

Client Alert

Special Matters & Government Investigations

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For more information, contact:

J.C. Boggs
+1 202 626 2383
jboggs@kslaw.com

Andrew Michaelson
+1 212 790 5358
amichaelson@kslaw.com

Daniel Kahan
+1 305 462 6018
dkahan@kslaw.com

Luke Roniger
+1 512 457 2044
lrniger@kslaw.com

Joe Zales
+1 212 827 4087
jzales@kslaw.com

Victoria Panettiere
+1 212 827 4089
vpanettiere@kslaw.com

Nick Cohen
+1 212 827 4020
ncohen@kslaw.com

King & Spalding

New York
1185 Avenue of the Americas
34th Floor
New York, New York 10036
T. +1 212 556 2100

Gimme Shelter: CorpFin Rolls Out New Perspective on Covered Stablecoins

INTRODUCTION

On April 4, 2025, the staff of the Securities and Exchange Commission's Division of Corporation Finance (the "Staff") issued a Staff Statement (the "Statement") announcing its view that the offer and sale of Covered Stablecoins (defined below) do not involve the offer and sale of securities under federal securities laws.¹ Notably, the Statement's definition of Covered Stablecoins explicitly does *not* include algorithmic stablecoins.² The Statement is a continuation of the SEC's efforts to "provide greater clarity on the application of the federal securities laws to crypto assets."³ Similar to the Staff's March 2025 statement about the application of federal securities laws to meme coins,⁴ the Statement does not substantively diverge from prior SEC Staff statements about reserve-backed stablecoins,⁵ but again underscores the Commission's seemingly crypto-friendly approach to regulating digital assets.

CORPORATION FINANCE DIVISION STATEMENT

The Statement provides the Staff's view regarding the regulatory treatment for the offer and sale of "Covered Stablecoins." The Statement defines "Covered Stablecoins" as stablecoins that (i) maintain a one-for-one value against the United States Dollar (and can be redeemed accordingly), and (ii) are backed by assets held in a reserve with a readily liquid USD-value that "meets or exceeds the redemption value of the stablecoins in circulation."⁶ For stablecoins that meet this definition and share some or all the characteristics outlined below, the Staff explains that the offer and sale of these assets does not involve the offer and sale of securities, and therefore persons minting and redeeming those coins do not need to register those transactions with the SEC.⁷

CHARACTERISTICS OF A COVERED STABLECOIN

The Statement provides that Covered Stablecoins are those solely “use[d] in commerce,” which includes “making payments, transmitting money, and/or storing value”—this would not include coins used primarily for investment purposes.⁸ The Staff emphasized that Covered Stablecoins may be likened to a “digital dollar” and highlighted certain indicia of Covered Stablecoins. Specifically, the Staff noted that marketers of a Covered Stablecoin often emphasize that the coin in question:⁹

- is designed to have a stable value relative or corresponding to USD (e.g., one Covered Stablecoin to one 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.

RESERVE REQUIREMENTS

The Statement also identifies key characteristics of the reserve requirements for Covered Stablecoins. As noted, the Statement provides that “[a]t all times, the assets held in the Reserve back the amount of outstanding Covered Stablecoins on at least a one-for-one basis.”¹⁰ It also provides that, “[w]hile the assets held in the Reserve may be sold to redeem Covered Stablecoins, they are segregated from and not comingled with the assets of the Covered Stablecoin issuer or any third party.”¹¹ Further, the assets held in Reserve (1) should not be used for operational or general business purposes; (2) should not be lent, pledged, or rehypothecated; and (3) should not be designated in a manner that would subject them to third party claims.¹²

It is important to note that the Staff’s Statement does not cover algorithmic stablecoins and therefore those stablecoins would not be considered Covered Stablecoins.¹³

LEGAL ANALYSIS

The Staff analyzed the offer and sale of Covered Stablecoins under the tests set forth in *Reves v. Ernst & Young*,¹⁴ which applies to notes and debt instruments, and *SEC v. W.J. Howey Co.*,¹⁵ which applies to the offer and sale of investment contracts.

Turning to *Reves* first, the Statement notes that “Covered Stablecoins share some characteristics with a note or other debt instrument.”¹⁶ Under *Reves*, there is a presumption that notes and other debt instruments constitute securities and should be regulated accordingly.¹⁷ This presumption can be rebutted if the instrument in question passes the “family resemblance test,” which considers (1) whether the transacting parties would be motivated to enter into the transaction; (2) whether the plan for distribution includes “common trading for speculation or investment;” (3) whether the investing public would reasonably expect the note to be subject to federal securities laws; and (4) whether there is a regulatory scheme or other feature that significantly reduces the instrument’s risk.¹⁸ Applying that test to Covered Stablecoins, the Staff concluded 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.¹⁹

The Staff next turned to *Howey*. Under *Howey*, an instrument qualifies as an investment contract subject to federal securities laws if 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.²⁰ The Statement reasons that, 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.’”²¹ Using this logic, The Staff concluded that Covered Stablecoins are not offered and sold as investment contracts because “buyers do not purchase Covered Stablecoins with a reasonable expectation of profit derived from the entrepreneurial or managerial efforts of others because these instruments are not marketed as investments or with any emphasis on the potential for profit.”²² Instead, “buyers are motivated to use or consume Covered Stablecoins as so-called ‘digital dollars’ in the same way one would use USD.”²³ Accordingly, the Staff concluded that Covered Stablecoins should not be treated as securities under the *Howey* test.

ENFORCEMENT IMPLICATIONS

The Statement, like the Staff’s statement regarding application of federal securities laws to meme coin transactions,²⁴ does not signal an outright lack of enforcement with respect to *all* stablecoins. Similar to the Staff’s meme coin statement,²⁵ the Statement applies only to the specific and limited circumstances detailed in the Staff’s statement. The Staff was careful to note that “[t]he Division’s view is not dispositive of whether any stablecoin, including a Covered Stablecoin, is offered or sold as a security,” and further noted that “[w]here facts vary from those presented in th[e] Statement, the Division’s view as to whether the specific stablecoin is offered or sold as a security may be different.”²⁶ Nonetheless, the Staff’s application of *Reves* and *Howey* provides helpful guidance as to how a stablecoin might be treated under both of those familiar tests.

COMMISSIONER CRENSHAW DISAGREES WITH THE STAFF (AGAIN)

In alignment with her dissent to the Staff’s previous meme coin statement,²⁷ Commissioner Caroline A. Crenshaw again issued a same-day competing statement categorizing the Statement as “another installment” by the Staff “dedicated to jurisdictional carve-outs for crypto.”²⁸ Commissioner Crenshaw’s statement criticized the Statement as understating the risks of Covered Stablecoins. For example, Commissioner Crenshaw specifically notes the “role of intermediaries, particularly unregistered trading platforms, as primary distributors of USD-stablecoins” as additional risks that the Staff did not consider, noting that the prevalence of intermediaries in the distribution and redemption of Covered Stablecoins “significantly diminishes the value of the issuer actions staff relies on as ‘risk-reducing features.’”²⁹ Additionally, she criticized the Staff’s reliance on the adequacy and safety of reserves and assurances, including commentary on regulators’ warnings about the “general lack of transparency and reliability in how stablecoin reserves are invested, managed, and valued.”³⁰

LOOKING FORWARD

The Statement is yet another example of the SEC’s heightened interest and activity in the digital asset space. While the SEC Staff foreshadowed a similar framework as early as 2019,³¹ the recent statement reveals an increasingly crypto-friendly approach by the Staff. Those operating in the crypto space should anticipate more action emanating from this new SEC in the months to come, as well as from the various legislative efforts to create a regulatory framework for stablecoins.³²

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¹ See generally Statement on Stablecoins, U.S. SECURITIES & EXCHANGE COMM'N DIV. CORP. FIN. (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

² See *id.* n.4.

³ See, e.g., Ehren Halse et al., *Meme Coins: Collectibles, Not Securities*, KING & SPALDING (Mar. 5, 2025), <https://www.kslaw.com/news-and-insights/meme-coins-collectibles-not-securities>.

⁴ See generally Staff Statement on Meme Coins, U.S. SECURITIES & EXCHANGE COMM'N DIV. CORP. FIN. (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

⁵ See Brady Dale, *SEC's Valerie Szczepanik at SXSXW: Crypto 'Spring' Is Going to Come*, COINDESK (updated Sept. 13, 2021), <https://www.coindesk.com/markets/2019/03/15/secs-valerie-szczepanik-at-sxsw-crypto-spring-is-going-to-come> (discussing the Staff's view that algorithmic stablecoins, those "whose value fluctuates in order to help [a] token's price stay fixed," are more likely to be securities than those that maintain a fixed price).

⁶ Statement on Stablecoins, *supra* note 1.

⁷ See *id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See *id.*

¹³ See *id.* Algorithmic stablecoins are those that use algorithms instead of assets in reserve to maintain a stable value.

¹⁴ See generally 494 U.S. 56 (1990).

¹⁵ See generally 328 U.S. 293 (1946).

¹⁶ Statement on Stablecoins, *supra* note 1.

¹⁷ See 494 U.S. at 65.

¹⁸ *Id.* at 66–67.

¹⁹ Statement on Stablecoins, *supra* note 1.

²⁰ 328 U.S. at 301.

²¹ Statement on Stablecoins, *supra* note 1 (quoting *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852–53 (1975)).

²² *Id.*

²³ *Id.*

²⁴ See Staff Statement on Meme Coins, *supra* note 4.

²⁵ See *id.*

²⁶ Statement on Stablecoins, *supra* note 1.

²⁷ See *Resp. to Staff Statement on Meme Coins: What Does it Meme?*, Comm'r Caroline A. Crenshaw Statement, U.S. SECURITIES & EXCHANGE COMM'N (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725>.

²⁸ *Resp. to Staff Statement on Covered Stablecoins: "Stable" Coins or Risky Business?*, Comm'r Caroline A. Crenshaw Statement, U.S. SECURITIES & EXCHANGE COMM'N (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-stablecoins-040425>.

²⁹ *Id.*

³⁰ *Id.*

³¹ See Dale, *supra* note 5.

³² See, e.g., Ehren Halse et al., *Could Stablecoin Legislation Be Finally Leaving the Stable?*, KING & SPALDING (Feb. 18, 2025), <https://www.kslaw.com/news-and-insights/could-stablecoin-legislation-be-finally-leaving-the-stable>.

Special Matters & Government Investigations Partners

Gary Adamson
New York
+1 212 556 2113
gadamson@kslaw.com

Adam Baker
New York
+1 212 556 2376
abaker@kslaw.com

J.C. Boggs
Washington, DC
+1 202 626 2383
jboggs@kslaw.com

Christopher C. Burris
Atlanta
+1 404 572 4708
cburris@kslaw.com

Craig Carpenito
New York
+1 212 556 2142
ccarpenito@kslaw.com

Steve Cave
Northern Virginia
+1 703 245 1017
scave@kslaw.com

Michael J. Ciatti
Washington, DC
+1 202 661 7828
mciatti@kslaw.com

Daniel R. Coats
Washington, DC
+1 202 626 2642
dcoats@kslaw.com

Patrick M. Collins
Chicago
+1 312 764 6901
pcollins@kslaw.com

Ander M. Crenshaw
Washington, DC
+1 202 626 8996
acrenshaw@kslaw.com

Sumon Dantiki
Washington, DC
+1 202 626 5591
sdantiki@kslaw.com

Dan Donovan
Washington, DC
+1 202 626 7815
ddonovan@kslaw.com

Robert L. Ehrlich, Jr.
Washington, DC
+1 202 626 9710
rehrllich@kslaw.com

David Farber
Washington, DC
+1 202 626 2941
dfarber@kslaw.com

Zachary Fardon
Chicago
+1 312 764 6960
zfardon@kslaw.com

Lucas Fields
Washington, DC
+1 202 626 2399
lfields@kslaw.com

Emily Gordy
Washington, DC
+1 202 626 8974
egordy@kslaw.com

Leah B. Grossi
Washington, DC
+1 202 626 5511
lgrossi@kslaw.com

Ehren Halse
San Francisco
+1 415 318 1216
ehalse@kslaw.com

Max Hill, K.C.
London
+44 20 7551 2130
mhill@kslaw.com

Amy Schuller Hitchcock
Sacramento/San Francisco
+1 916 321 4819
ahitchcock@kslaw.com

John A. Horn
Atlanta
+1 404 572 2816
jhorn@kslaw.com

Andrew C. Hruska
New York
+1 212 556 2278
ahruska@kslaw.com

Rob Hur
Washington, DC
+1 202 383 8969
rhur@kslaw.com

Mark A. Jensen
Washington, DC
+1 202 626 5526
mjensen@kslaw.com

Dixie L. Johnson
Washington, DC
+1 202 626 8984
djohnson@kslaw.com

William Johnson
New York
+1 212 556 2125
wjohnson@kslaw.com

Barry Kamar
Miami
+1 305 462 6044
bkamar@kslaw.com

Allison F. Kassir
Washington, DC
+1 202 626 5600
akassir@kslaw.com

M. Alexander (Alec) Koch
Washington, DC
+1 202 626 8982
akoch@kslaw.com

Yelena Kotlarsky
New York
+1 212 556 2207
ykotlarsky@kslaw.com

Steve Kupka
Washington, DC
+1 202 626 5518
skupka@kslaw.com

Jade R. Lambert
Chicago
+1 312 764 6902
jlambert@kslaw.com

Jamie Allyson Lang
Los Angeles
+1 213 443 4325
jlang@kslaw.com

Raphael Larson
Washington, DC
+1 202 626 5440
rlarson@kslaw.com

Carmen Lawrence
New York
+1 212 556 2193
clawrence@kslaw.com

Brandt Leibe
Houston
+1 713 751 3235
bleibe@kslaw.com

Aaron W. Lipson
Atlanta
+1 404 572 2447
alipson@kslaw.com

Daniel E. Lungren
Washington, DC
+1 202 626 9120
dlungren@kslaw.com

William S. McClintock
Washington, DC
+1 202 626 2922
wmclintock@kslaw.com

Amelia Medina
Atlanta
+1 404 572 2747
amedina@kslaw.com

Kendrick B. Meek
Washington, DC
+212 626 5613
kmeek@kslaw.com

Andrew Michaelson
New York
+212 790 5358
amichaelson@kslaw.com

Nema Milaninia
Washington, DC
+202 626 9273
nmilaninia@kslaw.com

Jim C. Miller III
Washington, DC
+1 202 626 5580
jmiller@kslaw.com

Patrick Montgomery
Washington, DC
+1 202 626 5444
pmontgomery@kslaw.com

Paul B. Murphy
Atlanta/Washington, DC
+1 404 572 4730
pbmurphy@kslaw.com

Grant W. Nichols
Austin/Washington, DC
+1 512 457 2006
gnichols@kslaw.com

Alicia O'Brien
Washington, DC
+1 202 626 5548
aobrien@kslaw.com

Patrick Otlewski
Chicago
+1 312 764 6908
potlewski@kslaw.com

Michael R. Pauzé
Washington, DC
+1 202 626 3732
mpauze@kslaw.com

Michael A. Plotnick
Washington, DC
+1 202 626 3736
mplotnick@kslaw.com

Olivia Radin
New York
+1 212 556 2138
oradin@kslaw.com

John C. Richter
Washington, DC
+1 202 626 5617
jrichter@kslaw.com

Rod J. Rosenstein
Washington, DC
+1 202 626 9220
rrosenstein@kslaw.com

Daniel C. Sale
Washington, DC
+1 202 626 2900
dsale@kslaw.com

Heather Saul
Atlanta
+1 404 572 2704
hsaul@kslaw.com

Greg Scott
Sacramento/San Francisco
+1 916 321 4818
mscott@kslaw.com

Richard Sharpe
Singapore
+65 6303 6079
rsharpe@kslaw.com

Kyle Sheahen
New York
+1 212 556 2234
ksheahen@kslaw.com

Michael Shepard
San Francisco
+1 415 318 1221
mshepard@kslaw.com

Thomas Spulak
Miami
+1 305 462 6023
tspulak@kslaw.com

Aaron Stephens
London
+44 20 7551 2179
astephens@kslaw.com

Cliff Stricklin
Denver
+1 720 535 2327
cstricklin@kslaw.com

Jean Tamalet
Paris
+33 1 7300 3987
jtamalet@kslaw.com

Courtney D. Trombly
Washington, DC
+1 202 626 2935
ctrombly@kslaw.com

Rick Vacura
Northern Virginia
+1 703 245 1018
rvacura@kslaw.com

Anthony A. Williams
Washington, DC
+1 202 626 3730
awilliams@kslaw.com

David K. Willingham
Los Angeles
+1 213 218 4005
dwillingham@kslaw.com

David Wulfert
Washington, DC
+1 202 626 5570
dwulfert@kslaw.com

Sally Q. Yates
Atlanta/Washington, DC
+1 404 572 2723
syates@kslaw.com

Joseph Zales
New York
+1 212 827 4087
jzales@kslaw.com

