

SEC Staff Issues Statement that Stablecoins are Not Securities

April 15, 2025

On April 4, 2025, the Division of Corporation Finance (“Corp Fin”) of the Securities and Exchange Commission (the “SEC”) issued a statement (“Statement”) that the offer and sale of “Covered Stablecoins,” as defined by Corp Fin, does not involve the offer and sale of securities within the meaning of Section 2(a)(1) of the Securities Act of 1933 (the “Securities Act”) or Section 3(a)(10) of the Securities Exchange Act of 1934 (the “Exchange Act”).¹ Accordingly, Corp Fin stated that “persons involved in the process of ‘minting’ (or creating) 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 exemption from registration.”

The Statement addresses “Covered Stablecoins,” which Corp Fin defines as stablecoins that are designed to maintain a stable value relative to the United States Dollar (“USD”), on a one-for-one basis, that can be redeemed for USD on a one-for-one basis, and are backed by assets held in a reserve that are considered low-risk and readily liquid with a USD-value that meets or exceeds the redemption value of the stablecoins in circulation. The Statement lays out Corp Fin’s understanding of the characteristics of Covered Stablecoins, the marketing of Covered Stablecoins, and the reserve mechanism of Covered Stablecoins to support its legal analysis that Covered Stablecoins, while resembling notes or other debt instruments, are not securities under the Supreme Court’s *Reves* test, or investment contracts under the Supreme Court’s *Howey* test.

Corp Fin Characterization of Covered Stablecoins

Characteristics of Covered Stablecoins

The Statement describes Covered Stablecoins as “crypto assets designed and marketed for use as a means of making payments, transmitting money, or storing value.” Covered Stablecoins are backed by a reserve of USD and/or other assets that are considered low-risk and readily liquid to allow issuers to honor redemptions on demand. Such assets held in reserve typically meet or exceed the redemption value of the Covered Stablecoin in circulation. Because the value of Covered Stablecoins is designed to correlate on a one-to-one basis with USD and there is no limitation on the amount of Covered Stablecoins that the issuer mints or redeems, the Statement suggests that the market price of a Covered Stablecoin is likely to remain stable relative to USD.

Covered Stablecoins may be offered and sold by an issuer or designated intermediaries. Depending on how Covered Stablecoins are distributed, holders may either mint or redeem Covered Stablecoins directly with the issuer or may need to go through designated intermediaries. Although the market price of a Covered Stablecoin on secondary markets can fluctuate from its redemption price, the Statement suggests that the fixed-price, unlimited mint-redeem structure of a Covered Stablecoin provides opportunities for designated intermediaries or other holders to engage in arbitrage to keep the market price stable relative to the redemption price.

Marketing of Covered Stablecoins

The Statement declares that the marketing of Covered Stablecoins, as described below, are “indicia that Covered Stablecoins are not offered or sold as securities.” The Statement explains that 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,” likening Covered Stablecoins to a “digital dollar.” The Statement also suggests that marketers sometimes state that a Covered Stablecoin:

- is designed to have a stable value relative or corresponding to USD;

- does not entitle a Covered Stablecoin holder to the right to receive any interest, profit, or other returns;
- does not reflect any investment or other ownership interest in the Covered Stablecoin issuer or any other third party;
- does not afford a Covered Stablecoin holder any governance rights with respect to the Covered Stablecoin issuer or the Covered Stablecoin; and/or
- 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.

The Reserve

Covered Stablecoin issuers use the proceeds from the sale of Covered Stablecoins to acquire assets in a reserve account (a "Reserve") that consists of USD and/or other assets that are considered low-risk and readily liquid so as to allow the issuer to honor redemptions. The assets in the Reserve are only used to pay redemptions and are:

- (i) not used by the issuer for operational or general business purposes,
- (ii) not lent, pledged, or rehypothecated for any reason,
- (iii) held in a manner not to subject them to third-party claims, and
- (iv) not used by the issuer to engage in trading, speculation, or discretionary investment strategies.

While the issuer may realize earnings on the assets held in the Reserve, such earnings are not paid to Covered Stablecoin holders. In certain cases, the Covered Stablecoin issuer publishes a "proof of reserves" as a verification method or audit to demonstrate that the Covered Stablecoin is backed by sufficient Reserves. Notably, the Statement did not state that "proof of reserves" or audit was necessary to preserve a Covered Stablecoin's status as a non-security.

Legal Analysis

The Statement notes that Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act each defines the term "security" by providing a list of various financial instruments, including "stock," "note," and "evidence of indebtedness." Because, according to Corp Fin, Covered Stablecoins share some characteristics with a note or other debt instrument, the Statement analyzes them under the test set forth in *Reves v. Ernst & Young* ("Reves").² The Statement also analyzes whether Covered Stablecoins are "investment contracts" under the test set forth in *SEC v. W.J. Howey Co.* ("Howey").³

Reves Analysis

Corp Fin applied its understanding of Covered Stablecoins to each of the four factors established by the Supreme Court in *Reves*:

- (i) the motivations of seller and buyer;
- (ii) plan of distribution of the instrument;
- (iii) reasonable expectations of the investing public; and
- (iv) risk reducing features, such as the existence of another regulatory scheme.

In applying the four factors, Corp Fin determined that, on balance, Covered Stablecoins are not securities under *Reves* because:

- issuers use the proceeds to fund a Reserve, and buyers are not purchasing Covered Stablecoins for investment purposes;
- Covered Stablecoins are distributed in a manner that does not encourage trading for speculation or investment;
- a reasonable buyer would likely expect that Covered Stablecoins are not investments; and
- the availability of a Reserve adequately funded to fully satisfy redemptions on demand is a risk-reducing feature of Covered Stablecoins.⁴

Accordingly, Corp Fin stated that the offer and sale of Covered Stablecoins is to advance a commercial or consumer purpose.

Howey Analysis

In case a Covered Stablecoin is not viewed as a note or other debt instrument and does not otherwise fall within any of the other categories of financial instruments that are specifically enumerated in the definition of “security,” Corp Fin provided further analysis of whether the offer and sale of a Covered Stablecoin constituted an “investment contract” under the Howey test. Corp Fin explained that the Howey test analyses instruments based on their “economic realities.” In evaluating the economic reality, the Howey test focuses on whether there is an investment of money in a common enterprise premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. Corp Fin reiterated that buyers do not purchase Covered Stablecoins for investment purposes. Rather, buyers purchase Covered Stablecoins to use them in the same way they use USD – for payment functionality.

Commissioner Crenshaw’s Criticism of the Statement⁵

Commissioner Crenshaw criticized Corp Fin’s analysis, asserting that the Statement’s “legal and factual errors paint a distorted picture of the USD-stablecoin market that drastically understates its risks.” Contrary to Corp Fin’s descriptions of the risk-reducing features of Covered Stablecoins, Commissioner Crenshaw argues that over ninety percent of USD-stablecoins in circulation are distributed through intermediaries who may be unable or unwilling to redeem the stablecoin leaving a holder with no contractual recourse against the issuer. The role of intermediaries, particularly unregistered trading platforms, poses “a panoply of significant, additional risks that the staff does not consider.”

Commissioner Crenshaw also expressed doubt that a Reserve, which may at some point be valued at or above the par value of its outstanding coin, would guarantee the issuer’s ability to satisfy future redemptions. The Commissioner pointed to “runs” on USD-stablecoins that have already occurred “with significant consequences for the broader stablecoin market and the traditional banking system.” Commissioner Crenshaw also criticized Corp Fin’s reliance on issuer publications of “proof of reserves,” as a demonstration that a Covered Stablecoin is backed by sufficient reserves. Commissioner Crenshaw warned that the content of such proof of reserves is unregulated and determined entirely at the issuer’s discretion and noted an enforcement action against stablecoin issuers who settled allegations of fraud based on misrepresentations regarding their reserve assets.

Commissioner Crenshaw also challenged Corp Fin’s Reves analysis that an issuer’s Reserves are a risk-reducing feature. Specifically, because retail holders generally have no right to access the issuer’s Reserve to guarantee redemption, the Reserve does not “collateralize” the Covered Stablecoins held by the retail public. Even intermediaries responsible for retail redemptions may not have recourse against the issuer in the event of the issuer’s bankruptcy. Because of the lack of transparency in the contractual arrangements between issuers and intermediaries, retail holders are in the dark. Finally, Commissioner Crenshaw states that while Corp Fin touted the stabilizing effect of an issuer’s ability to mint and redeem Covered Stablecoins on a one-for-one basis with USD at any time and in unlimited quantities, Corp Fin failed to explain if or how such transactions occur when Covered Stablecoins are purchased through intermediaries.

Regulatory and Market Implications

The Statement comes at a time when the SEC's Acting Chair, Mark Uyeda, has ordered a wholesale review of past staff statements on digital assets to potentially change or withdraw them in light of the White House's policy directive on deregulation. While it offers some near-term clarity, its impact could be limited, as any future legislation would likely override it with explicit statutory provisions. Notably, both the GENIUS Act and the STABLE Act propose assigning enforcement authority over payment stablecoins to federal and state banking regulators rather than the SEC—potentially establishing a regulatory framework that diverges from the one suggested by Corp Fin's guidance. The GENIUS and STABLE Acts also contemplate a one-to-one reserve, which would address the arbitrage scenario by requiring the stablecoin issuer to either acquire additional reserve assets or issue more stablecoin in order to maintain a stable fixed price. These legislative measures also add an audit requirement, providing a legislative “fix” to the Statement. Moreover, Wyoming's recent announcement of a state-issued stablecoin could also impact the regulatory landscape for stablecoins by providing an alternative to the federal issuance regime.

Although not addressed in the Statement, the Commodity Futures Trading Commission (“CFTC”) has consistently asserted that stablecoins are classified as commodities. Consequently, they fall under the CFTC's jurisdiction for enforcing anti-fraud and anti-manipulation regulations. A notable instance of this occurred in October 2021, when the CFTC initiated and resolved an enforcement action against Tether Holdings Limited. The action was based on allegations that Tether made false or misleading statements regarding the USD tether token (USDT), specifically claiming that it was fully backed by USD held in reserve.

Therefore, the Statement may function as a temporary regulatory clarification for issuers and intermediaries of Covered Stablecoins until comprehensive legislation is enacted and jurisdictional issues are resolved.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact a member of the Investment Management Practice Group or visit us online at chapman.com.

- 1 Division of Corporation Finance, Securities and Exchange Commission, Statement on Stablecoins (Apr. 4, 2025), available at https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425?utm_medium=email&utm_source=govdelivery#_ftnref17
- 2 *Reves v. Ernst & Young*, 494 U.S. 56 (1990).
- 3 *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).
- 4 While the Statement notes in its discussion of the first Reves factor that Covered Stablecoins are typically offered in compliance with applicable state money transmitter laws, the Statement does not expressly address such compliance as a risk-reducing feature in its discussion of the fourth Reves factor.
- 5 Commissioner Caroline A Crenshaw, “Stable” Coins or Risky Business? (Apr. 4, 2025), available at https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-stablecoins-040425?utm_medium=email&utm_source=govdelivery.

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