

April 14, 2025

SEC Staff Issues Stablecoin Guidance

Guidance Clarifies That the Offer and Sale of “Covered Stablecoins” Are Not Securities Transactions

SUMMARY

On April 4, 2025, the Division of Corporation Finance of the SEC issued a statement¹ setting forth the Division’s view that the offer and sale of “Covered Stablecoins” in the manner and under the circumstances described in the statement do not involve the offer and sale of securities under Section 2(a)(1) of the Securities Act of 1933 or Section 3(a)(1) of the Securities Exchange Act of 1934. Accordingly, in the Division’s view, persons involved in the creation (or “minting”) and redemption of such Covered Stablecoins need not register those transactions with the SEC under the Securities Act or ensure that they qualify for a Securities Act registration exemption.² On that basis, an entity effecting transactions, dealing, providing a marketplace for trading or engaging in clearing or settling transactions in Covered Stablecoins would not be required to register as a broker-dealer, national securities exchange or clearing agency under the Exchange Act. The Division’s statement is consistent with other recent digital asset-friendly actions taken by the SEC and other regulators. It also anticipates—and effectively could be superseded by—pending legislation that, if adopted as proposed, would provide that “payment stablecoins” (which, as defined, are substantially similar to Covered Stablecoins) are not securities under the Securities Act, Exchange Act, Investment Advisers Act of 1940 or the Investment Company Act of 1940.

COVERED STABLECOINS

The Division’s statement describes stablecoins, generally, as a type of digital asset designed to maintain a stable value relative to a reference asset, such as the United States Dollar (USD) or another fiat currency, a commodity (e.g., gold) or a pool or basket of assets. Stablecoins typically track the value of the reference asset on a one-for-one basis, though the mechanisms for doing so can differ.³ Likewise, stablecoin issuers generally offer and sell stablecoins at a price corresponding to that of the reference asset on a one-for-one

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basis and reserve-backed stablecoin issuers generally use the assets held in reserve to fund stablecoin redemptions.

The guidance applies only to “Covered Stablecoins,”⁴ which the Division describes as having the following characteristics:

- **Purpose:** Covered Stablecoins are a means of making payments, transmitting money or storing value.
- **USD-Backed:** Covered Stablecoins are designed to maintain a stable value relative to USD, not any non-USD fiat currency, commodity or crypto asset.
- **Reserve:** Covered Stablecoins are backed by reserve assets consisting of USD or other “low-risk and readily liquid” assets⁵ that allow the issuer to honor redemptions on demand (the “Reserve”). The Reserve has a USD value that meets or exceeds the redemption value of Covered Stablecoins in circulation.
 - **Reserve Funding:** Covered Stablecoin issuers use the proceeds from sales of Covered Stablecoins to acquire assets that are then held in the Reserve.
 - **Use of Reserve Assets:** Assets held in the Reserve are used only to pay redemptions (*i.e.*, they may be sold to redeem Covered Stablecoins). Moreover, assets held in the Reserve are: (1) not used by the Covered Stablecoin issuer for operational or general business purposes; (2) not otherwise lent, pledged or rehypothecated for any reason; (3) held in a manner designed not to subject them to claims of third parties; and (4) not used by the issuer to engage in trading, speculation or discretionary investment strategies. The issuer may realize the earnings on the Reserve assets in its discretion, but it does not pay those earnings to Covered Stablecoin holders.
 - **Segregation:** Reserve assets are segregated from and not comingled with the assets of the Covered Stablecoin issuer or any third party.
 - **“Proof of Reserves”:** In some cases, the Covered Stablecoin issuer publishes a “proof of reserves,” which the issuer uses as a verification method or audit to demonstrate that the Covered Stablecoin is backed by sufficient Reserves.
- **Minting and Redemption:** A Covered Stablecoin issuer (directly or through a designated intermediary) mints and redeems Covered Stablecoins on a one-for-one basis with USD at any time and in unlimited quantities.
- **Marketing:** Covered Stablecoins are marketed solely for use in commerce, as a means of making payments, transmitting money and/or storing value, and not as investments.⁶ They do not: (1) offer any interest or return; (2) represent an interest in the issuer of the stablecoins; (3) provide any governance rights; or (4) provide the holder with any financial benefit or loss that depends on the issuer’s or any other party’s financial performance.
- **Maintenance of Dollar Value:** A Covered Stablecoin may trade on secondary markets and the trading prices on those markets may differ from the redemption price. The “fixed-price, unlimited mint-redeem” structure of a Covered Stablecoin provides opportunities for designated intermediaries or other holders that are eligible to directly mint and redeem with a Covered Stablecoin issuer to engage in arbitrage to keep the market price stable relative to the redemption price.⁷

Under these circumstances (and subject to each stablecoin transaction being evaluated on its particular facts and circumstances), the Division’s view is that the offer and sale of Covered Stablecoins do not involve the offer and sale of securities under the Securities Act or the Exchange Act and, accordingly, persons involved in the process of minting and redeeming Covered Stablecoins do not need to register those transactions with the SEC under the Securities Act or fall within one of the Securities Act’s exemptions from

registration. Although not directly addressed by the statement, the Division's view concerning the Exchange Act's "security" definition should also mean that activities involving Covered Stablecoins do not trigger broker-dealer, national securities exchange or clearing agency registration. However, the treatment of Covered Stablecoins for other purposes under the Exchange Act (such as broker-dealer net capital requirements) remains unclear.

LEGAL ANALYSIS

Noting that Covered Stablecoins "share some characteristics with a note or other debt instrument," which are "securities" within the meaning of the Securities Act and Exchange Act, the statement provides the Division's analysis of Covered Stablecoins under *Reves v. Ernst & Young* (notes)⁸ and *SEC v. W.J. Howey Co.* (investment contracts).⁹

A. *Reves* "Family Resemblance" Analysis

In *Reves*, the Supreme Court held that, because a "note" is one of the instruments in the Securities Act's and Exchange Act's definitions of "security," there is a presumption that a note is a security. However, that presumption can be rebutted if the instrument at issue bears a "family resemblance" to notes issued in connection with commercial transactions that are excepted from the "security" definition.¹⁰

The "family resemblance" test considers four factors:

- **Motivations of Seller and Buyer.** This factor considers the motivations that would prompt a reasonable seller and buyer to enter into a transaction. A note is less likely to be a security if it is exchanged in order "to advance [a] *commercial* or consumer purpose" rather than for the general use of a business enterprise or to finance substantial investments, such that the buyer is interested primarily in the profit the note is expected to generate.¹¹
 - The statement provides that Covered Stablecoins are "issued and purchased for commercial rather than investment purposes" because they do not pay or guarantee to pay interest or otherwise convey any rights to payments or assets except upon redemption for USD on a one-for-one basis.
- **Plan of Distribution of the Instrument.** A note is more likely to be a security if there is "common trading for speculation or investment" in the instrument, including if it is "offered and sold to a broad segment of the public."¹²
 - The statement provides that Covered Stablecoins are offered and sold broadly, but that "the Covered Stablecoin's price stability design helps ensure that any secondary market trading is not for speculation or investment," notwithstanding certain arbitrage opportunities described above.
- **Reasonable Expectations of the Investing Public.** This factor turns on the manner in which a note is marketed and sold, and focuses in particular on whether an instrument is marketed as an investment opportunity.¹³
 - By definition, Covered Stablecoins are not marketed as investment opportunities.
- **Risk-Reducing Features.** The final factor considers whether a note is collateralized or insured, or subject to "another regulatory scheme [that] significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary."¹⁴
 - The Division describes the maintenance of a reserve designed to satisfy fully a Covered Stablecoin issuer's redemption obligations as a risk-reducing factor. In this regard, the Division further provides

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that “[t]he extent to which the Reserve is or is not subject to the claims of the issuer’s creditors may impact whether there are sufficient risk-reducing features under *Reves*. For example, there likely are sufficient risk-reducing features where a stablecoin issuer holds the Reserve funds in a bankruptcy-remote account or entity for the sole benefit of Covered Stablecoin holders.”¹⁵

In considering Covered Stablecoins under *Reves*, the Division concludes:

“[O]n balance, it is the Division’s view that Covered Stablecoins are not securities under *Reves* because: (1) sellers use the proceeds to fund a Reserve and buyers are not motivated by an expected return on their funds; (2) Covered Stablecoins are distributed in a manner that does not encourage trading for speculation or investment; (3) a reasonable buyer would likely expect that Covered Stablecoins are not investments; and (4) the availability of a Reserve adequately funded to fully satisfy redemptions on demand is a risk-reducing feature of Covered Stablecoins. In short, the offer and sale of Covered Stablecoins is to advance a commercial or consumer purpose.”

B. *Howey* Investment Contract Analysis

In *Howey*, the Supreme Court held that an instrument or arrangement constitutes an “investment contract,” and thus is a “security” within the Securities Act and Exchange Act definitions, where there is (i) an investment of money, (ii) in a common enterprise, (iii) with an expectation of profits, (iv) from the efforts of others. All prongs of the *Howey* Test must be satisfied for an instrument to be an investment contract. The Division notes that, because Covered Stablecoins are not marketed as investments or with any emphasis on the potential for profit and buyers are motivated to use or consume Covered Stablecoins as if they were fiat USD (meaning that Covered Stablecoins fail at least the first and third prongs), the Division’s view is that Covered Stablecoins marketed as defined are not offered or sold as investment contracts.¹⁶

IMPLICATIONS

The Division’s statement builds on the SEC’s recent efforts to clarify the application of the federal securities laws to crypto assets. On January 21, 2025, Acting Chairman Uyeda announced the launch of the SEC’s Crypto Task Force, led by Commissioner Peirce, “dedicated to developing a comprehensive and clear regulatory framework for crypto assets.”¹⁷ Since then: (1) the SEC dropped several enforcement actions against digital asset firms; (2) the Crypto Task Force requested public input on a wide-ranging set of questions about the status of digital assets under the federal securities laws; and (3) the Division issued a statement on “Offerings and Registrations of Securities in the Crypto Asset Markets” clarifying the application of disclosure requirements under the federal securities laws to offerings and registrations of securities in crypto asset markets and a “Staff Statement on Meme Coins” providing the Division’s view that transactions in certain meme coins do not involve the offer and sale of securities under the Securities Act or Exchange Act.¹⁸

Other regulators have also undertaken similar efforts. For example, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation each released statements affirming the ability of

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banking organizations subject to their respective jurisdictions to maintain stablecoin reserves and engage in related activities, in each case reversing previous policies that had required banks supervised by the applicable agency to obtain supervisory non-objection prior to engaging in such activities.¹⁹

The Division's statement also follows (and to some extent anticipates) movement on stablecoin legislation in Congress. Two bills in particular have advanced: (1) the "Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025" (the "GENIUS Act")²⁰ was approved by the Senate Banking Committee on March 13, 2025, and (2) the "Stablecoin Transparency and Accountability for a Better Ledger Economy Act of 2025" (the "STABLE Act") was approved by the House Financial Services Committee on April 2, 2025.²¹ Although both the GENIUS Act and STABLE Act have been approved by their respective committees, to date, neither has received a full floor vote. Both bills, as currently drafted, would amend the definition of "security" in the federal securities laws (including in Section 2 of the Securities Act, Section 3 of the Exchange Act, Section 2 of the Investment Company Act and Section 202 of the Investment Advisers Act) to expressly exclude "payment stablecoins" issued by entities approved to issue stablecoins under the regulatory framework that would be established under the bills.²² Because those "payment stablecoins" would likely include all Covered Stablecoins that are permitted to be issued in the United States, either bill, if enacted, would effectively supersede the Divisions' statement for those Covered Stablecoins. Furthermore, because "payment stablecoins" are expressly excluded from the definition of "security," a firm that, for compensation, engages in the business of providing investment advice regarding "payment stablecoins" issued by a permitted payment stablecoin issuer ("PPSI") would not need to register as an investment adviser under the Investment Advisers Act on that basis; likewise, "payment stablecoins" issued by a PPSI would not be treated as securities for purposes of analyzing whether a firm must register as an investment company under the Investment Company Act.

However, the proposed amendments to the federal securities laws under the pending legislation would not expressly exclude from the "security" definition Covered Stablecoins issued outside the United States by foreign issuers that would not be subject to the proposed regulatory framework. Therefore, even if the pending legislation is enacted, the Division's statement may continue to have applicability to these Covered Stablecoins issued outside the United States if they may be traded in the United States on secondary markets or otherwise transferred into the United States.

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ENDNOTES

- 1 SEC Division of Corporation Finance, *Statement on Stablecoins* (April 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.
- 2 The Division's view "is not dispositive of whether any stablecoin, including a Covered Stablecoin, is offered or sold as a security," as any such determination requires a facts-and-circumstances analysis of the specific stablecoin and its offer and sale.
- 3 In some cases, stablecoins maintain a stable value by being backed by assets held in a reserve. In other cases, stablecoins are designed to use mechanisms other than reserves to maintain a stable value, such as using algorithms that increase or decrease the supply of stablecoins in response to demand. According to the Division, the risks associated with stablecoins vary significantly depending on multiple factors, including their stability mechanisms and the maintenance of a reserve (if applicable).
- 4 The Division notes that it does not express a view regarding (1) the application of the federal securities laws to any other types of stablecoins, including those that are intended to track the value of reference assets other than USD, such as non-USD fiat currencies, commodities, other crypto assets or those with alternative stability mechanisms like algorithmic stablecoins; (2) stablecoins that are intended to track the value of USD and can be redeemed for assets other than USD; and (3) the application of the federal securities laws to "yield-bearing stablecoins" (stablecoins providing holders with yield, interest or other passive income, whether in the form of regular payments or rewards) or in the form of "re-basing" (a mechanism that automatically adjusts the total supply of the stablecoins).
- 5 "Low-risk and readily liquid" assets include USD cash equivalents, demand deposits with banks or other financial institutions, U.S. Treasury securities and/or money market funds registered under Section 8(a) of the Investment Company Act of 1940, and do not include precious metals or other crypto assets. The Division also notes that some issuers may be subject to regulation under state law that prescribes the permissible assets that may be held in the Reserve.
- 6 The Division notes that other attributes are "sometimes" highlighted, including that a Covered Stablecoin: (1) is designed to have a stable value relative or corresponding to USD (e.g., one Covered Stablecoin to one USD); (2) does not entitle a Covered Stablecoin holder to the right to receive any interest, profit or other returns; (3) does not reflect any investment or other ownership interest in the Covered Stablecoin issuer or any other third party; (4) does not afford a Covered Stablecoin holder any governance rights with respect to the Covered Stablecoin issuer or the Covered Stablecoin; and/or (5) does not provide a Covered Stablecoin holder with any financial benefit or loss based on the Covered Stablecoin issuer or any third party's financial performance.
- 7 For example, if the market price is more than the redemption price, such parties will mint Covered Stablecoins directly with the issuer and sell them into the market, and the increased supply is likely to cause the market price to decrease and correlate closer to the redemption price. Alternatively, if the market price is less than the redemption price, such parties will purchase Covered Stablecoins in the secondary market and redeem them directly with the issuer, and the decreased supply is likely to cause the market price to increase and correlate closer to the redemption price. Note, the statement does not define the term "designated intermediary."
- 8 *Reves*, 494 U.S. 56 (1990).
- 9 *Howey*, 328 U.S. 293 (1946).
- 10 In its *Reves* analysis, the Division also noted: "Federal courts apply the *Reves* test to notes as well as to other instruments with debt characteristics. See, e.g., *In re Tucker Freight Lines, Inc.*, 789 F. Supp. 884, 885 (W.D. Mich. 1991) (The Court's 'method [in *Reves*] seems applicable to all debt instruments, including evidences of indebtedness.'). As Covered Stablecoin issuers create an obligation to honor redemption requests, the Covered Stablecoin may be viewed as a debt of the issuer. While a Covered Stablecoin does not exhibit all the attributes of a typical note (e.g., there

ENDNOTES (CONTINUED)

- is no term, stated rate of interest payable, etc.), we nevertheless want to clarify that it is the Division's view that the offer and sale of a Covered Stablecoin is not the offer and sale of a security in the event the Covered Stablecoin may be deemed to be a note or other evidence of indebtedness."
- 11 *Reves*, 494 U.S. at 67.
- 12 *Reves*, 494 U.S. at 67.
- 13 The *Reves* Court noted that "[t]he advertisements for the notes [in this case] characterized them as 'investments,' ... and there were no countervailing factors that would have led a reasonable person to question this characterization."
- 14 *Reves*, 494 U.S. at 70.
- 15 In the event that the GENIUS Act or STABLE Act (both defined below), or any other similar stablecoin legislation, is passed into law, the application of this factor would likely be enhanced given the existence of an alternate regulatory regime as a "risk-reducing" factor in the *Reves* analysis.
- 16 The statement does not address the possibility of other (non-Covered Stablecoins) stablecoins being sold as part of a package that could constitute an "investment contract."
- 17 SEC Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force* (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.
- 18 See, e.g., SEC Press Release, *SEC Announces Dismissal of Civil Enforcement Action Against Coinbase* (Feb. 27, 2025), <https://www.sec.gov/newsroom/press-releases/2025-47>; Statement of Commissioner Hester M. Peirce, *There Must be Some Way Out of Here* (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>; SEC Division of Corporation Finance, *Statement on Meme Coins* (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>; SEC Division of Corporation Finance, *Statement on the Offerings and Registrations of Securities in the Crypto Asset Markets* (Apr. 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025>. Please also our April 11, 2025 Client Memorandum, regarding the latter statement, <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025>.
- 19 See Financial Institution Letter 7-2025 (March 28, 2025), <https://www.fdic.gov/news/financial-institution-letters/2025/fdic-clarifies-process-banks-engage-crypto-related>; Interpretive Letter 1183 (March 7, 2025), <https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1183.pdf>. For additional information, please refer to our March 9, 2025 Client Memorandum, https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/OCC-Clarifies-Permissible-Crypto-Asset-Activities.pdf and April 12, 2025 Client Memorandum, https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/FDIC-Simplifies-Process-Banks-Engage-Crypto-Activities.pdf.
- 20 Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 or GENIUS Act of 2025, S. 919, 119th Cong. (2025) (the "GENIUS Act"). For additional information, please refer to our March 18, 2025 Client Memorandum, https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/Stablecoin-Legislation.pdf.
- 21 Stablecoin Transparency and Accountability for a Better Ledger Economy Act of 2025 or STABLE Act of 2024, H.R. 2392, 119th Cong. (2025) (the "STABLE Act").
- 22 GENIUS Act § 2(a)(15); STABLE Act § 15.

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