Steptoe

BLOCKCHAIN BLOG | APRIL 15, 2025

SEC Articulates Standards for Non-Security Stablecoin, Providing Clarity for Issuers

Authors
Alexandra C. Scheibe, Coy Garrison, Nathaniel Sans

Stablecoins

Overview

On April 4, 2025, the staff of the SEC Division of Corporation Finance ("the Staff") issued a statement (the "Statement") on stablecoins in which it defined a category of stablecoins ("Covered Stablecoins") for which issuance, sale, and redemption do not involve the offer and sale of securities under the Securities Act of 1933 and the Securities Exchange Act of 1934 (respectively, the "1933 Act" and "1934 Act").[1]

Covered Stablecoins: The Statement applies only to Covered Stablecoins. Characteristics of Covered Stablecoins include the following:

1. Design and Purpose: Covered Stablecoins are designed and marketed for making payments, transmitting money, or storing value. They may be marketed solely for use in commerce. Marketers may also state that a Covered Stablecoin does not represent an investment interest, entitle a holder to any interest, profit, or returns, provides no governance rights, and provides no financial benefit or loss based on the issuer or another party’s financial performance.

2. Stable Value: Covered Stablecoins are designed to maintain a stable value relative to US dollars ("USD"). **The Statement applies only to stablecoins tracking USD.**

3. Treatment of Reserves: Issuers may realize earnings from reserves (e.g., interest from assets purchased using reserve funds), but reserves may only be used to pay for stablecoin redemptions. Issuers cannot pay interest earned from reserves to holders of their stablecoin. Other requirements in the Statement include:

- Covered Stablecoins are backed by USD or other low-risk, liquid assets allowing the issuer to honor redemptions on demand. The Statement does not prescribe assets that an issuer may hold but notes that some issuers may be subject to limits on reserve holdings under state law.
- Assets must back outstanding coins on at least a one-for-one basis.
- Reserves must be segregated from issuer funds and may not be used to pay issuer operational or business costs. Reserves cannot be pledged or rehypothecated and must be held in a manner "designed not to subject them to the claims of third parties."[2]
- The Statement notes that "in some cases" issuers publish a proof of reserves. However, it does not require that issuers do so, nor does it require that they verify or audit their reserves.

4. Minting and Redemption: A Covered Stablecoin's issuer is always ready to mint or redeem a Covered Stablecoin for one USD or the relevant fraction.

Legal Analysis Under *Reves* and *Howey*

In the Statement, the Staff analyze covered Stablecoins under the frameworks described in *Reves v. Ernst & Young* (determining whether an instrument is a note for purposes of the 1933 Act and 1934 Act) and in *SEC v. W.J. Howey Co.* (determining whether an instrument is an investment contract for purposes of the 1933 Act and 1934 Act).[3]

The Statement details the *Reves* test and what might cause an instrument to be classified as a security under the test. There are four factors: First, the motivations of the buyer and seller in a transaction; second, the plan of distribution of the instrument; third, the reasonable expectations of the investing public; and fourth, whether some other factor (e.g., existence of an alternative regulatory scheme) reduces the investment's risk, and renders application of the protections of the federal securities laws unnecessary.[4] Where the buyer's expectation of profit drives the purchase, the seller uses the sale of the asset to raise capital for business use or investment purposes, there is common trading in the instrument for speculation or investment, and the seller's marketing frames the instrument as an investment product, the instrument is more likely to be a note under the *Reves* test.

The use of Covered Stablecoins for payments and as a store of value is key to the Staff's analysis of the first and third factors. The analysis focuses on the price stability of Covered Stablecoins, which limits opportunities for buyer speculation or investment based on changes in value. Finally, the Staff note the practice of maintaining reserves designed to satisfy redemption requests as a "risk-reducing feature" that cuts against treatment as a security. These factors contribute to the conclusion that Covered Stablecoins are not notes for purposes of the 1933 Act and the 1934 Act.

The Statement's discussion of the *Howey*[5] test —whether there is an investment of money in a common enterprise with expectation of profits to come solely from the efforts of others—concludes that stablecoin buyers acquire Covered Stablecoins to use them as a replacement for dollars, not as an investment or with an expectation of profit. "Since Howey, the Supreme Court has contrasted the motivations of investors—those who are attracted to a scheme by the 'prospects of a return on their investment'—with the motivations of consumers—those who are 'motivated by a desire to use or consume the item purchased.' While the federal securities laws apply to transactions in investments, they do not apply to consumer transactions."[6]

Since buyers do not purchase Covered Stablecoins with a reasonable expectation of profit but instead use Covered Stablecoins as so-called "digital dollars" in the same way one would use USD, it is the Division's view that Covered Stablecoins are not offered or sold as investment contracts.

Stablecoin issuers and users should take note of the Statement and the Staff's analysis. Adapting marketing and other operational practices (treatment of reserves, minting) to align with the criteria for a Covered Stablecoin will help issuers gain the most benefit from this Statement.

Those interested in an overview of considerations for firms evaluating how they can incorporate stablecoins into their model should review the article on the topic authored by Alexandra Scheibe, Juliana Gerrick, and Nate Sans, *What Fintechs Should Know About Stablecoins*.

---

[1] Division of Corporation Finance, Securities and Exchange Commission, *Statement on Stablecoins* (Apr. 4, 2025) https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425 ("Statement").

[2] *Id.*

[3] 494 U.S. 56 (1990) and 328 U.S. 293 (1946), respectively.

[4]494 U.S. 56, 66-67.

[5] 328 U.S. 293, 301

[6] Statement, *supra* n.1.

Practices

Blockchain & Cryptocurrency

Financial Services

Digital Assets and Decentralized Finance

White-Collar Defense