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BLOG

SEC Staff Issues Guidance Exempting Covered Stablecoins from Registration Requirements

APRIL 10, 2025

On April 4, 2025, the Securities and Exchange Commission's (SEC's) Division of Corporation Finance (Division) issued a staff statement that certain USD-pegged stablecoins do not qualify as securities under federal law. The announcement, a continuation of the SEC's recent clarifications regarding the regulatory treatment of crypto assets, defines a narrow category of "Covered Stablecoins" exempt from registration requirements.

COVERED STABLECOINS

The Division's statement defines "Covered Stablecoins" as crypto assets pegged one-to-one with the U.S. dollar, fully backed by a reserve of USD or low-risk, liquid assets (e.g., Treasury securities or cash equivalents), and redeemable on demand on a one-for-one basis. Crucially, these stablecoins must not offer yield, interest, or ownership or governance rights and must be marketed solely for payments, money transmission, or value storage—not investment. The Division concludes that such assets, under these conditions, fall outside the definitions of a "security" in Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934. As a result, minting and redemption transactions involving Covered Stablecoins need not be registered with the SEC.

The statement emphasizes the role of the reserve, which must be maintained at or above the value of outstanding stablecoins and segregated from other issuer assets, as a stabilizing mechanism. Issuers must stand ready to mint or redeem unlimited quantities of stablecoins at a fixed one-to-one ratio with USD, a structure the Division claims fosters price stability via short-lived arbitrage opportunities in the secondary market. This guidance applies only to Covered Stablecoins and does not include algorithmic, yield-bearing, or non-USD-pegged variants.

CRENSHAW DISSENT

The same day, Commissioner Caroline A. Crenshaw issued a dissent from the Division's position, arguing that it mischaracterizes the USD-stablecoin market and understates its risks. Commissioner Crenshaw highlights that over 90% of these USD-stablecoins reach retail holders through intermediaries rather than directly from issuers. These holders lack contractual redemption rights against issuers, relying instead on intermediaries who are not obligated to redeem at par, exposing them to market price fluctuations.

Commissioner Crenshaw also criticizes the Division's reliance on issuer reserves as a risk mitigator, noting that retail holders have no claim to these assets. She questions reserve sufficiency, pointing out vulnerability to redemption runs and the unreliability of issuer-published "proof of reserves" reports, which lack regulatory oversight and auditing standards. Labeling the Division's analysis "distorted," she warns that calling Covered Stablecoins "digital dollars" misleads investors about their unregulated, uninsured nature.

LEGAL ANALYSIS: *REVES* AND *HOWEY*

The Division and Commissioner Crenshaw anchor their arguments in two Supreme Court frameworks: *Reves v. Ernst & Young,* 494 U.S. 56 (1990), and *SEC v. W.J. Howey Co.,* 328 U.S. 293 (1946).

REVES

The Division applies *Reves*'s four-factor test to rebut the presumption that Covered Stablecoins, as potential notes, are securities:

1. **Motivations of Seller and Buyer**: Issuers use proceeds from sales to fund reserves, not speculative ventures, while buyers seek utility, not profit, given the absence of yield.
2. **Plan of Distribution of the Instrument**: Broad availability is tempered by a mint-redeem structure designed to deter arbitrage opportunities and speculation.
3. **Reasonable Expectations of the Investing Public**: Covered Stablecoins are marketed as transfers and stores of value, not investments.
4. **Risk-Reducing Features**: A fully backed, segregated reserve ensures redemption, reducing the need for securities law oversight.

Commissioner Crenshaw, in her dissent, targets the risk-reduction factor, asserting that reserves do not collateralize stablecoins for retail holders, who lack direct redemption rights. She compares them to the uncollateralized, uninsured notes in *Reves,* arguing that intermediary reliance and reserve opacity undermine the Division's conclusion.

HOWEY

Under the *Howey* test, a financial instrument is an "investment contract," a type of security, if there is an investment of money in a common enterprise with a reasonable expectation of profits from the efforts of others. The Division contends that Covered Stablecoins do not satisfy *Howey* as they are not marketed as investments or as potential profit-makers, instead likening Covered Stablecoins to "digital dollars." Crenshaw's dissent does not directly address *Howey* but implicitly challenges the stability narrative, suggesting that intermediary-driven volatility could affect the analysis.

IMPLICATIONS

The Division's statement offers relief for issuers of Covered Stablecoins by exempting their minting and redemption from SEC registration. However, the Division's strict criteria may exclude dominant stablecoins. Intermediaries facilitating secondary market trades may also benefit, though Crenshaw's focus on their role could hint at potential future scrutiny.

Winston's Capital Markets & Securities Law Watch and Digital Assets Group are monitoring developments related to the SEC's regulation of crypto assets and will provide our readers with timely updates as new information becomes available.

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