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November 14, 2024

Via ECF

The Honorable Katherine Polk Failla, U.S.D.J.
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Securities and Exchange Commission v. Coinbase, Inc.
and Coinbase Global, Inc.*, 23 Civ. 4738 (KPF)

Dear Judge Failla:

Pursuant to Local Rule 7.1(d) and this Court's Individual Rule 2(C), Coinbase seeks to amend the operative Case Management Plan and Scheduling Order (Dkt. 166). While both Coinbase and the SEC have been working hard to meet their discovery obligations and to resolve or narrow disagreements, recent developments lay bare the substantial discovery that remains outstanding and renders the current timeline untenable. As detailed below, in light of new SEC document requests, outstanding SEC productions, and the scale and timing of the deposition program sought by the SEC, Coinbase seeks an order to extend the fact discovery deadline and to provide interim deadlines. Revising the schedule now would provide the parties visibility to plan the completion of fact discovery on an efficient, reasonable timetable, with document discovery and depositions undertaken in the appropriate and customary sequence. This is Coinbase's first request to amend the schedule.

On September 5, the Court granted in part Coinbase's motion to compel the SEC's compliance with 13 requests for production served in April. Dkt. 160. The Court also ordered the SEC to log withheld documents to "give the defense the information it needs to challenge, as appropriate, the SEC's privilege assertions." Tr. at 4. The parties negotiated a search protocol, which required the SEC to collect and review more than 133,000 documents. The SEC then sought Coinbase's consent to a four-month extension of the October 18 fact discovery deadline. Coinbase consented to that extension based on the parties' expectations that document discovery would be substantially complete well before year-end, permitting time to resolve disputes and to begin depositions in mid-January 2025. On September 19, the Court ordered the SEC-proposed schedule.

In the past two months, several discovery developments have undermined the premises of the schedule and now warrant its amendment:

1. SEC's new document requests: In the wake of the Court's motion-to-compel order, the SEC served on Coinbase two additional sets of document demands, with a total of 71 new requests. This wave of requests has imposed several months of additional work for Coinbase to complete, on top of its efforts already underway to respond to the SEC's 222 prior requests. And just two days ago, on November 12, the SEC served on Coinbase another wave of 461 Requests for Admission, indicative of the voluminous ongoing work ahead — by both parties — all of which may inform further discovery, including depositions. Nevertheless, the SEC seeks to commence depositions in the coming weeks, to meet the current fact discovery deadline. But during the weeks

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ahead, with ongoing document discovery and the upcoming holidays, there is no reason to subject Coinbase's witnesses to depositions with the attendant risk that the SEC may invoke subsequent productions to seek witnesses' additional appearances for testimony. Nor, for that matter, would there be reason to subject SEC witnesses to that risk and burden. Revising the schedule now would remove this risk and burden.

2. SEC's outstanding production obligations: To date, despite its obligation to review more than 133,000 documents to comply with the motion-to-compel order, the SEC has produced only 300 documents subject to that review, comprised almost entirely of documents already in Coinbase's possession (SEC communications with Coinbase). The SEC committed to make a further production arising from the order on November 11, but that did not happen. Instead, the SEC now represents that such production will come on November 19, with its initial review of all documents anticipated by December 20. The SEC has not stated when its privilege log will follow.

Given this state of affairs, there is little prospect that meet and confers concerning the SEC's production, let alone any Coinbase motions to follow, can be raised or resolved until well into 2025 (for example, to resolve disputes with respect to SEC documents withheld as privileged). These substantial SEC production obligations that remain outstanding also preclude Coinbase from having now, or anytime soon, a fully informed basis in the documentary record for assessing what depositions are needed for its defense. Revising the schedule now would address this problem.

3. Ongoing meet and confers: Coinbase has met and conferred constructively with the SEC on various issues relating to both parties' requests for production. For certain Coinbase requests to which the SEC objected, on October 28 the SEC agreed, while preserving its objections, to provide a hit report for a search Coinbase proposed to resolve the dispute; yesterday, the SEC furnished that report, identifying an additional 50,000 documents potentially responsive in this case. On this and other matters, Coinbase would like to have the time to continue working with the SEC to address any burden concerns they might have and to resolve open disagreements before seeking the Court's intervention. Revising the schedule now would allow that.

4. SEC's proposed deposition program: Contrary to the parties' original understanding that they would complete document productions before commencing depositions in mid-January, in order to complete its desired deposition program by the February 18 fact discovery deadline, the SEC now seeks to begin depositions in December — despite the substantial documentary discovery (and potential issues in dispute) still outstanding. Further, the SEC has sought Coinbase's consent to increase each side's permissible number of depositions to 15 — five more than the default under the federal rules — and, due to the approaching fact discovery deadline, to take party and third-party depositions concurrently.

Across several meet and confers, Coinbase has attempted to address the SEC's concerns about its ability to complete depositions before the current deadline, including by exploring potential dates of witness and counsel availability far earlier than the parties had envisioned. The SEC sought to proceed with depositions on those potential dates, but Coinbase ultimately remained resolved that it is neither appropriate nor necessary to subject either side's witnesses to depositions with such substantial documentary discovery outstanding, and for that reason sought the SEC's

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consent to a reasonable schedule extension to resolve both sides' timing concerns. As Coinbase made clear to the SEC during the parties' meet and confer, it does not seek to deprive the SEC of testimony from any of the witnesses it has noticed for deposition in this case, but rather requests an extension of the schedule in order to permit the witnesses — for both sides — to provide their deposition testimony in the customary sequence, after documentary discovery is substantially complete. Again, revising the schedule now on the terms proposed would allow this to happen.

In light of these developments, and the SEC's demand that depositions commence promptly to meet the current discovery schedule, an extension is warranted now to provide clarity for the parties to proceed with an efficient, feasible completion of fact discovery. An amended schedule should include interim deadlines that ensure the parties can complete discovery in the customary sequence. Coinbase respectfully asks the Court to order the enclosed case management plan (*see* Exhibit A), which would result in a shorter extension than the SEC sought (and that Coinbase did not oppose) in September. The proposed deadlines provide for the following schedule:

- Substantial Completion of Document Discovery: March 7, 2025
- Service of Privilege Logs: March 17, 2025
- Commencement of Depositions: April 1, 2025
- Completion of Fact Discovery: May 30, 2025

We had hoped that the parties could agree on an extension to propose jointly to the Court, and on November 13 the parties held a meet and confer on Coinbase's proposal, but the SEC has notified Coinbase that it opposes any extension of the schedule. Coinbase is available at the Court's convenience should it have any questions.

Respectfully,



Kevin S. Schwartz

cc: All counsel of record

Enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
Securities and Exchange Commission,	:	
	:	
Plaintiff(s),	:	<u>23 Civ. 4738 (KPF)</u>
	:	
v.	:	<u>PROPOSED AMENDED</u>
	:	<u>CIVIL CASE</u>
Coinbase, Inc. and Coinbase Global, Inc.,	:	<u>MANAGEMENT PLAN</u>
	:	<u>AND SCHEDULING</u>
Defendant(s).	:	<u>ORDER</u>
-----	X	

Defendants’ Proposed Amended Civil Case Management Plan (the “Plan”) is set forth below.

1. All parties [consent _____ do not consent X _____] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. *[If all parties consent, the remaining paragraphs need not be completed. Instead, the parties shall submit to the Court a fully executed SDNY Form Consenting to Proceed for All Purposes Before a Magistrate Judge, available at the Court’s website, <https://nysd.uscourts.gov/hon-katherine-polk-failla>, within three (3) days of submitting this Proposed Civil Case Management Plan and Scheduling Order.]*
2. Settlement discussions [have _____ / have not X _____] taken place.
3. The parties [have X _____ / have not _____] conferred pursuant to Fed. R. Civ. P. 26(f).
4. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed within N/A days from the date of this Order. *[Absent exceptional circumstances, a date not more than 30 days following the initial pretrial conference.]*
5. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed no later than N/A days from the date of this Order. *[Absent exceptional circumstances, a date not more than 14 days following the initial pretrial conference.]* (Completed in accordance with previous Case Management Plan (ECF No. 116) 14 days after issuance.)

6. [If applicable] The plaintiff(s) shall provide HIPAA-compliant medical records release authorizations to the defendant(s) no later than N/A.
7. Discovery
 - a. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York.
 - b. The parties are to discuss, if and as appropriate, provisions for the disclosure, discovery, or preservation of electronically stored information (ESI). Any agreement reached between the parties concerning ESI is to be filed within 30 days from the date of this Order.
 - c. The parties are to discuss whether a procedure for designating materials as confidential is necessary in this matter. Any agreement between the parties for designating materials as confidential must conform to the Court's Individual Rules regarding the filing of materials under seal. Any confidentiality agreement between the parties is to be filed within 30 days from the date of this Order.
 - d. The parties are also to discuss protocols for asserting claims of privilege or of protection as trial-preparation material after such information is produced, pursuant to Federal Rule of Evidence 502. Any agreement reached between the parties concerning such protocols is to be filed within 30 days from the date of this Order.
 - e. All fact discovery shall be completed no later than May 30, 2025. [A date not more than 120 days following the initial pretrial conference, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]
 - f. All expert discovery, including reports, production of underlying documents, and depositions, shall be completed no later than August 1, 2025. [Absent exceptional circumstances, a date not more than 45 days from the date in paragraph 7(e) (i.e., the completion of all fact discovery).]

8. Interim Discovery Deadlines

- a. Initial requests for production of documents shall be served by N/A. (Completed in accordance with previous Case Management Plan (ECF No. 116) by May 10, 2024.)
- b. Interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York shall be served by N/A. No Rule 33.3(a) interrogatories need to be served with respect to disclosures automatically required by Fed. R. Civ. P. 26(a).
- c. Unless otherwise ordered by the Court, contention interrogatories pursuant to Rule 33.3(c) of the Local Civil Rules of the Southern District of New York must be served no later than 30 days before the close of discovery. No other interrogatories are permitted except upon prior express permission of the Court.
- d. The parties shall substantially complete documentary discovery by March 7, 2025.
- e. The parties shall serve privilege logs by March 17, 2025.
- f. Depositions of fact witnesses:
 - (i) Depositions of fact witnesses shall not commence before April 1, 2025.
 - (ii) Depositions of fact witnesses shall be completed by May 30, 2025.
 - (iii) Party and non-party depositions may take place concurrently, in accordance with the foregoing subsections (i) and (ii).
- g. Requests to admit shall be served by May 1, 2025.
- h. Any of the deadlines in paragraphs 8(a) through 8(g) may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 7(e).
- i. No later than 30 days prior to the date in paragraph 7(e) (i.e., the completion of all fact discovery), the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents, and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 7(f).

9. All motions and applications shall be governed by the Federal Rules of Civil Procedure, the Local Rules of the Southern District of New York, and the Court's Individual Rules of Practice in Civil Cases ("Individual Rules"), which are available at <https://nysd.uscourts.gov/hon-katherine-polk-failla>.
10. In the case of discovery disputes, parties should follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party may submit a letter to the Court, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Such a letter must include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter, it must submit a responsive letter, not to exceed three pages, within three business days after the request is received. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, by order, by conference, or by telephone.
11. All counsel must meet in person for at least one hour to discuss settlement within 14 days following the close of fact discovery EXCEPT in cases brought as putative collective actions under the Fair Labor Standards Act, in which case counsel must meet to discuss settlement within 14 days following the close of the opt-in period.
12. Alternative dispute resolution/settlement
 - a. Counsel for the parties have discussed an informal exchange of information in aid of early settlement of this case and have agreed upon the following: The parties have not agreed upon an informal exchange of information at this time.

 - b. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and/or (iii) retention of a privately retained mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case: The parties have not agreed to engage in alternative dispute resolution at this time.

- c. Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph 12(b) be employed at the following point in the case (*e.g.*, within the next 60 days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery):
The parties have not agreed to engage in alternative dispute resolution at this time.

- d. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.
13. Absent good cause, the Court will not ordinarily have summary judgment practice in a non-jury case. Before filing a summary judgment motion, the moving party must file a pre-motion submission pursuant to Section 4(A) of the Court's Individual Rules. The submission shall be filed within 30 days of the close of fact or expert discovery, whichever comes later.
14. Similarly, any motion to exclude the testimony of experts pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, is to be filed within 30 days of the close of fact or expert discovery, whichever is later. Unless otherwise ordered by the Court, opposition to any such motion is to be filed two weeks after the motion is served on the opposing party, and a reply, if any, is to be filed one week after service of any opposition.
15. Unless otherwise ordered by the Court, within 30 days of the close of all discovery, or, if a dispositive motion has been filed, within 30 days of a decision on such motion, the parties shall submit to the Court for its approval a Joint Pretrial Order prepared in accordance with the Court's Individual Rules and Fed. R. Civ. P. 26(a)(3). The parties shall also follow Paragraph 5 of the Court's Individual Rules, which paragraph identifies submissions that must be made at or before the time of the Joint Pretrial Order, including any motions *in limine*.
16. If this action is to be tried before a jury, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be filed on or before the Joint Pretrial Order due date in accordance with the Court's Individual Rules. Jury instructions may not be submitted after the Joint Pretrial Order due date, unless they meet the standard of Fed. R. Civ. P. 51(a)(2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law shall be filed on or before the Joint Pretrial Order due date in accordance with the Court's Individual Rules.

- 17. Unless the Court orders otherwise for good cause shown, the parties shall be ready for trial 30 days after the Joint Pretrial Order is filed.
- 18. This case [is X / is not] to be tried to a jury.
- 19. Counsel for the parties have conferred and the present best estimate of the length of trial is 2-3 weeks.
- 20. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.

N/A

Counsel for the Parties:

/s/ Kevin S. Schwartz
Counsel for Defendants

TO BE FILLED IN BY THE COURT IF APPLICABLE:

_____ shall file a motion for _____ no later than _____ . Any opposition shall be filed by _____ and any reply shall be filed by _____. One courtesy copy of all motion papers, marked as such, shall be mailed or hand delivered to the Court by the movant at the time the reply is served. All courtesy copies should be three-hole punched, tabbed, and placed in binders as specified in the Court's Individual Rules.

The next pretrial conference is scheduled for _____ at _____ in Courtroom 618 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York 10007.

By Thursday of the week prior to that conference, the parties shall file on ECF, and provide a courtesy copy, clearly marked as such, via e-mail (Failla_NYSDChambers@nysd.uscourts.gov) a joint letter, not to exceed three pages, regarding the status of the case. The letter should include the following information in separate paragraphs:

- (1) A statement of all existing deadlines, due dates, and/or cut-off dates;
- (2) A brief description of any outstanding motions;
- (3) A brief description of the status of discovery and of any additional discovery that needs to be completed;
- (4) A statement describing the status of any settlement discussions and whether the parties would like a settlement conference;
- (5) A statement of the anticipated length of trial and whether the case is to be tried to a jury;
- (6) A statement of whether the parties anticipate filing motions for summary judgment, including the basis of any such motion; and
- (7) Any other issue that the parties would like to address at the pretrial conference or any information that the parties believe may assist the Court in advancing the case to settlement or trial.

This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Unless the Court orders otherwise, parties engaged in settlement negotiations must proceed on parallel tracks, pursuing settlement and conducting discovery simultaneously. Parties should not assume that they will receive an extension of an existing deadline if settlement negotiations fail. Any application to modify or extend the dates herein (except as provided in paragraph 8(f)) shall be made in a written application in accordance with the Court's Individual Rules and must be made no fewer than two business days prior to the expiration of the date sought to be extended.

SO ORDERED.

KATHERINE POLK FAILLA
United States District Judge

Dated: _____, 2024
New York, New York