Twitter Thread by Jesse Hynes



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A necessary clarification needs to be made with regards to securities laws because I've been seeing a theory lately not based on law but based on false presumptions. Before I do so, I want to note that I DO NOT think that XRP is a security (before I get "FUD" responses). 1/

Here it goes: There has been a theory that the SEC should only be pursuing the sales of XRP by Ripple, and once it exchanges hands it is no longer a security. Basically the theory is that the XRP the common investor holds (who bought off an exchange) is not a security because 2/

there is no privity with Ripple. Stated differently, the assumption is the SEC should categorize XRP into two pots: 1) XRP sold by Ripple and 2) all other XRP . The theory continues that a difference should be made and the SEC should clarify that it is only alleging the 3/

transactions made by Ripple to be transactions of securities. This theory is a fallacy. I've seen this theory argued by comparing XRP to a stock and noting the differences. It is important to note that this type of comparison cannot apply. 4/

The SEC is not alleging that XRP is a stock, but rather an "investment contract". An Investment Contract is (1) an investment of money (2) in a common enterprise (3) with the expectation of profit (4) derived solely from the efforts of others. 5/

A stock is not an investment contract. For example, let's say that David Schwartz were to sell his old gym shorts and sought investors. If I were to loan him, say $1,000.00 in capital with an agreement that he would pay me back out of the sales at LIBOR + 300 basis points, 6/

that is a security. If I then sold my contractual interest to a third party, they still purchase a security even though they didn't buy it from David (and even if they don't know who David is). Similarly, just because I buy my XRP from Coinbase and don't research 7/

Ripple doesn't make XRP any more or less of a security. It is further argued that many people who invest in XRP have no idea what Ripple is unlike how an investor in Facebook stock would know what Facebook is. Once again, stocks are different than investment contracts AND 8/

secondly how many people who have invested in XRP don’t know about Ripple (I mean really)? Third, that argument doesn’t matter. If I saw someone on twitter talking about buying AAPL stock and I didn’t research what it meant an bought the stock 9/

(and had no idea that AAPL meant Apple), that doesn’t make the Apple stock that I own not a security. Similarly, just because I buy my XRP from Coinbase and don’t research Ripple doesn’t make XRP any more or less of a security. 10/

A common retort that I receive on this conversation is that Jay Clayton has stated that cryptocurrencies can evolve from being a security. This is a true statement. However, this argument keeps getting stretched into a fallacy. 11/

The fallacy argument is that some XRP can evolve while others don’t. The argued evolution point is when a third party sells the XRP and there is no longer a privity with Ripple. That is the fallacy. 12/

Jay Clayton was making a point that there could come a time when an asset IN ITS ENTIRETY was but no longer is a security. Basically, either nothing or the whole enchilada. Not some are, some aren't 13/

There are, however, legitimate defenses to why XRP is not security now and was not a security when it was first created. None of them, however, have to do with the fact that you didn’t buy your XRP from Ripple 14/14 END