SHADOW INVESTMENT COMPANIES

William A. Birdthistle,* Gabriel V. Rauterberg,** & Jeffery Y. Zhang***

Stablecoins are cryptocurrencies designed to track the value of fiat currency, most commonly the U.S. dollar. Over the past decade, they have grown from a niche innovation into the primary gateway between crypto markets and the traditional financial system, with daily trading volumes exceeding $100 billion. Despite their scale and centrality, stablecoin issuers occupy an uncertain and increasingly contested regulatory space.

This Article argues that the largest stablecoin issuers—such as Circle and Tether—are best understood not as banks or payments firms, but as investment companies under the Investment Company Act of 1940. As a matter of statutory interpretation, these firms satisfy the Act's definition: they issue redeemable claims, invest customer funds primarily in securities, and derive a substantial portion of their income from those investments. Yet neither issuers nor regulators have acknowledged this status. As a result, stablecoin issuers operate as shadow investment companies, meeting the law's criteria while evading its constraints.

The Article makes three contributions. First, it provides a systematic application of the Investment Company Act's primary business and asset-based tests to stablecoin issuers. Second, it shows that this framework applies even if stablecoin tokens themselves are not securities, because issuers independently issue securities and function economically as pooled investment vehicles. Third, it explains why recent legislation, including the GENIUS Act, fails to resolve these issues and may exacerbate regulatory arbitrage. Recognizing stablecoin issuers as investment companies would bring them within the SEC's existing authority, offering a path toward enhanced transparency and investor protection while also highlighting the limits of fund regulation in addressing systemic risk.

* William Birdthistle is a Professor from Practice at the University of Chicago.

** Gabriel Rauterberg is a Professor of Law at the University of Michigan.

*** Jeffery Zhang is an Assistant Professor of Law at the University of Michigan. The authors thank Josh Younger for his insightful contributions to this project. The authors also thank the editing team of the *Columbia Business Law Review*, including Liam Heffernan, James Morsch, and Alexa Masseur, for their helpful comments and suggestions throughout the editorial process.

INTRODUCTION

Cryptocurrencies originally aimed to serve as a means of payment as well as a store of value.[1] Your Bitcoin would not only be an investment, but you could buy things with it too. Yet, while Bitcoin and Ethereum have grown to exceed $2 trillion in value worldwide, they have failed to catch on as vehicles for payment.[2] They are too volatile. Markets, however, adapted by inventing stablecoins. Stablecoins are cryptocurrencies designed to maintain stability by tracking the value of another asset, such as a national currency.[3]

Stablecoins have enjoyed astonishing growth. In only a decade, they have moved from nonexistence to major components of the crypto financial system. The largest stablecoins track the U.S. dollar and have grown vast. In January 2025, their circulating value exceeded

[1] *See* SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM 1 (2008), https://bitcoin.org/bitcoin.pdf [https://perma.cc/5294-CY9S] (defining Bitcoin as "[a] purely peer-to-peer version of electronic cash would allow online payments to be sent directly from one party to another without going through a financial institution.").

[2] *See Today's Cryptocurrency Prices by Market Cap*, COINMARKETCAP, https://coinmarketcap.com [https://perma.cc/9RYF-YAZG] (last visited Jan. 9, 2026).

[3] Christian Catalini & Jai Massari, *Stablecoins and the Future of Money*, HARV. BUS. REV. (Aug. 10, 2021), https://hbr.org/2021/08/stablecoins-and-the-future-of-money [https://perma.cc/ZZX7-FDN8].

$200 billion, but more importantly, they are used an enormous amount.[4] Their turnover rate is roughly $100 billion *daily*.[5] In fact, stablecoins are the most actively traded part of crypto finance. The most popular stablecoin alone, issued by Tether and known as USDT, has about double the trading volume of Bitcoin.[6]

In large part because of stablecoins, crypto finance is increasingly being integrated into the traditional financial system and, as a result, the broader U.S. economy. In the past year, some of the largest and most established payments institutions in the world, including Visa, PayPal, and Stripe, have begun investing in projects involving stablecoins.[7] The market for trading crypto assets has become complex, sophisticated, and global.

At the same time, a consensus is emerging among scholars and former regulators that stablecoins are the fastest growing and most unstable part of the crypto ecosystem.[8] Stablecoins matter because of their size, scale, and interconnectedness. A vast amount of money turns over in stablecoins each day, and they represent the gate through which most participants, whether large institutions or retail traders, participate in the crypto financial universe. Stablecoins are dangerous because stablecoin issuers, like Tether, act like banks by issuing debt claims to individuals that are redeemable for a dollar on demand.[9] An individual depositing a dollar with Tether for a crypto token has a right

[4] James van Straten, *Stablecoin Market Surges Past $200B, Signaling Potential Crypto Price Upswing*, COINDESK (Jan. 31, 2025, at 05:24 ET), https://www.coindesk.com/markets/2025/01/31/stablecoin-market-surges-past-usd200b-signaling-potential-crypto-price-upswing [https://perma.cc/P6CQ-HUUH].

[5] *Id.*

[6] *See Monthly Volume Rankings (Currency)*, COINMARKETCAP, https://coinmarketcap.com/currencies/volume/monthly/ [https://perma.cc/2DLL-FB34] (last visited Jan. 9, 2026).

[7] PANews, *The Largest Merger in the Industry: The Underlying Logic of Stripe's $1.1 Billion Acquisition of Bridge*, AICOIN https://www.aicoin.com/en/article/425180 [https://perma.cc/65RB-CNXU] (last visited Jan. 9, 2026).

[8] When the federal institution charged with coordinating financial regulators, the Financial Stability Oversight Council (FSOC), addressed digital assets in its 2024 Annual Report, its focus was on stablecoins. FSOC observed that stablecoin "failure could disrupt the crypto-asset market and create knock-on effects for the traditional financial system[,]" and suggested that "Congress pass legislation creating a comprehensive federal prudential framework for stablecoin issuers . . . ." FIN. STABILITY OVERSIGHT COUNCIL, 2024 ANNUAL REPORT 9 (2024), https://home.treasury.gov/system/files/261/FSOC2024AnnualReport.pdf [https://perma.cc/DF6J-EDC8].

[9] Gary B. Gorton & Jeffery Y. Zhang, *Taming Wildcat Stablecoins*, 90 U. CHI. L. REV. 909, 910–11 (2023).

to receive that dollar back. But like a bank, a stablecoin issuer may prove unable to redeem that crypto token for its putative value.[10] Whether or not it is solvent, a stablecoin issuer, like a bank, is susceptible to devastating runs in which market participants withdraw money en masse. Runs, of course, can lead to broader systemic contagion and panic.[11]

As a result of the controversy around stablecoins and their growing financial footprint, scholars, regulators, and popular commentators have advanced a variety of normative visions for how stablecoin regulation *should work*.[12] Congress and the Trump Administration offered their own version in July 2025 with the so-called "GENIUS Act."[13] This new law, in short, provides a framework for stablecoin issuers that are not in the business of offering interest to holders of their stablecoins. Such non-interest-bearing "payment stablecoins" may proliferate without the burden of complying with banking law or securities law, instead operating under a unique regulatory framework for digital assets. But, as we describe in detail in Part I.C., this law's scope is ostensibly quite narrow. In other words, the universe of stablecoins that do or wish to offer interest is vast. To the extent the GENIUS Act offers no legal framework for those interest-bearing stablecoins, then some other legal regime must do so. As importantly, the statute seems not to have been drafted against an explicit understanding of the applicable securities law. Yet it is worth knowing what law would govern these stablecoins, were it not for their bespoke regime.

At the moment, the scope of the GENIUS Act is—to the banking industry—surprisingly unsettled. On its face, the legislation appears unequivocal: "No permitted payment stablecoin issuer . . . shall pay the holder of any payment stablecoin any form of interest or yield . . . ."[14] Yet soon after the Act's passage, crypto exchanges like Coinbase publicly offered yield on stablecoin deposits, arguing that the Act's prohibition applies only to the issuers of stablecoins and, as

[10] *Id.* at 912.

[11] *Id.* at 915.

[12] *See infra* Part I.B.

[13] *See infra* Part I.C; Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, 12 U.S.C. §§ 5901–5916 (2025).

[14] 12 U.S.C. § 5903(a)(11).

exchanges, they themselves are not issuers.[15] Bank lobbyists noticed this loophole belatedly and to their chagrin, crying foul and issuing a series of statements to "set the record straight."[16] Then, in something of a backhanded acknowledgement of the Act's imprecision, bank lobbyists called for the closure of "the payment of interest loophole for stablecoins."[17] Crypto proponents accused the banking industry of contradicting its "long history of advocating for narrow statutory interpretation" in its expansive call for the Treasury Department to eliminate "indirect interest" on stablecoins.[18] The debate is now most likely to be settled by regulators, with Michelle Bowman, Federal Reserve Vice Chair for Supervision, testifying to the House Financial Services Committee in November 2025 that she will be working "to establish new rules for banks and stablecoins."[19]

As policymakers and scholars debate the future of stablecoin regulation, the outcome will be shaped in part by competing interests with substantial resources and influence, including both incumbent financial institutions and major crypto market participants. But regardless of how that contest resolves, the GENIUS Act leaves significant questions unanswered. Some stablecoin arrangements fall outside the statute's scope by design, while others may be excluded as a practical matter if the Act's restrictions on yield-bearing features are enforced as written. In that case, a substantial and economically significant segment of the stablecoin market would remain governed primarily by preexisting law rather than by the new statutory regime. This Article takes that gap as its starting point. It asks what existing federal law already applies to stablecoin issuers as a class, independent of how the current legislative debate unfolds.

---

[15] *See Paying Interest on Stablecoins: Setting the Record Straight*, BANK POLICY INSTITUTE (Oct. 3, 2025), https://bpi.com/paying-interest-on-stablecoins-setting-the-record-straight/ [https://perma.cc/NN5X-LQNP].

[16] *Id.*

[17] *Closing the Payment of Interest Loophole for Stablecoins*, BANK POLICY INSTITUTE (Aug. 12, 2025), https://bpi.com/closing-the-payment-of-interest-loophole-for-stablecoins/ [https://perma.cc/NS96-793P].

[18] J.W. Verret, Comment Letter on Proposed Rulemaking Relating to GENIUS Act Implementation (Nov. 4, 2025), https://www.regulations.gov/comment/TREAS-DO-2025-0037-0397 (on file with Columbia Business Law Review).

[19] *See* Katanga Johnson, *Fed's Bowman Says Bank Regulators Working on Stablecoin Rules*, BLOOMBERG (Dec. 1, 2025), https://www.bloomberg.com/news/articles/2025-12-01/fed-s-bowman-says-bank-regulators-working-on-stablecoin-rules [https://perma.cc/2AAS-VJJB].

In particular, our Article argues that federal securities law already offers an answer to that question: Stablecoin issuers are often *investment companies*. This determination is true not only of some niche stablecoin issuers, for which it is uncontroversial, but probably for the largest ones as well (at least absent the GENIUS Act). The Investment Company Act of 1940 defines an "investment company"—more commonly called an "investment fund"—and regulates entities covered by that definition.[20] Scattered commentators have remarked upon the similarities between stablecoin issuers and money market funds,[21] but what little has been said on the topic has been too cursory to bear the weight of legal and policy conclusions. In this Article, we systematically explore whether stablecoin issuers are investment companies under existing federal securities law.

We conclude that there is a strong case they are, and that they almost inevitably must be. This conclusion is important. If stablecoin issuers are investment companies, then the SEC enjoys significant legal authority over them *right now*. If its authority is well-founded, the SEC could use that authority to craft a preliminary regulatory regime to improve the safety of stablecoin issuers. As importantly, we explain why many of the fundamental concerns raised by stablecoins issuers are precisely those addressed by the basic regulatory logic and policy ambitions of general investment company regulation.

While this Article fully develops our legal and economic account,[22] a quick sketch of our legal analysis will prove valuable here. The Investment Company Act essentially offers two definitions of an investment company. Put simply, an investment company is an issuer who either: (1) is engaged primarily in investing or trading in securities;

---

[20] Investment Company Act of 1940, Pub. L. No. 76-768, 54 Stat. 789, 797–99 (1940) (codified as amended at 15 U.S.C. §§ 80a-1 to 80a-64 (2012)). All references to statutory provisions without a further reference to a statute or the U.S. Code are references to the Investment Company Act of 1940.

[21] *See, e.g.*, Ron Feiman et al., *Stablecoins Are (Not Just Similar To) Money Market Funds*, CARTER, LEDYARD, & MILBURN LLP (May 8, 2023), https://clm.com/stablecoins-are-not-just-similar-to-money-market-funds/ [https://perma.cc/R5YS-8V9F]. Far more has been said on the *economic* similarities between stablecoins and money market funds. *See, e.g.*, KENECHUKWU ANADU ET AL., RUNS AND FLIGHTS TO SAFETY: ARE STABLECOINS THE NEW MONEY MARKET FUNDS? 1–4 (2023); Iñaki Aldasoroet et al., *Stablecoins, Money Market Funds and Monetary Policy* 2 (Bank for International Settlements Working Paper No. 1219, 2024), https://www.bis.org/publ/work1219.pdf (on file with Columbia Business Law Review); Nico Oefele et al., *Are Stablecoins the Money Market Mutual Funds of the Future?*, 79 J. EMP. FIN. 1, 2–3 (2024).

[22] *See infra* Part II.A.

or (2) is engaged in owning, holding, or investing in securities *and* forty percent or more of whose total assets consist of investment securities.[23] The first test is the more important one for the major stablecoin issuers, and while the analysis is complex and involves judgment, the conclusion that they are investment companies is strong. The key issue is whether Circle and Tether's primary business is investing in securities. As we will show, the *vast majority* of both companies' assets are securities. In most economic conditions, the companies will make most of their income from those securities and other investments. Put simply, Tether and Circle are companies that, as a matter of assets, mostly hold securities, and as a matter of income, mostly make money from those securities. Under longstanding securities principles, these are the two key factors in finding that an entity's primary business is investing in securities. Perhaps this conclusion should not be so surprising: A stablecoin issuer offers customers digital tokens redeemable for dollars on demand, and it then invests the dollars that customers deposit in a longer-term, less liquid portfolio of financial instruments. They transform dollars into investments.

For stablecoin issuers, the tougher part of the analysis is whether they are an "issuer."[24] Both the first and second tests, known as the subjective and objective tests, require that a business be an issuer of securities. Many observers of crypto finance have probably stopped here, uncertain whether stablecoin tokens are securities. We show that resolving this tricky issue is not necessary. Circle, and almost certainly Tether, is an issuer because they issued ordinary securities to fund their operations in multiple equity raising rounds.[25]

There are broader payoffs for our understanding of crypto finance and the Investment Company Act itself. First, in terms of understanding fund regulation itself, our analysis of stablecoin issuers highlights both what the Investment Company Act does well and what it does poorly. Federal fund regulation offers powerful investor protection devices for registered funds. It aggressively polices self-dealing by powerful insiders, limits fund leverage, and mandates safe custody arrangements of customer funds. Yet, as the analogy between stablecoin issuers and their close cousin, money market mutual funds, highlights, the Investment Company Act was not designed with

[23] *See infra* Part II.
[24] *See id.*
[25] *See infra* Part II.C.

systemic risk in mind and does not offer powerful devices to mitigate that risk. The problem is that financial institutions established and regulated by the Act increasingly do pose broader risks to the entire economy, and this may ultimately prove true of stablecoins as well. As a result, there is a case for a bespoke regulatory environment for stablecoin issuers.

Second, the applicability of the Investment Company Act to stablecoin issuers suggests that stablecoins may be just the beginning in terms of how much of crypto finance actually falls under the regulation of the Investment Company Act.[26] Crypto finance usually seems arcane, strange, and technical, but it is often old wine in new digital bottles. Crypto routinely reinvents familiar structures with new technology, and we demonstrate this through examples from decentralized finance (DeFi).

The rest of this Article proceeds in four Parts. Part I situates stablecoins within the broader evolution of crypto markets and reviews the dominant regulatory approaches that frame stablecoins as problems of money, payments, or banking law, including recent legislative efforts such as the GENIUS Act. Part II advances the core claim of the Article: that the largest stablecoin issuers satisfy the definition of "investment company" under the Investment Company Act of 1940. Applying both the Act's primary business test and its asset-based test, Part II shows that issuers like Circle and Tether operate as pooled investment vehicles funded by redeemable public claims, regardless whether stablecoin tokens themselves are securities. Part III examines the logic and limits of applying investment company regulation to stablecoin issuers, explaining how the Act addresses important investor-protection concerns while leaving broader issues of systemic risk largely unresolved. Part IV then situates this analysis within the wider crypto ecosystem, showing how investment company regulation complements—rather than supplants—other regulatory frameworks and highlighting what the stablecoin example reveals about the evolving boundary between securities law and digital finance. The Conclusion draws together these strands to assess the implications for regulators, lawmakers, and the future architecture of crypto regulation.

[26] *See infra* Part IV.

I. CRYPTO, STABLECOINS, AND THE REINVENTION OF FINANCE

Over the past decade, crypto markets have evolved from a fringe experiment to a complex financial ecosystem that increasingly mirrors—and in some respects reconfigures—traditional financial intermediation. This Part situates stablecoins within that broader evolution and explains why prevailing regulatory approaches have struggled to accommodate them. Parts I.A and I.B briefly trace the rise of stablecoins and review the dominant narratives that frame them as problems of banking, payments, or monetary law—narratives that have shaped both scholarly debate and recent legislative efforts, including the GENIUS Act. In particular, Part I.C shows that, while the GENIUS Act represents a significant development, it is neither comprehensive nor self-executing. By design, it applies only to a subset of stablecoin arrangements and leaves unresolved the legal status of issuers that fall outside its scope or decline to conform to its constraints. As a result, a substantial portion of the stablecoin market remains governed primarily by preexisting law. The remainder of this Article takes that residual category as its starting point and asks what existing legal framework already applies to stablecoin issuers as institutions.

A. *What Are Stablecoins and Their Issuers?*

We should begin with cryptocurrencies more generally. Although the meaning of the term itself can be the subject of debate among evangelists, skeptics, and novices alike, we take as a starting point the Executive Order on Ensuring Responsible Development of Digital Assets issued by the Biden Administration in March 2022.[27] That order defines a cryptocurrency as "a digital asset, which may be a medium of exchange, for which generation or ownership records are supported through a distributed ledger technology that relies on cryptography, such as a blockchain."[28] In other words, they are digital tokens for which ownership is recorded on a decentralized ledger and for which the settlement of transfers is recorded via cryptographic techniques.

[27] Exec. Order No. 14,067, 87 Fed. Reg. 14143 (Mar. 9, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-14/pdf/2022-05471.pdf [https://perma.cc/6ZFF-6562].

[28] *Id.* at 14151.

Bitcoin, launched in 2009, is often referred to as the original cryptocurrency—"[a] purely peer-to-peer version of electronic cash [that] would allow online payments to be sent directly from one party to another without going through a financial institution."[29] Bitcoin itself was the unit of account for a specific implementation of an open-network distributed ledger.[30] To the extent that unit was exchangeable for more traditional (i.e., fiat) currencies, its value was free to float based on the supply of new bitcoins versus demand for access to the bitcoin network. A few years later in 2012, J.R. Willet proposed introducing a new protocol, built on top of bitcoin, designed to create new digital currencies, including those with "a stable value, pegged to an external currency or commodity."[31] His goal was to remove barriers to adoption for potential users of the bitcoin network.[32] The first stablecoin was thus born.

Stablecoins are a specific class of crypto tokens, the value of which is designed to hew closely (i.e., to be "pegged" to) fiat currencies. That connection makes them, in a sense, a bridge between the crypto ecosystem, which functions on its own standard(s), and more traditional financial institutions, like banks, which function on a fiat standard. Why is there market demand for cryptocurrencies that mimic other more traditional "dollars" like bank deposits? In theory, stablecoins offer an alternative medium of exchange for domestic and international payments. In being decentralized, these networks are interoperable across national boundaries by design. That transnational reach makes stablecoins particularly attractive for cross-border payments which would otherwise rely on long chains of transactions among correspondent banks, which have become increasingly

[29] Nakamoto, *supra* note 1, at 1.

[30] The "proof-of-work" protocol underlying Bitcoin and other major distributed ledgers today has its origins in spam and denial-of-service countermeasures that go back at least to the 1990s. They all rely on "public key" cryptographic techniques originally developed in the 1970s. Tom Espiner, *GCHQ Pioneers on Birth of Public Key Crypto*, ZDNET (Oct. 26, 2010, at 04:23 PT), https://www.zdnet.com/article/gchq-pioneers-on-birth-of-public-key-crypto [https://perma.cc/2687-55CT].

[31] J.R. WILLET, MASTERCOIN: A SECOND-GENERATION PROTOCOL ON THE BITCOIN BLOCKCHAIN FOR CREATING AND TRADING NEW CURRENCIES (2012), https://github.com/bitsblocks/mastercoin-whitepaper/blob/master/index.md [https://perma.cc/8XA3-QPHR].

[32] *Id.*

expensive and unreliable in recent years.[33] Stablecoin issuers are quick to note that this ability makes their tokens a much less expensive, much more reliable, and much faster medium for international payments while still maintaining stable value in fiat currency terms.[34]

In practice, however, stablecoins are more commonly used for speculation. Their origins are, in fact, providing alternative payments services, not because of efficiency gains, but because of access restrictions among certain key crypto market participants.[35] Whereas bank accounts are identified and settled in full view of local and international authorities, stablecoins are bearer instruments settled pseudonymously on a decentralized network (i.e., blockchain). That attribute makes stablecoins, particularly those domiciled offshore, the ideal instrument with which to circumvent access restrictions and to introduce new fiat funds to the crypto trading ecosystem. Although the connections between crypto trading platforms and traditional financial intermediaries have improved over the years—in large part due to the growth of domestic venues—stablecoins remain primarily engaged in facilitating speculation.[36] The first generation of stablecoins failed

[33] *See generally* COMM. ON PAYMENTS & MKT. INFRASTRUCTURES, CORRESPONDENT BANKING (July 2016), https://www.bis.org/cpmi/publ/d147.pdf [https://perma.cc/2FJJ-MNCM] (providing an overview of traditional correspondent banking networks and noting that increased demand for payments facilitated by fewer intermediaries has led to fewer connections and longer payment chains). Correspondent banking networks have also been growing longer and more brittle in recent years, leading to more frequent and expensive disruptions. *See* Lea Borchert et al., *Broken Relationships: De-Risking by Correspondent Banks and International Trade* 7–9 (Eur. Bank for Reconstruction & Dev. Working Paper No. 285, 2023), https://www.ebrd.com/publications/working-papers/broken-relationships-de-risking-by-correspondent-banks-and-international-trade [https://perma.cc/H2WK-PTSC].

[34] *USDC as a Platform for Global Prosperity*, CIRCLE, https://www.circle.com/reports/state-of-the-usdc-economy/how-usdc-is-used-today [https://perma.cc/4K2J-RCFA]; *see also* Christoper L. Allen et al., *An Introduction to Stablecoins: What They Are and How They Might Evolve*, ARNOLD & PORTER KAYE SCHOLER LLP https://www.arnoldporter.com/en/perspectives/advisories/2025/05/an-introduction-to-stablecoins [https://perma.cc/MU5U-YM5N].

[35] Eva Xiao, *Three Months After Launch, This Unbanked Crypto Exchange Made $7.5m in Profit* (Nov. 30, 2017), https://www.techinasia.com/cryptocurrency-exchange-binance [https://perma.cc/T9BX-GTLA] (Changpeng Zhao, CEO of the then Japan-based Binance exchange, claiming, "We don't touch fiat so we don't have a bank.").

[36] Gary Gensler, former Chairman of the Securities Exchange Commission, has described stablecoins as "poker chips." Cheyenne Ligon, *SEC's Gensler Calls Stablecoins "Poker Chips" at the Wild West Crypto Casino*, COINDESK (May 11, 2023, at

rather spectacularly.[37] They were backed not by fiat but by other associated cryptocurrencies in an algorithmic arrangement that foreshadowed the much more spectacular collapse of TerraUSD in 2022.[38] Within a few years, however, promoters developed far more successful strategies.

Stablecoin developers have built multiple approaches, each with advantages and disadvantages, not to mention efficiency and failure modes. These approaches can generally fit into one of three categories.[39] The first approach, adopted by the globally dominant stablecoins, use tokens that represent a claim on a pool of real-world assets. In crypto parlance, they are "off-chain asset-backed stablecoins" since they represent a tokenized claim on a pool of assets unconnected to a blockchain.[40] Off-chain collateral includes fiat-currency denominated assets such as Treasury bills and short-term debt instruments as well as commodities like gold.[41] These instruments are typically "fully collateralized" or "fully reserved," meaning that the

13:13 ET), https://www.coindesk.com/policy/2021/09/21/secs-gensler-calls-stablecoins-poker-chips-at-the-wild-west-crypto-casino [https://perma.cc/9HEB-TKCG]. Stablecoins have also historically served as the numeraire for trading in freely floating cryptocurrencies such as Bitcoin and Ether. Joshua D. Younger et al., *Only as Strong as the Foundation*, J.P. MORGAN FIXED INCOME RESEARCH (Jan. 25, 2021) (on file with Columbia Business Law Review). Stablecoins are also a key component of decentralized finance where they serve as collateral. Much of that ecosystem is, however, dominated by automated market makers and lending protocols which offer leverage for crypto trading. YIMING MA ET AL., STABLECOIN RUNS AND THE CENTRALIZATION OF ARBITRAGE 11 (June 2023), https://www.ecb.europa.eu/press/conferences/shared/pdf/20231109_money_markets/Ma_paper.en.pdf [https://perma.cc/8VTV-8R2U].

[37] Joakim Kristiansen, *The Rise and Fall of the First Stablecoins—BitUSD and NuBits* (Nov. 4, 2022), https://medium.com/@yakhat86/the-rise-and-fall-of-the-first-stablecoins-bitusd-and-nubits-1efc020a7ae8 [https://perma.cc/6CAG-FE8K]; Salomon Kisters, *The History of Stablecoins: The Reason They Were Created* (Apr. 29, 2022), https://web.archive.org/web/20240912155431/https://originstamp.com/blog/the-hi [https://perma.cc/D8Y5-DVPZ].

[38] Hannah Miller, *Terra $45 Billion Face Plant Creates Crowd of Crypto Losers*, BLOOMBERG NEWS (May 14, 2022, at 10:25 ET), https://www.bloomberg.com/news/articles/2022-05-14/terra-s-45-billion-face-plant-creates-a-crowd-of-crypto-losers (on file with Columbia Business Law Review).

[39] *See also* Joshua D. Younger et al., *The Market Implications of Libra and Other Stablecoins*, J.P. MORGAN FIXED INCOME STRATEGY (Sep. 5, 2019) (on file with Columbia Business Law Review).

[40] *What Are Stablecoins and How Do They Work?*, GEMINI (Sep. 26, 2025), https://www.gemini.com/cryptopedia/what-are-stablecoins-how-do-they-work#section-stablecoin-taxonomy [https://perma.cc/VP7C-WNNU].

[41] *E.g.*, Tether Transparency Reports of December 31, 2025, TETHER, https://tether.to/ru/transparency/?tab=reports [https://perma.cc/94M9-3ADP].

fair value of their assets is very close to the redemption (or "par") value of the outstanding tokens. Tokens backed by U.S. dollar financial assets make up the vast majority of outstanding stablecoins: USDT (issued by Tether), at $185 billion as of early-December 2025 is by far the largest,[42] followed by USDC (issued by Circle Internet Financial), which at $78 billion comes in a rather distant second.[43] Because they will play important roles in our analysis, it is worth saying a little more about Circle and Tether.

The first successful stablecoin debuted in 2015 with the launch of Tether.[44] Tether, or USDT, was backed not by other cryptocurrencies, but by traditional financial assets in an arrangement similar to money market mutual funds.[45] That backing made for a much more stable peg. A couple of years after Tether's successful launch, a joint venture of Circle and a major U.S.-based crypto exchange launched a domestic competitor.[46] USD Coin, or USDC, had a similar design to Tether, and was intended to address the same access issues.

The timing of these innovations proved fortuitous. Tether was designed specifically to facilitate the introduction of fiat currency into the crypto ecosystem because relying on traditional payment rails to do

---

[42] *Tether*, COINMARKETCAP, https://coinmarketcap.com/currencies/tether/ [https://perma.cc/XB7B-N6XH] (last visited Dec. 4, 2025).

[43] *USDC*, COINMARKETCAP, https://coinmarketcap.com/currencies/usd-coin/ [https://perma.cc/E884-Q2GL] (last visited Dec. 4, 2025).

[44] TETHER: FIAT CURRENCIES ON THE BITCOIN BLOCKCHAIN 14 (n.d.), https://assets.ctfassets.net/vyse88cgwfbl/5UWgHMvz071t2Cq5yTw5vi/c9798ea8db99311bf90ebe0810938b01/TetherWhitePaper.pdf [https://perma.cc/WFQ8-R99X].

[45] Money market mutual funds have attracted attention from policy makers as well, as they were shown by the financial crises of 2008 and 2020 to be a major financial stability risk. *See* EVA SU, CONG. RSCH. SERV., R47309, MONEY MARKET MUTUAL FUNDS: POLICY CONCERNS AND REFORM OPTIONS 7–8 (2022), https://crsreports.congress.gov/product/pdf/R/R47309 [https://perma.cc/R7XF-MPH7].

[46] Anna Irrera, *Circle Raises $110 Million, Plans to Create Dollar-pegged Cryptocurrency*, REUTERS (May 16, 2018), https://www.reuters.com/article/business/circle-raises-110-million-plans-to-create-dollar-pegged-cryptocurrency-idUSKCN1IG38R/ [https://perma.cc/96YL-5GDS]; Kate Rooney, *Cryptocurrency Giants Coinbase and Circle Form Joint Venture to Boost Adoption of Dollar-backed Digital Coins*, CNBC (Oct. 24, 2018, at 10:10 ET), https://www.cnbc.com/2018/10/23/cryptocurrency-giants-coinbase-and-circle-form-a-joint-venture-to-boost-adoption-of-dollar-backed-stable-coins.html [https://perma.cc/T2BG-RKT8].

so was, as the Tether Whitepaper described it, "complicated, risky, slow, and expensive."[47] USDC, meanwhile, sought to address the "plethora of problems that were handed down to [cryptocurrency traders] by the banking system" and to redress "unwanted friction[s]" created by "hostile regulations coupled with conservative Institutions."[48] It was, in fact, difficult if not impossible for many of those trading platforms and other major participants to open U.S. banking accounts in the first place.[49] As Changpeng Zhao, CEO of the then-Japan-based Binance exchange put it in 2017, "We don't touch fiat so we don't have a bank."[50] In other words, USDT and USDC both represented a workaround of the traditional financial system, providing U.S. dollar funds even when banks and other intermediaries were wary of crypto-associated clients. In that sense, the first generation of stablecoins was not too dissimilar to Eurodollars, the other form of borderless U.S. dollar money.[51] That demand helped jumpstart the market and sustains it to this day.

USDT and USDC have consistently dominated stablecoin supply globally. Even as of early-2025, these two tokens account for more than 85% of the more than $220 billion in stablecoins outstanding.[52] USDT is by far the largest with roughly two-thirds of the circulating supply.[53] In addition, the stablecoin market consists of on-chain asset-backed stablecoins. These versions of stablecoins use reserves that can include any number of different tokens but typically

[47] TETHER: FIAT CURRENCIES ON THE BITCOIN BLOCKCHAIN, *supra* note 44, at 12.

[48] USDC, AN INVESTMENT CRYPTOCURRENCY WITH A PRICE GUARANTEE PLAN 6 (n.d.), https://cryptoactu.com/wp-content/uploads/2018/12/WhitePaper.pdf [https://perma.cc/XA7K-79YQ].

[49] Xiao, *supra* note 35.

[50] *Id.*

[51] Josh Younger & Lev Menand, *Why Stablecoins Aren't the New Eurodollars*, *Odd Lots Newsletter*, BLOOMBERG (Jan. 31, 2025), https://www.bloomberg.com/news/newsletters/2025-01-31/josh-younger-and-lev-menand-on-why-stablecoins-aren-t-the-new-eurodollars [https://perma.cc/6DUW-ACRE].

[52] *Top Stablecoin Tokens by Market Capitalization*, COINMARKETCAP, https://web.archive.org/web/20250107003258/https://coinmarketcap.com/view/stablecoin/ (last visited Jan. 7, 2025).

[53] *Tether*, COINMARKETCAP, https://web.archive.org/web/20250108182221/https://coinmarketcap.com/currencies/tether/(last visited Jan. 8, 2025).

rely on blue-chip crypto names such as Bitcoin and Ether.[54] Because the value of these tokens in fiat currency units tends to be highly volatile, crypto-secured stablecoins are typically "over-collateralized," meaning the fair value of the assets to which token holders can lay claim is much larger than the redemption value of outstanding tokens.[55] Among the on-chain crypto backed stablecoins, only DAI, a MakerDAO project, has ever achieved any notable market footprint. At times, this stablecoin was as large as $10 billion (6% of all outstanding stablecoins) and has consistently ranked among the top five stablecoins, but more recently has declined even while off-chain asset-backed tokens continue to grow.[56]

The last and most infamous stablecoin category comprises algorithmic tokens. Algorithmic stablecoins are intended to maintain their value through the automated production ("minting") and withdrawal ("burning") of tokens from circulation in a manner designed to maintain a stable value in U.S. dollar units.[57] Initially a somewhat idiosyncratic backwater, algorithmic stablecoins grew to prominence with the rise of TerraUSD, a stablecoin whose value was determined by the supply of its sister token, LUNA. That token grew to more than $18 billion in total outstanding—10% of all stablecoins at the time and the third largest such token[58]—before spectacularly collapsing into irrelevance in May 2022.[59] Algorithmic stablecoins have

[54] Corey Barchat, *Stablecoins: The Ultimate List (23 Stablecoins to Know in 2025)*, MOONPAY (Aug. 5, 2025), https://www.moonpay.com/learn/cryptocurrency/stablecoins-list [https://perma.cc/7NLU-PC5V].

[55] *Id.*

[56] Chayanika Deka, *Total Supply of Decentralized Stablecoin DAI Exceeds $10 Billion*, CRYPTOPOTATO (Feb. 8, 2022, at 14:15 ET), https://cryptopotato.com/total-supply-of-decentralized-stablecoin-dai-exceeds-10-billion/ [https://perma.cc/HLM4-N72G].

[57] Jiageng Liu et al., *Anatomy of a Run: The Terra Luna Crash* 8 (Nat'l Bureau of Econ. Rsch., Working Paper No. 3116, 2023), https://www.nber.org/system/files/working_papers/w31160/w31160.pdf (on file with Columbia Business Law Review).

[58] At one point, the Washington Nationals baseball team considered accepting TerraUSD at their games. *See* Sylvan Lane, *Washington Nationals Ink Partnership with Terra Crypto Community*, THE HILL (Feb. 9, 2022, at 14:03 ET), https://thehill.com/policy/finance/593533-washington-nationals-ink-partnership-with-terra-crypto-community/ [https://perma.cc/U8WT-QCL3].

[59] Jiageng Liu et al., *supra* note 57, at 1. Treasury Secretary Janet Yellen cited that event as a watershed event for the crypto ecosystem and a clear indication of the need for regulation. Paul Kiernan, *Yellen Renews Call for Stablecoin Regulation After TerraUSD Stumble*, WALL ST. J. (May 10, 2022, at 14:42 ET),

since returned to their roots as more of a curiosity than a major market player.

B. *Review of Legal Scholarship and Proposed Regulations*

Over the last half-decade, legal scholars and economists have extensively studied stablecoins and developed a variety of approaches for their optimal regulation. Yet none of them has affirmatively advanced the case that stablecoin issuers are investment companies under existing federal securities law. We argue in this Article that the SEC can exercise its authority over stablecoin issuers right now, without the need for new legislation from Congress or even new regulations promulgated by the SEC.

This gap in understanding exists because, roughly speaking, the analysis of stablecoins has split into two camps. In one camp, scholars view stablecoins primarily as "a money problem." In other words, stablecoins represent a private institution's issuance of short-term debt claims that customers treat like money, but those claims turn out to be less safe than insured bank deposits. When a customer deposits dollars with a stablecoin issuer, and receives tokens in exchange, they expect to be able to reverse the transaction and receive dollars back on demand. In this paradigm, the stablecoin issuer has issued short-term debt to the customer, which customers can run on en masse and that can and will exacerbate systemic risk. Thus, stablecoin issuers are essentially unregulated banks, and the first-best regulation would be rooted in banking law. In the other camp, scholars acknowledge the instability risk presented by stablecoins but primarily view stablecoins through the lens of "a payments problem." Said differently, stablecoin issuers have bank-like features but they are less traditional banks than institutions that serve primarily to help facilitate payments. As a result, the regulation of stablecoins' issuers should be more tailored, perhaps focusing on the development of better payments while limiting the downside risks. In this Subpart, we review these two important streams of existing scholarship.

Notably, this focus on stablecoins as functioning either like a bank or a payments system has led to a failure to consider the relevance of securities regulation, which is oriented toward neither of these two financial functions. This oversight is exacerbated by the fact that the

https://www.wsj.com/articles/yellen-renews-call-for-stablecoin-regulation-after-terrausd-stumble-11652208165 [https://perma.cc/FV3K-Q5KH].

primary statute governing investments funds, the Investment Company Act, remains only unevenly understood among scholars, even as the total assets managed by public and private funds now far exceeds the value of the U.S. stock market.

1. *Stablecoins as a Money Problem*

We begin with the banking law analysis and then proceed to a payments lens. As we will see, many scholars and regulators essentially understand stablecoins as bank-like institutions in the business of money creation. Through this lens, the risks of stablecoins are inherently centered upon uninsured deposits, run risk, and financial stability. The basic idea, as previewed above, is that when an institution issues short-term debt, which investors can insist on being repaid in cash on demand, the investors tend to view the debt as effectively money, just as we equate our bank deposits (technically, liabilities of a bank) with money. The problem is that when something calls into question the safety of the debt, individuals and institutions tend to collectively demand that the debts be converted into cash. This functions as a mass withdrawal of funds or "run." Runs can destabilize and even destroy solvent but insufficiently liquid financial institutions, which simply do not have the funds on hand. Building upon first principles, Morgan Ricks argued almost a decade ago that short-term runnable debt produced by private financial institutions—whether we call them "deposits" or "money market funds" or "repo" or "stablecoins"—should be issued only by properly regulated, properly supervised, properly insured, chartered banking entities.[60] There is a regulatory perimeter for a reason.[61] History has taught us that failure to manage runnable debt by banking law leads to the recurrence of financial panics.

[60] MORGAN RICKS, THE MONEY PROBLEM: RETHINKING FINANCIAL REGULATION 32–33 (2016). In the years since stablecoins have proliferated, we have seen numerous instances of stablecoin "runs." *See, e.g.*, Josh Younger et al., *The Financial Stability Risks of Stablecoins*, J.P. MORGAN REPORTS 1 (Jul. 22, 2021) (on file with Columbia Business Law Review) ("Stablecoins are constantly 'breaking the buck,' with the largest such tokens having spent 30-40% of the past three months trading below par, and their intraday volatility is well in excess of pegged currencies.").

[61] *See* Katherine E. Di Lucido et al., *Fenceposts without a Fence*, 76 VAND. L. REV. 1215, 1218–20 (2023) (beginning to discuss why the regulatory perimeter is "crucial for the growth and stability of the financial system").

On stablecoins in particular, Howell Jackson and Morgan Ricks provided an incisive legal analysis of stablecoin issuers as unregulated banks.[62] In their piece, *Locating Stablecoins Within the Regulatory Perimeter*, Jackson and Ricks recommend that government officials begin with section 21(a)(2) of the Glass-Steagall Act.[63] Section 21 of the Act renders it unlawful for anyone "to engage, to any extent whatever . . . , in the business of receiving deposits subject . . . to repayment . . . upon the request of the depositor," unless the entity holding the deposits is subject to oversight under one of three express exclusions.[64] One exclusion refers to banking regulations and the other two, as Jackson and Ricks put it, "contemplate other forms of federal or local supervisory oversight."[65] Thus, operating under the premise that stablecoins are simply bank deposits by another name,[66] the authors conclude that stablecoin issuers are unregulated banks. While we do not find it plausible that section 21 can serve to regulate stablecoins or other forms of bank-like nonbank institutions—for reasons we develop fully elsewhere[67]—under this view, no new legislation is required to regulate stablecoins. Existing banking laws would suffice.

Gary Gorton and Jeffery Zhang proceeded along a similar path. These authors investigated stablecoins from an economist's perspective on money creation and concluded that stablecoin issuers are economically banks, since both banks and stablecoin issuers produce short-term debt that is runnable.[68] As such, the authors recommended that stablecoin issuers be regulated through the lens of banking law—specifically, by using section 21 of the Glass-Steagall Act;[69] using FSOC designation authority under title VII of the Dodd-Frank Act (to impose one-for-one backing of stablecoins);[70] or via new

[62] Howell E. Jackson & Morgan Ricks, *Locating Stablecoins Within the Regulatory Perimeter*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 5, 2021), https://corpgov.law.harvard.edu/2021/08/05/locating-stablecoins-within-the-regulatory-perimeter [https://perma.cc/QY9Q-39U6].

[63] *Id.*

[64] 12 U.S.C. § 378(a)(2).

[65] Jackson & Ricks, *supra* note 62. *See* 12 U.S.C. § 378(a)(2).

[66] *See* Jackson & Ricks, *supra* note 62 ("Quite clearly, it would seem, stablecoin issuers are attempting to produce a deposit-like product, with a value tied to the U.S. dollar.").

[67] Gabriel V. Rauterberg & Jeffery Y. Zhang, *Shadow Banking and Securities Law*, 77 STAN. L. REV. 563, 621–23 (2025).

[68] Gorton & Zhang, *supra* note 9, at 911–12.

[69] *Id.* at 950–51.

[70] *Id.* at 951–55.

congressional legislation.[71] Art Wilmarth also has argued that the Department of Justice should invoke section 21 of the Glass-Steagall Act to bring stablecoin issuers within the bank regulatory perimeter; or that Congress should pass new legislation requiring all stablecoin issuers to become FDIC-insured banks.[72] Notably, Wilmarth recommended that the SEC consider designating stablecoin tokens as securities, but acknowledged "the scope of the SEC's authority to regulate stablecoins is not clear."[73] We do not take a final position on whether stablecoin tokens themselves are securities. But, if our legal analysis is correct, then the SEC has clear and immediate authority to regulate stablecoin *issuers* as *investment companies*.

Legal scholars have, to be sure, presented additional paths to combat the risks posed by stablecoins—paths related to the money paradigm but that do not involve the direct application of banking law. If one accepts the premise that stablecoins are analogous to circulating banknotes from the 19th century, then one can draw a direct analogy to the approach that Congress took in the National Bank Acts.[74] In the U.S. historical setting, Gorton and Zhang described a framework in which Congress first created uniform, safer *national* banknotes as substitutes for heterogeneous, unpredictable state banknotes (i.e., the carrot), and taxed existing *state* banknotes out of circulation (i.e., the stick).[75] The present-day version of the National Bank Acts would utilize a similar carrot-and-stick approach, where the new carrot would involve the creation of a central bank digital currency (CBDC).[76] To be clear, while Gorton and Zhang addressed CBDCs in the context of stablecoins in particular,[77] legal scholars such as John Crawford, Lev Menand, Saule Omarova, and Morgan Ricks have written at length about the CBDC issue in a much more generalized setting as a

[71] *Id.* at 955–56.

[72] Arthur E. Wilmarth Jr., *It's Time to Regulate Stablecoins as Deposits and Require Their Issuers to Be FDIC-Insured Banks Issuers to Be FDIC-Insured Banks*, 41 BANKING & FIN. SERV.'S POL'Y REP. No. 2, at 1–2, 4 (Feb. 2022).

[73] *Id.* at 1.

[74] *See* RICKS, *supra* note 60, at 230 (noting that, with the National Bank Acts, Congress created a new system to "supplant, rather than supplement, money creation by state-chartered banks").

[75] Gorton & Zhang, *supra* note 9, at 994.

[76] In the context of our literature review, think of CBDCs as a version of publicly issued stablecoins. *See also* Gary B. Gorton & Jeffery Y. Zhang, *The Orkney Slew and Central Bank Digital Currencies*, 14 HARV. NAT'L SEC. J. 1, 35–36 (2022) (concluding it is worthwhile to experiment with a CBDC to address operational and technical issues).

[77] *See id.* at 2–3.

preferred option for enhancing the safety of the financial system while also improving financial access.[78]

2. *Stablecoins as a Payments Problem*

Now, we proceed to the other side of the literature where the primary objective is to solve the payments problem, not the money problem.[79] The functioning of the cross-border payments system is widely viewed as problematic. As highlighted by Josh Younger, et al., "[m]odernization of payments is a global theme, and a key driver of stablecoin projects like Libra."[80] In other words, creators of stablecoins were not motivated to create new money; they were motivated to create new payments. Indeed, as a general matter, Dan Awrey demonstrated in his new book, *Beyond Banks*, that the payments system, particularly the U.S. system, is embarrassingly outdated and in desperate need of improvement along the dimensions of cost, speed, security, convenience, accessibility, and interoperability.[81]

In prior research, Dan Awrey noted that "the highly sophisticated and bespoke regulatory frameworks governing banks" would be a poor fit for the new types of financial entities we are concerned about.[82] Thus, "PayPal, Libra, and the new breed of aspiring monetary institutions simply do not look like banks."[83] But, as Awrey acknowledged, they do resemble money market funds, and so regulators should impose investment restrictions in the way that the SEC regulates money market funds.[84] Awrey further argued that the OCC should be the agency with the power to implement the first-best

[78] *See* Saule Omarova, *The People's Ledger: How to Democratize Money and Finance the Economy*, 74 VAND. L. REV. 1231, 1257–1300 (2021); John Crawford et al., *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113, 125–42 (2021).

[79] *See* Jess Cheng, *How to Build a Stablecoin: Certainty, Finality, and Stability Through Commercial Law Principles*, 17 BERKELEY BUS. L.J. 320, 320 (2020) (noting that "[s]tablecoins have the potential to offer a borderless and more accessible way to pay, addressing many shortcomings in existing payment systems around the world.").

[80] Josh Younger et al., *A Case Study in Alternative Payments: Lessons from the Chinese Experience*, J.P. MORGAN REPORT (Dec. 5, 2019) (on file with Columbia Business Law Review).

[81] *See generally* DAN AWREY, BEYOND BANKS: TECHNOLOGY, REGULATION, AND THE FUTURE OF MONEY (2024).

[82] Dan Awrey, *Bad Money*, 106 CORNELL L. REV. 1, 56, 58 (2020).

[83] *Id.* at 60.

[84] *Id.* at 61.

regulatory vision.[85] If our legal analysis in this Article is correct, then the SEC could potentially impose Awrey's desired regulations under its existing statutory authority.[86]

In a separate but related analysis, Dan Awrey, Howell Jackson, and Timothy Massad provided details for a regulatory framework that "could promote increased competition in payments services and potentially safeguard the role of the dollar" by creating "a federal stablecoin platform (FSP) within the regulatory framework for insured depository institutions[.]"[87] In particular, these authors advocated for each stablecoin issuer to be a subsidiary of an insured depository institution, and the subsidiary itself to be a national trust bank chartered by the OCC.[88] Notably, this proposed framework by the three authors sought to harmonize the aspects of both camps—with a serious treatment of the run risk caused by the deposit-like instrument alongside flexibility for developing faster, more efficient payments.

Also in line with the payments angle, Massad has likened the development of stablecoins to the development of Eurodollars and cautioned that unregulated stablecoins could undermine U.S. sanctions.[89] To prevent such risk from materializing, Massad writes: "[a]t minimum, we should require stablecoin issuers to engage in enhanced monitoring of blockchains for suspicious transactions and consider when the issuer must 'freeze' stablecoins—that is, prevent the holder from using them further."[90]

* * *

That securities law has not been discussed as a desirable path by legal scholars is not surprising. If one's main concern with the

[85] *See id.* at 62 ("What we need is a single regulatory authority that has both the power and expertise to strengthen and harmonize the regulatory framework governing MSBs and other new monetary institutions. . . . That regulator is the OCC.").

[86] Another article that provides the logical underpinnings of this view is Dan Awrey, *Unbundling Banking, Money, and Payments*, 110 GEO. L.J. 715 (2022).

[87] Dan Awrey, Howell E. Jackson & Timothy G. Massad, *How We Can Regulate Stablecoins Now—Without Congressional Action* 1 (Brookings Hutchins Ctr., Working Paper No. 76, 2022), https://www.brookings.edu/wp-content/uploads/2022/08/WP76-Massad-et-al_v4.pdf [https://perma.cc/2B4Z-XAPX].

[88] *Id.* at 1.

[89] Timothy G. Massad, *Stablecoins and National Security: Learning the Lessons of Eurodollars*, BROOKINGS (Apr. 17, 2024) https://www.brookings.edu/articles/stablecoins-and-national-security-learning-the-lessons-of-eurodollars/ [https://perma.cc/9LSU-DBTG].

[90] *Id.*

proliferation of stablecoins is systemic risk, then the full arsenal of banking law is the obvious choice for a regulatory intervention. If one's main concern is the poor state of payments, then a lighter touch than full-blown banking law would be preferable. In neither case is securities law the first-best solution. And when legal scholars have discussed securities law, it is almost always to ponder only whether stablecoins (the actual tokens, not the issuer) qualify as securities. In this Article, we focus on the *issuers* of stablecoins and demonstrate that they do not fall outside of the federal regulatory framework.

C. *Legislative Loopholes*

Recent legislative efforts reflect a growing consensus that stablecoins warrant a tailored regulatory response. The GENIUS Act represents the most comprehensive attempt to date to impose federal standards on certain stablecoin arrangements, particularly those designed to function as payment instruments. But legislation of this kind necessarily draws boundaries, and those boundaries matter. By defining its scope narrowly and conditioning regulatory treatment on specific design choices—such as limits on yield-bearing features—the GENIUS Act leaves a category of stablecoin issuers outside its reach. As a result, the Act does not resolve the more general question of how stablecoin issuers should be classified under the federal financial regulatory framework. Instead, it sharpens that question by making clear that, even after enactment, a consequential segment of the stablecoin market will continue to operate in the shadow of preexisting statutes.

1. *Overview of the GENIUS Act*

On February 4, 2025, Senators Bill Hagerty (R-TN), Cynthia Lummis (R-WY), and Kirsten Gillibrand (D-NY) introduced the "Guiding and Establishing National Innovation for U.S. Stablecoins Act"—a bill intended to "establish a safe and pro-growth regulatory framework that will unleash innovation and advance the President's mission to make America the world capital of crypto."[91] The

[91] Press Release, Bill Hagerty, Senator, Hagerty Leads Legislation to Establish a Stablecoin Regulatory Framework (Feb. 4, 2025), https://www.hagerty.senate.gov/press-releases/2025/02/04/hagerty-leads-legislation-to-establish-a-stablecoin-regulatory-framework/ [https://perma.cc/CCT8-VHUQ].

"GENIUS Act"[92] attempts to provide "clear regulatory guidelines."[93] This proposal, the sponsors hoped, would resolve what Hagerty described as the Biden Administration's "hostility toward crypto" that they believed "severely stifled stablecoin innovation."[94] The Trump Administration agreed. Five months after the bill's introduction, it was signed into law.

The GENIUS Act creates a new category, which it then focuses on, called "payment stablecoins." Payment stablecoins are defined by the Act as digital assets that are: (A) designed to be used as a "means of payment and settlement," (B) for which the issuer is obligated to redeem or repurchase tokens for a fixed amount of "monetary value," and (C) for which the issuer also "creates a reasonable expectation" that those digital assets will maintain a "stable value relative to the value of a fixed amount of monetary value."[95] Importantly for our purposes, the Act specifically excludes deposit tokens[96] and securities issued by investment companies regulated under section 8(a) of the Investment Company Act.[97] The GENIUS Act also amends the Securities Act of 1934, Investment Company Act of 1940, and Securities Investor Protection Act of 1970 to specifically exclude payment stablecoins from the definition of a "security."[98]

This regulatory framework is not entirely dissimilar from those which preceded it. It seeks to establish "light-touch, tailored regulatory standards" which reflect the specific uses and characteristics of

[92] Not to be confused with the "Stable Genius Act," requiring President Trump to undergo and disclose the results of a medical examination. Press Release, Brendan Boyle, Member, House of Representatives, Boyle Introduces STABLE GENIUS Act Requiring Presidential Candidates Undergo and Disclose Medical Examination (Jan. 9, 2018), https://boyle.house.gov/media-center/press-releases/boyle-introduces-stable-genius-act-requiring-presidential-candidates [https://perma.cc/7VSD-WPPM].

[93] Senator Bill Hagerty, One Pager: GENIUS Act (Feb. 4, 2025), https://www.hagerty.senate.gov/wp-content/uploads/2025/02/GENIUS-Act-One-Pager-2.4.25.pdf [https://perma.cc/F4SD-7JJ3]; s*ee also* David Krause, The GENIUS Act: A New Era of U.S. Stablecoin Regulation 3 (Feb. 7, 2025) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5127407 (on file with Columbia Business Law Review).

[94] Senator Hagerty, *supra* note 93.

[95] 12 U.S.C. § 5901(22)(A). "Monetary value" is defined "a national currency or deposit (as defined in [12 U.S.C. § 1813(l)] denominated in a national currency." *Id.* § 5901(17).

[96] The Act specifically defines these as "digital assets that represent those deposits . . . ." 12 U.S.C. § 5915(a)(1).

[97] *Id.* § 5901(22)(b)(iii).

[98] *Id.*

payment stablecoins.[99] It includes a two-tiered approach where large payment stablecoins (i.e., those with more than $10 billion in outstanding tokens) are subject to federal requirements and smaller tokens can opt into a state regulatory scheme (provided the state scheme is "substantially similar").[100] Federal requirements include ensuring the issuer backs its liabilities with an equal or greater market value of reserve assets—in other words, payment stablecoins should be "fully reserved."[101] Doing so functionally prohibits the issuance of crypto-backed or algorithmic stablecoins. Those reserve assets are furthermore restricted to a small subset of low risk instruments, including currency, demand deposits held at insured depository institutions, short-term Treasury securities and repurchase agreements,[102] money market mutual funds,[103] and central bank deposits.[104] Payment stablecoin issuers are furthermore required to clearly disclose their redemption policy and to provide audited and certified public monthly statements of the amount and composition their reserve holdings.[105]

The GENIUS Act furthermore assigns the "appropriate Federal Banking agency" as the primary regulatory of payment stablecoins issued by depository institutions and the Office of the

[99] Press Release, Kirsten Gillibrand, Senator, Bipartisan Group of Senators Introduce Legislation to Establish Stablecoin Regulatory Framework (Feb. 5, 2025), https://www.gillibrand.senate.gov/news/press/release/gillibrand-bipartisan-group-of-senators-introduce-legislation-to-establish-stablecoin-regulatory-framework/ [https://perma.cc/7QHA-FYRV].

[100] 12 U.S.C. § 5903(c)(1). This was done to avoid a race to the bottom among state regulators. *See GENIUS Stablecoin Bill Allows for State Regulation, But Limits Race to Bottom*, LEDGER INSIGHTS (Feb. 5, 2025), https://www.ledgerinsights.com/genius-stablecoin-bill-allows-for-state-regulation-but-limits-race-to-bottom [https://perma.cc/F2TH-U8WE].

[101] *What to Know About Stablecoins*, J.P. MORGAN (Sept. 4, 2025), https://www.jpmorgan.com/insights/global-research/currencies/stablecoins [https://perma.cc/626S-X38B].

[102] Treasury securities include bills, notes and bonds with a remaining maturity of 93 days of less. Repurchase agreements are restricted to seven days or less and "subject to overcollateralization in line with standard market terms" and secured by Treasury securities. 12 U.S.C. § 5903(a)(1)(A)(v).

[103] Permissible money market funds must comply with other requirements and cannot hold instruments the stablecoin issuer could not itself hold outright. *Id.* § 5903(a)(1)(A)(vi).

[104] *Id.* § 5903(a)(1)(A)(vii)–(viii).

[105] These statements are to be examined by a registered public accounting firm (*i.e.*, audited) and certified by the Chief Executive and Chief Financial Officers of the issuer, which in turn subjects them to criminal penalties for knowing false representations. *Id.* § 5903(a)(3).

Comptroller of the Currency as the primary regulator for non-bank issuers.[106] Regulations pertaining to capital adequacy, liquidity standards, and risk management (including operational and interest rate risk) requirements were left to those primary regulators.[107] The Act finally makes provisions for enforcement actions in the event of noncompliance, including suspension or revocation of registration or civil monetary penalties.[108] It also instructs the Federal Reserve in collaboration with the Secretary of the Treasury to pursue and implement reciprocal regulatory relationships with overseas jurisdictions.[109] In other words, it encourages the United States to take the lead in setting international standards along the lines of the Basel Accords for banking.[110]

2. *Interest-Bearing Stablecoins*

Importantly, both to our analysis and to the future evolution of stablecoins as an alternative monetary instrument, the GENIUS Act prohibits stablecoin issuers from paying interest to their token holders.[111] That prohibition applies to "permitted" stablecoins under the terms of the Act as well as "foreign payment stablecoin issuer[s]" seeking to offer or sell stablecoins in the United States.[112] Those interest payments are defined as payments made in "connection with the holding, use, or retention of such payment stablecoin."[113] There are, however, numerous means by which to evade those prohibitions. We point out the three most obvious ones below.

First, the prohibition does not apply to crypto exchanges.[114] Those exchanges could, and do, compensate holders of favored stablecoins with monetary awards.[115] At Coinbase, for example, holders of USD Coin, in which Coinbase has a major financial stake, are paid "reward rates" that are significantly higher than most bank

[106] *Id.* § 5901(25).
[107] *Id.* § 5903.
[108] *Id.* § 5909.
[109] *Id.* § 5916.
[110] *See* CHARLES GOODHARDT, THE BASEL COMMITTEE ON BANKING SUPERVISION: A HISTORY OF THE EARLY YEARS 1974–97 (Cambridge Univ. Press 2011).
[111] 12 U.S.C. § 5903(a)(11).
[112] *Id.*
[113] *Id.*
[114] The GENIUS Act says nothing about exchanges.
[115] *See Paying Interest on Stablecoins: Setting the Record Straight*, *supra* note 15.

deposits.[116] This exception matters all the more because recent research has found that a sizeable proportion of stablecoins are held by exchanges, where they represent more than 30% of exchange assets and are involved in 80% of trading volume.[117] It would appear that there are very few barriers preventing the holders of stablecoins from seeking these rewards and similar payments. Indeed, not long after the passage of the Act, Coinbase publicly defended its payment of yield on stablecoin deposits by arguing that the Act's prohibition applies only to the issuers of stablecoins and, as exchanges, they themselves are not issuers.[118]

Second, offshore issuers of stablecoins are, of course, not subject to the jurisdiction of the United States. That universe includes, critically, Tether, by far the largest stablecoin by outstanding par value. The GENIUS Act prohibits non-compliant foreign stablecoin issuers from selling their tokens directly to Americans. That barrier is potentially costly, leading Tether to assert its plans to list a new stablecoin that is compliant with new U.S. regulations.[119] But crypto markets are stateless, making offshore transfers between compliant and non-compliant stablecoins extremely straightforward to execute without risk of U.S. intervention or blocking. One is reminded in this case of the "sweep accounts" of the 1990s that used automated transfers between different account types to arbitrage reserve

[116] Dylan Tokay & Gina Heeb, *Why Banks Are on High Alert About Stablecoins*, WALL ST. J. (July 18, 2025, at 09:52 ET), https://www.wsj.com/finance/currencies/why-banks-are-on-high-alert-about-stablecoins (on file with Columbia Business Law Review). Most bank deposits pay a fraction of market interest rates. *See e.g.*, Alena Kang-Landsberg et al., *Deposit Betas: Up, Up, and Away?*, FED. RSRV. BANK OF N.Y.: LIBERTY ST. ECON. (Apr. 11, 2023) https://libertystreeteconomics.newyorkfed.org/2023/04/deposit-betas-up-up-and-away/ [https://perma.cc/YN8E-HNTM].

[117] David Vidal-Tomás, *Centralized Exchanges & Proof-of-Solvency: The Guardians of Trust*, J. OF INT'L FIN. MKTS., INSTS. & MONEY, Vol. 103, 2025, at 4; Christopher J. Waller, Bd. of Governors of the Fed. Rsrv. Sys., Reflections on a Maturing Stablecoin Market (Feb. 12, 2025), https://www.federalreserve.gov/newsevents/speech/waller20250212a.htm [https://perma.cc/BAB7-ZJ7V].

[118] *See* James Morales, *Can Coinbase Save Stablecoin Rewards?*, YAHOO FINANCE (November 6, 2025), https://finance.yahoo.com/news/coinbase-save-stablecoin-rewards-treasury-091715450.html (on file with Columbia Business Law Review).

[119] Monika Ghosh, *Tether to Issue Separate Stablecoin for U.S. Despite "Getting Comfortable" with the Genius Act*, CRYPTO SLATE (May 25, 2025), https://cryptoslate.com/tether-to-issue-separate-stablecoin-for-u-s-despite-getting-comfortable-with-the-genius-act-ceo-says/ [https://perma.cc/HBS3-5VY2].

requirements set by the Federal Reserve.[120] Given the ease of transfers within and among blockchains, such automated transfers should be even more straightforward for stablecoin, creating de facto interoperability between compliant and non-compliant stablecoins via offshore venues would seem a trivial but likely prohibitable engineering challenge.

Third, otherwise compliant stablecoin issuers could simply find alternative ways to compensate their holders that do not involve paying interest in the formal sense. Islamic finance has been doing just this for centuries.[121] One common application of these principles is *mudāraba* in which traditional bonds are substituted for a profit-sharing interest in the issuer's activities. One could easily imagine stablecoin issuers taking a similar route, especially in light of the fact that interest income from reserve holdings comprises the vast majority of their revenue.[122] While similar approaches might provide a workaround to GENIUS Act prohibitions on interest payments, they may also implicate securities law and therefore the Investment Company Act as well.

* * *

One can see that the GENIUS Act is not airtight, to say the least. Its goal is to provide an ecosystem for stablecoins to proliferate as payment vehicles, not as interest-bearing deposits. Yet reality is more complicated. Bank and crypto lobbyists are now engaged in a public fight over whether the Act's "loophole" that allows for the payment of "indirect interest" can and will be closed.[123] Federal Reserve Vice Chair for Supervision, Michelle Bowman, has recently announced that she will be tackling that issue in working "to establish

[120] *See* Richard G. Anderson and Robert H. Rasche, *Retail Sweep Programs and Bank Reserves, 1994—1999*, 83 FED. RSRV. BANK OF ST. LOUIS REV. No.1, 51 (2001); Selva Demiralp & Dennis Farley, *Declining Required Reserves, Funds Rate Volatility, and Open Market Operations*, 29 J. BANKING & FIN. 1131 (2005).

[121] *See generally* Alsadek H. Gait & Andrew C. Worthington, *A Primer on Islamic Finance: Definitions, Sources, Principles and Methods* (Univ. of Wollongong Sch. of Acct. & Fin., Working Paper No. 07/05, 2007), https://www.isfin.net/sites/isfin.com/files/a_primer_on_islamic_finance-_definitions_sources_principles_and_methods.pdf (on file with Columbia Business Law Review).

[122] Circle Internet Financial, which issues USD Coin and is the only publicly listed stablecoin issuer, recently reported that 98% of its 2024 revenue and 96% of its 2025 revenue were derived from interest income on reserve investments. Circle Internet Group, Inc., Quarterly Report (Form 10-Q) at 8 (Aug. 12, 2025).

[123] *See Closing the Payment of Interest Loophole for Stablecoins*, *supra* note 17.

new rules for banks and stablecoins."[124] Thus, we ask in this Article what existing legal frameworks can be used to regulate stablecoin issuers in general, because many issuers are at least indirectly providing interest to their token holders. We turn now to the central legal issue of stablecoin issuers' status under the Investment Company Act.

II. STABLECOIN ISSUERS AS SHADOW INVESTMENT COMPANIES

The Investment Company Act is complex and often neglected, even by scholars of securities law. When the Act appears in a Securities Regulation casebook, it tends to do so at the end of the book.[125] As a result, we will present our analysis as systematically and accessibly as we can.

We naturally begin with the fundamental definition of an investment company. The statute provides two main tests, which determine what counts as an investment company.[126] The first test encompasses any issuer *primarily engaged in the business of investing* or trading in securities.[127] The second encompasses any issuer engaged in the business of investing, owning, holding, or trading in securities, and where investment securities exceed 40% of the value of the issuer's total assets (excluding government securities and cash items entirely from this calculation of assets).[128] Importantly, the tests are disjunctive: satisfying either means the entity in question is an investment company; one need not satisfy both.[129]

In this Part, we explore whether stablecoin issuers meet these tests. The analysis is complicated for reasons worth clarifying upfront. First, stablecoin issuers are attractive but also challenging candidates under both definitions, making a separate analysis under each necessary. Second, both definitions require the entity under consideration to be an "issuer," meaning a "person who issues or proposes to issue any security or has outstanding any security which it

---

[124] *See* Johnson, *supra* note 19.

[125] *See, e.g.,* THOMAS L. HAZEN, THE LAW OF SECURITIES REGULATION 737 (9th ed., 2025) (discussing the Investment Company Act in Chapter 19, the third to last chapter).

[126] 15 U.S.C. §§ 80a-3(a)(1)(A), 80a-3(a)(2). For an important reference point on broadly similar issues, *see* Robert Jackson & John Morely, *SPACs as Investment Funds*, WHARTON INITIATIVE ON FIN. POL'Y & REG. (July 14, 2022), https://wifpr.wharton.upenn.edu/wp-content/uploads/2022/07/Jackson-Morley-SPACs-as-Investment-Funds-2022.07.14-2.pdf [https://perma.cc/K559-LHWH].

[127] 15 U.S.C. § 80a-3(a)(1)(A).

[128] *Id.* § 80a-3(a)(1)(C).

[129] *Id.* § 80a-3(a)(1).

has issued." While this analysis is often trivial, it has been a major stumbling block for commentators considering stablecoins and their issuers. Lastly, stablecoins differ in important details that are pivotal to different pieces of the analysis.

We proceed in the following way. First, to illustrate our thinking, we analyze whether the most prominent stablecoin issuers are investment companies under each test, assuming they are "issuers." We then ask whether they are issuers. The bottom line is that the conclusion is a close judgment call, but they are certainly issuers and they are probably investment companies because their primary business is investing. Either way, the analysis proves illuminating.

A. *The Primary Business Test*

The first definition is based on understanding the "primary business" of an entity (it is often known as the "subjective" or "orthodox" investment company test). Set forth in section 3(a)(1)(A) of the Investment Company Act, this first definition is the one that most plausibly applies to stablecoin issuers. Specifically, this provision defines "investment company" as any issuer which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."[130]

Most companies with a primary business of investing in securities tell the public exactly that. They hold themselves out as investment companies, which is what explains the common reference to the "primary business" test as a "subjective" one. When things are less obvious, however, courts and the SEC rely on what is known as the *Tonopah* factors, after the seminal SEC release enumerating the key factors for assessing whether an entity's primary business is investing. Indeed, the SEC staff has a longstanding practice, reiterated as recently as 2024,[131] of "assess[ing] an issuer's primary engagement" by "historically look[ing] at five criteria, known as the *Tonopah* factors, to guide the determination of whether an entity is an investment company" under the first test.[132] The five factors are: (1) the issuer's historical evolution; (2) how it holds itself out to the public; (3) its

[130] *Id.* § 80a-3(a)(1)(A).

[131] Special Purpose Acquisition Companies, Shell Companies, and Projections, 89 Fed. Reg. 14158, 14258 (Feb. 26, 2024) (to be codified at 17 C.F.R. pts. 210, 229, 230, 232, 239. 240, 249).

[132] Tonopah Mining Co. of Nev., 26 S.E.C. 426 (1947); *see also* Certain Prima Facie Investment Companies, 17 C.F.R. § 270.3a-1 (2025).

officers and directors' activities; (4) the nature of its assets; and (5) the sources of its income.[133] Factors (4) and (5) are often considered the most important, and so we begin there.[134]

Are Tether and Circle investment companies according to *Tonopah*? The nature of their present income and assets militates strongly in favor of the answer being "yes." Tether's assets are overwhelmingly securities under the Investment Company Act.[135] For instance, as of September 2025, Tether's total assets are valued at $181 billion.[136] Of that number, at least $139 billion are securities. Tether reports $112 billion in Treasury securities, $17 billion in overnight repo, $6 billion in money market fund shares, and $9 billion in Bitcoin.[137] Treasuries and money fund shares are uncontroversially securities for the purposes of the primary business test.[138] As of December 2025, Tether's total assets are valued at $193 billion.[139] Of that number, at least $125-150 billion are securities. Tether reports $122 billion in Treasury securities, $25 billion in repo, and $17 billion in secured loans. Circle, meanwhile, held $31 billion of its $36 billion assets in shares of the Circle Reserve Fund (USDC Reserve), a money

---

[133] *See* Special Purpose Acquisition Companies, Shell Companies, and Projections, 89 Fed. Reg. at 14258 n.1146.

[134] A.B.A., DIGITAL AND DIGITIZED ASSETS: FEDERAL AND STATE JURISDICTIONAL ISSUES 184 (2020), https://www.americanbar.org/content/dam/aba/administrative/business_law/buslaw/committees/CL620000pub/digital_assets.pdf (on file with Columbia Business Law Review) ("The last two factors are the most important and are weighed most heavily in the analysis."). Indeed, the SEC staff's most recent guide to using the *Tonopah* factors begins by examining assets and income. *See* Special Purpose Acquisition Companies, Shell Companies, and Projections, 89 Fed. Reg. at 14259.

[135] *See* 15 U.S.C. § 80a-2(a)(36) (defining "security" to include bonds and instruments of indebtedness); SEC Release No. IC-27438, Definition of "Government Securities" and Treatment Under the Investment Company Act (June 27, 2006) (discussing government securities as securities under the Act).

[136] BINDER DIJKER OTTE, TETHER HOLDINGS LTD.: INDEPENDENT AUDITORS' REPORT ON THE FINANCIALS FIGURES AND RESERVES REPORT 1 (2025), https://assets.ctfassets.net/vyse88cgwfbl/6GbUTVK4tTYAytefu5daIi/6cac18eb4b526c9c52640a3d2bed9642/ISAE_3000R_-_Opinion_Tether_International_Financial_Figure_31-10-2025.pdf [https://perma.cc/8CCJ-KWWM].

[137] *Id.* at 4.

[138] *See infra* note 171 and accompanying text.

[139] TETHER HOLDINGS LTD.: INDEPENDENT AUDITORS' REPORT ON THE FINANCIALS FIGURES AND RESERVES REPORT 1 (2025), https://assets.ctfassets.net/vyse88cgwfbl/20d2BoOAd28ZfkiQPYPjGN/4ed12f5939e1e06ee5aceccad4effbe4/ISAE_3000R_-_Opinion_Tether_International_Financial_Figure_31-12-2025.pdf.

market mutual fund organized under rule 2a-7 of the Company Act and available exclusively to Circle and its affiliates,[140] as of the end of September 2024.[141] As of December 31, 2024, the numbers had increased to $43,856,799,846 USDC in circulation, and $43,921,522,065 held in USDC Reserve, almost all of which was Treasuries ($18,486,000,000) and repos collateralized by Treasuries ($18,486,000,000).[142] Money market shares, again, are uncontroversially securities.

Both Tether and Circle also appear to generate the vast majority of their revenue from securities. Tether has occasionally disclosed its profits, which are almost always dominated by interest income generated by its Treasury holdings and investment activities. However, Tether makes significant investments in assets that are not securities (or arguably not), such as Bitcoin and precious metals. In 2023, for example, Tether disclosed $6.2 billion in net operating profits, of which $4 billion was "generated by U.S. Treasuries" and the remainder from "the performance of other asset classes."[143] They make little mention of other sources of revenue. In early 2022, Circle provided some visibility into the sources of its revenue as well as its own expectations for sources of future revenue growth via filings related to its planned, but ultimately withdrawn, merger with a Special Purpose Acquisition Company (SPAC). That filing shows while "Transaction and Treasury Services" provided the bulk of its income in 2021,[144] Circle's management expected interest income to make up

[140] BLACKROCK FUNDS, PROSPECTUS: CIRCLE RESERVE FUND 3, 11 (Aug. 28, 2025), https://www.blackrock.com/cash/literature/prospectus/pro-crf-us.pdf [https://perma.cc/2GCF-F3WQ].

[141] DELOITTE, INDEPENDENT ACCOUNTANTS' REPORT 2–4 (Oct. 30, 2024), https://6778953.fs1.hubspotusercontent-na1.net/hubfs/6778953/USDCAttestationReports/2024/2024%20USDC_Examination%20Report%20September%202024.pdf [https://perma.cc/Y2SM-VZWS].

[142] DELOITTE & TOUCHE LLP, INDEPENDENT ACCOUNTANTS' REPORT 2–4 (Sept. 30, 2025), https://6778953.fs1.hubspotusercontent-na1.net/hubfs/6778953/USDCAttestationReports/2025/2025%20USDC_Examination%20Report%20August%2025.pdf [https://perma.cc/K5F2-4PPU].

[143] *Q4 2023 Attestation Report*, TETHER (Jan. 31, 2024), https://tether.io/news/tethers-2023-q4-attestation/ [https://perma.cc/N4RA-NSGB].

[144] Circle defines Transaction and Treasury Services as "(1) Transaction Services, (2) Integration Services, and (3) Treasury Services. All three of the services are components of a unified suite of services that are accessed by, and integrated with, the Circle Account by providing customers with the infrastructure required to

nearly 90% income growth over the next two years.[145] In that sense, Circle held itself out to investors as likely to earn the vast majority of its future revenue from its interest-bearing securities investments.[146]

Structurally, a successful stablecoin issuer is effectively condemned to function as an investment fund (or maybe a commodity pool if it invested mostly in non-securities assets). There is a kind of "Catch 22." If a stablecoin issuer wants to offer cheap payments, then it has to rely on interest income or capital appreciation for their primary revenue source (i.e., to make revenue primarily from acting as an investment intermediary). To avoid being an investment company, a stablecoin issuer would have to make payments so expensive that their stablecoins would barely be used. A quantitative example is arguably useful here. One large U.S. bank which discloses payments revenue earned roughly $18 billion of global payments revenue in 2023, or a 0.75% return on $2.4 trillion in gross volume and $715 billion in deposit balances (turnover of 3.4 times per year).[147] With interest rates around 4%, it would take a much higher rate of turnover

process a wide variety of transactions and support their financial infrastructure." Circle Internet Fin. PLC, Registration Statement (Form S-4) 107 (May 6, 2022).

This can likely be thought of as analogous to payments related revenue earned by traditional financial institutions and separate from interest income on reserves.

[145] Circle projected total operating income to increase from $85 million in 2021 to $2.6 billion in 2023, of which $28 million was interest income in 2021 and $2.2 billion was interest income in 2023. That projection assumed USDC in circulation increased from $42 billion to $200 billion while interest rates rose from roughly 0% to 1.1% over the same period. *Id.* at 131–32.

[146] That reflected an assumption that USDC in circulation would increase from $42 billion to $200 billion and interest rates would rise from 0% to 1% over the same period; in reality, interest rates went up substantially more than markets or Circle expected, and interest income on their reserves likely fell only slightly short of target ($1.5 billion actual versus $2.2 billion expected) despite a decrease in outstanding USDC balances ($31 billion on average for 2023). Estimated income assumes total Circle reserve assets are similar to the total market capitalization of USDC outstanding and earns rates similar to that on three-month Treasury bills. *See USDC Historical Data*, COINGECKO, https://www.coingecko.com/en/coins/usdc/historical_data?start=2021-12-31&end=2024-11-25 [https://perma.cc/54GC-X3TK] (last visited Dec. 2, 2025).

[147] J.P. Morgan Chase & Co., Annual Report (Form 10-K) (December 31, 2023). This likely overstates somewhat the extent of turnover among fee-earning transactions by including "on-us" transfers which are payments between two customers of the same bank. Those are affected, not by using externalized payment instructions but rather book transfers that are cleared and settled on one set of books. One estimate suggests this is the single largest payment channel for money center banks like J.P. Morgan. Joshua Younger et al., *You Say you Want a Revolution: Considering Central Bank Digital Currency*, J.P. MORGAN FIXED INCOME RESEARCH 11 (May 21, 2020) (on file with Columbia Business Law Review).

for transaction fees to even equal interest income at that rate of return. For stablecoins to fulfill their promise of much lower transaction costs than traditional financial institutions, that turnover would have to be much higher still. As a point of comparison, data collected by the Bank for International Settlements show just under $10 trillion of U.S. domestic credit card and e-money payments in 2022,[148] which translates to a turnover ratio of roughly 2:1 versus demand deposits issued by U.S. banks and held by non-official institutions.[149] Although wholesale payments have much higher rates of turnover, a stablecoin-focused business model, even if successful in garnering a significant share of payments for the proverbial "cup of coffee," is still likely to earn most of its net income from interest on its reserve assets. Put simply, the stablecoin issuer business model presumes they are investment intermediaries. Insofar as Tether complicates this, it is not because it earns large sums as an operating company but because it invests heavily in an exotic portfolio of non-securities assets. Further, technological constraints also potentially limit the ability of stablecoin networks to handle very high levels of turnover.[150]

The third *Tonopah* factor—concerning the activities of the issuer's management—is difficult to ascertain without an accounting of the duties and responsibilities of a stablecoin's directors and officers. Yet, it is clear that managers of stablecoin issuers do not have a substantial portfolio of responsibilities that obviously lie elsewhere, as with an operating company that has inadvertently tripped the investment company definition, or even a SPAC, whose management might be seeking a de-SPAC transaction.

---

[148] Table 6: Value of cashless payments and withdrawal/deposit transactions, BANK FOR INT'L SETTLEMENTS: DATA PORTAL, https://data.bis.org/topics/CPMI_CT/tables-and-dashboards/BIS,CPMI_T6,1.0?dimensions=REP_CTY%3AUS [https://perma.cc/RC33-XYZP] (last visited Oct. 29, 2025).

[149] *See* Demand Deposits (WDDNS) Chart, FED. RSRV. BANK OF ST. LOUIS, https://fred.stlouisfed.org/series/WDDNS [https://perma.cc/7SQD-U56Y] (last visited Dec. 2, 2025). These data are collected from the Federal Reserve Board's H.6 Table entitled "Money Stock Measures." Its demand deposits measure includes those issued by domestically chartered commercial banks, U.S. branches and agencies of foreign banks, and Edge Act corporations and excludes domestic and international official holdings. We take the weekly average of calendar year 2022 for $4,999 billion.

[150] *See* Joshua Younger et al., *Can Stablecoins Achieve Global Scale?*, J.P. MORGAN FIXED INCOME RESEARCH 3 (Dec. 3, 2019) (on file with Columbia Business Law Review).

The first and second *Tonopah* factors—relating to the issuer's historical development and how it holds itself out to the public—are ambiguous. Stablecoin issuers have no history as operating companies or other track record of engaging in unrelated lines of business, although they do seek to serve as payment-like systems in crypto. In its public disclosures filed with the SEC in anticipation of its potential initial public offering, Circle pronounced that it was "a global financial technology firm that provides internet-native payments and treasury infrastructure."[151] Yet Circle and other stablecoin issuers are widely regarded as essentially functioning as unregulated banks that borrow short, lend long, and generate revenue from a portfolio of securities investments. Whether or not the issuers think of themselves that way (or have been counseled to avoid making problematic public admissions), their fundamental business model has arguably always involved investing in a portfolio of assets using customer deposits.

B. *The Asset-Based Test*

The second test, under section 3(a)(1)(C) of the Investment Company Act, arguably also encompasses stablecoin issuers. Under this test, an issuer is an investment company if it is engaged in the business of investing, owning, or holding securities *and* where more than 40% of the total value of its total assets consist of investment securities (excluding governmental securities and cash items from the calculation of assets).[152] What makes this test objective is that the intentions or messaging of the issuer is irrelevant; all that matters is the composition of its balance sheet. For that reason, this test is the one most likely tripped inadvertently by businesses that have no real intention of serving as an investment vehicle. If, for instance, an operating company (that might be devoted primarily to making widgets or selling services) raises a large amount of money through an IPO and then, without considering the reach of the Investment Company Act,

[151] *See* Circle Internet Fin. Ltd., Registration Statement (Form S-4) 22 (Oct. 20, 2022).

[152] *See* Investment Company Act of 1940, 15 U.S.C. § 80a-3(a)(1)(C) (any issuer which "(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.").

invests those sums in securities, the company can become an inadvertent investment company.[153]

Two thoughts that may appeal to someone encountering the test for the first time prove to be red herrings. Looking at Circle's assets, one may think they overwhelmingly satisfy the asset-based test, making Circle an investment company. After all, Circle's assets consist overwhelmingly of shares of the Circle Reserve Fund money market mutual fund, which itself holds U.S. Treasuries and repurchase agreements on U.S. Treasuries.[154] Recall, though, that cash items and government securities are *excluded* from the asset-based test.[155] The SEC has determined that U.S. Treasuries, money market fund shares, and fully collateralized repos all count either as cash items or government securities.[156] The second red herring is to think that, as a result, Circle is obviously *not* an investment company under the asset-based test. This is wrong because, crucially, governmental securities are excluded from both the numerator *and denominator* of the asset calculation.[157]

As a result, the asset-based test must now narrow down to the small percentage of a stablecoin issuer's total assets that are not cash items or government securities,, and focus on what percentage of *those assets* are "investment securities."[158] An investment security is essentially any security other than government securities or securities issued by majority-owned subsidiaries of the issuer (unless those subsidiaries are investment companies or exempt entities under section 3(c)(1) or 3(c)(7)).[159]

---

[153] The company would almost certainly fail the subjective test. Under the Tonopah analysis, the company's historical development, how it holds itself out to the public, and the actions of its management would all be devoted primarily to widget-making or service-selling, not to generating returns on its new investments. *See* A.B.A., *supra* note 134, at 184–86. Similarly, those investments and assets are likely to be secondary to the company's revenues from widgets and services in general.

[154] See DELOITTE, *supra* note 142.

[155] *See* 15 U.S.C. § 80a-3(a)(1)(C).

[156] *See* 17 C.F.R. § 270.2a-7(a)(14) (defining a government money market fund as a money market fund that invests at least 99.5% of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully by cash or government securities); id. § 270.2a-7(a)(15) (incorporating the definition of government security under Section 2(a)(16) of the Investment Company Act, which includes U.S. Treasury obligations).

[157] 15 U.S.C. § 80a-3(a)(1)(C).

[158] *Id.* § 80a-3(a)(2).

[159] *Id.* § 80a-3(a)(1).

The issue is complex. Consider Tether's assets as disclosed in recent financial statements.[160] Of its $181 billion in assets, $112 billion are excluded from the total asset calculation, as government securities. That calculation also excludes "cash items," which encompasses a number of Tether's other major asset categories, such as money market fund shares and cash and bank deposits. The second and third largest categories of assets, types of repurchase agreements, may be considered cash items by the SEC, although the statute uses the term without precisely defining it anywhere.[161] With the vast majority of its assets now excluded, most of Tether's remaining assets are not securities. It has billions in precious metals, Bitcoin, secured loans, and a catch-call category of other investments.[162] As a result, though the matter is factually contingent and uncertain, we suspect that Tether at least is not an investment company under the asset-based test.

C. *Are Circle and Tether "Issuers"?*

The most obvious way for Circle and Tether, or any other stablecoin issuer, to be an "issuer" would be for the stablecoins they create to be securities. Indeed, the typical methodology of the SEC is probably to view whether a stablecoin issuer is an investment company as downstream from whether the stablecoins it creates are securities. This is understandable but can be a mistake. There are two different ways for a stablecoin issuer to be an "issuer." Its stablecoins can be securities, or it can have issued other types of securities—such as stocks and bonds—to finance itself. Here, we pursue both routes. First, we ask whether stablecoins are securities. Second, we ask whether the most prominent issuers, Tether and Circle, have issued other types of securities, making them issuers, even if their stablecoins are not securities.

---

[160] *See* BINDER DIJKER OTTE, *supra* note 136, at 4, 6.

[161] It is discussed extensively in SEC no-action letters. *See, e.g.*, Wilkie Farr & Gallagher, SEC Staff No-Action Letter, OFF. OF CHIEF COUNS. DIV. OF INV. MGMT. (Oct. 23, 2000) https://www.sec.gov/divisions/investment/noaction/2000/willkiefarrgallagher102300.pdf [https://perma.cc/J2C8-T74V].

[162] *See* BINDER DIJKER OTTE, *supra* note 136, at 4.

1. *Are Stablecoins "Securities"?*

The major securities statutes each define "security" in separate but largely overlapping ways.[163] Each statute defines the term by means of a laundry list. The lists include the familiar: stocks, bonds, and other well-known forms of securities that are common in capital markets. They also, crucially, include a number of vague, open-ended, catch-all terms. Most importantly, they list "investment contract" and "any note."[164] The courts have interpreted these terms capaciously. In fact, each term has its own seminal Supreme Court decision lending a name to the test for when an instrument qualifies as a "security" because it is an "investment contract," defined by *Howey*,[165] or "note," defined by *Reves*.[166]

In *Howey*, the Supreme Court confronted the seemingly idiosyncratic question of whether the offer of a set of contracts to own units in a citrus grove and have a team develop them constituted an "investment contract."[167] Amazingly, even fairly subtle features of the case are relevant to complex issues involving crypto assets today, as we will see below. The Court held that the contracts together constituted an "investment contract," and thus, a security.[168] The Court laid out four elements that are required for an investment contract beyond a contract, transaction, or scheme: (1) an investment of money; (2) in a common enterprise; and (3) the expectation of profits; (4) from the efforts of others.[169]

In *Reves*, the Supreme Court returned to the issue of defining the outer bounds of "security," but now under the guise of determining what constitutes "any note" in the statutory definition.[170] The task is not an easy one as commerce features a vast variety of debt instruments, including many bilaterally negotiated notes that seem ill

---

[163] *See, e.g.*, 15 U.S.C. § 77b(a)(1) ("The term 'security' means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness . . . ."); *see also* 15 U.S.C. § 78c(a)(10).

[164] *See* 15 U.S.C. § 77b(a)(1) ("The term 'security' means any note . . . investment contract . . . or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.").

[165] SEC v. W.J. Howey Co., 328 U.S. 293, 297 (1946).

[166] Reves v. Ernst & Young, 494 U.S. 56, 60 (1990).

[167] *Howey,* 328 U.S. at 294, 297.

[168] *Id.* at 298–99.

[169] *Id.*

[170] *Reves*, 494 U.S. at 62–63.

fit for the definition of a "security." The Court ultimately crafted a complex, multi-factor family resemblance test.[171] In sum, there are three main routes to being a security. An instrument can be a familiar one (a stock, a bond, etc.), which is the usual case; it can be an investment contract under *Howey*; or it can be a note under *Reves*.[172]

Stablecoins are not like the most familiar securities, stocks or bonds. Yet, like many things in the crypto ecosystem, they may fit under quite familiar categories of securities law. The question is whether stablecoins are investment contracts or notes under *Howey* or *Reves*. Unlike the central legal question of this Article—whether stablecoin *issuers* are *investment companies*—there has been extensive commentary on the status of stablecoins' status as securities. In their "Framework for 'Investment Contract' Analysis of Digital Assets," the SEC provided a basic analysis of whether a novel digital instrument constituted an investment contract under *Howey* and the subsequent jurisprudence.[173] The SEC focused on the question of whether digital assets were securities because they were investment contracts under the four prongs of *Howey*.

Stablecoin arrangements clearly satisfy the first prong: an "investment of money." Courts have consistently interpreted this requirement very broadly. For example, in *International Brotherhood of Teamsters v. Daniel*, the Supreme Court found that "in order to meet the definition of an investment contract," a person's investment need not "take the form of cash only, rather than of goods and services."[174] Later case law affirmed this concept that securities or investment contracts need not be "one neat, tidy, certificate," and that, in defining them, "the emphasis should be on economic reality."[175] Stablecoins are created by exchanging a transfer of fiat currency, usually in the form of a bank wire, for a newly "minted" token transferred to a pre-identified digital wallet (presumably owned by the originator of the

[171] *Id.* at 61–62.

[172] *Id.*

[173] *See Framework for "Investment Contract" Analysis of Digital Assets*, SEC (July 5, 2024), https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets [https://perma.cc/Y76E-MDKX].

[174] Int'l Bhd. of Teamsters v. Daniel, 39 U.S. 551, 560 n.12 (1979).

[175] Hocking v. Dubois, 885 F.2d 1449, 1457 (9th Cir. 1989).

wire transfer).[176] That transaction transparently constitutes an "exchange of value."

The second prong (a "common enterprise") is only slightly more ambiguous, particularly for the asset-backed stablecoins that dominated the market. Courts have held that there are two forms of common enterprise under *Howey*: "horizontal communities," in which all the investors share in profit and loss, and "vertical communities" in which returns are tied to the promoter of the project.[177] In *Revak*, the Second Circuit found that the former is defined by "the tying of each individual investor's fortunes to the fortunes of the other investors by the pooling of assets, usually combined with the pro-rata distribution of profits."[178] Asset-backed stablecoin arrangements like Circle and Tether represent a pro-rata claim on a pool of securities which receive a similar pro-rata distribution of income generated by its reserve assets.[179] That this share is currently set to zero (i.e., non-interest bearing) is arguably not relevant. In principle, token holders are a horizontal community under this standard; were they to be remunerated as well, that status would be unambiguous.

The fourth prong is arguably trivial. The vast majority of stablecoin arrangements do not allow the holders of those tokens to have input into the investment process. Tether and Circle, for example, act as independent managers of their reserve accounts.[180] The

[176] PRESIDENT'S WORKING GRP. ON FIN. MKTS., FED. DEPOSIT INS.CORP. & OFF. OF THE COMPTROLLER OF THE CURRENCY, REPORT ON STABLECOINS, U.S. DEP'T OF TREASURY 4 (2021), https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf [https://perma.cc/SG52-BCCQ].

[177] Revak v. SECRealty Corp., 18 F.3d 81, 87–88 (2d Cir. 1994).

[178] *Id.*

[179] For each USDC in circulation, Circle holds a corresponding amount of liquid assets—primarily short-dated U.S. Treasuries and cash—in segregated accounts for the benefit of USDC holders, such that each token is fully backed by the reserve pool. Thus, holders have a claim on the pool of reserve assets backing their tokens. *See* Circle, *How the USDC Reserve Is Structured and Managed* (Mar. 28, 2023) (describing backing by cash and U.S. Treasuries) https://www.circle.com/blog/how-the-usdc-reserve-is-structured-and-managed; Circle, *Transparency & Stability* (describing segregated reserve assets for token holders), https://www.circle.com/transparency.

[180] *See* Circle, *How the USDC Reserve is Structured and Managed* (Mar. 28, 2023), https://www.circle.com/blog/how-the-usdc-reserve-is-structured-and-managed (describing that the USDC reserve is held in U.S. Treasuries and cash and is managed as a dedicated reserve pool); Ledger Insights, *Cantor Fitzgerald Confirms It Is Custodian for Tether Treasuries* (Dec. 13, 2023), https://www.ledgerinsights.com/cantor-fitzgerald-custodian-tether-stablecoin (reporting that Cantor Fitzgerald serves as custodian for Tether's Treasury holdings).

profitability of that pool of investments is directly tied to their decisions.

That leaves the third prong: an "expectation of profit." This element is the most controversial portion of *Howey* as applied to stablecoins and is the nexus of most current debate. *Howey* itself defines that expectation as "the prospects of a return on their investment."[181] Importantly, the court specified that "some purchasers" of an investment contract may "accept the offer of the investment contract in its entirety."[182] In other words, the court specified that such an expectation of profit must simply be offered, not required, of investors. That concept was later found to include "income or return, to include, for example, dividends, other periodic payments, or the increased value of the investment."[183] The Ninth Circuit has also found the third prong to be applicable even if those returns were secondary to the investment rationale.[184]

Recent case law highlights this ambiguity. By now, there have been important judicial opinions directly addressing whether some of the lesser known stablecoins are securities, albeit not final decisions on the merits. They are sufficiently important that they are worth describing in a little depth.

The first case involves the UST stablecoin created by Terraform in 2019.[185] UST was designed to track the value of one U.S. dollar based on the performance of an algorithm under which customers could always exchange $1 worth of LUNA tokens for one UST, and one UST for $1 worth of LUNA.[186] A little over a year later, Terraform launched the Anchor Protocol, which enabled UST holders to deposit UST tokens in a shared pool.[187] The pool of tokens was then lent to borrowers, and interest was paid at a fixed rate to depositors based on the proportion of UST they had deposited.[188] In a December 2023 decision, Judge Jed Rakoff found that "UST in combination with the Anchor Protocol constituted an investment contract," and that "it is of no legal consequence that not all holders of UST deposited tokens

[181] SEC v. W.J. Howey Co., 328 U.S. 293, 301 (1946).
[182] *Id.* at 300.
[183] *See* SEC v. Edwards, 540 U.S. 389, 394 (2004).
[184] SEC v. Hui Feng, 935 F.3d 721, 730–31 (9th Cir. 2019).
[185] SEC v. Terraform Labs Pte. Ltd., 708 F. Supp. 3d 450 (S.D.N.Y. 2023).
[186] *Id.* at 459.
[187] *Id.*
[188] *Id.*

in the Anchor Protocol, and thus that some holders 'ch[o]se not to accept the full offer of an investment contract.'"[189]

Judge Amy Berman Jackson came to the opposite conclusion for a different stablecoin, albeit in a way confined to the allegations the SEC had made in that action.[190] That stablecoin, BUSD, was also pegged to one U.S. dollar.[191] It was sold and redeemed on the Binance.com platform.[192] The proceeds from purchases of BUSD were placed in a portfolio of investments that acted as "reserves" for redemption and to generate profits for the issuing entities.[193] Judge Berman Jackson found it pivotal that BUSD customers did not understand proceeds to be invested for "*their* benefit."[194] She found that the SEC failed to plausibly allege that the proceeds in any way directly benefited the purchasers in terms of greater profits of enhanced user experience of Binance.[195]

Crucially, Judge Berman Jackson found that the SEC did not allege that any of the investment protocols associated with BUSD—the rough analog of the Anchor Protocol for UST—had been alleged to be securities, or that the whole package of BUSD-plus-protocol had been alleged to be a security.[196] In other words, Judge Berman Jackson did not find the SEC to have made the appropriate allegations that would have allowed her to make findings like Judge Rakoff.

What is the appropriate inference to make from this case law and body of precedent? For us, it is that the combination of a stablecoin and associated investment protocols *can* constitute an investment contract, depending on the facts and circumstances.

2. *What If Stablecoins Are Not Securities?*

One of the major stumbling blocks has been thinking that, because USDT and USDC may not be securities, Tether and Circle cannot be investment companies. (Indeed, the GENIUS Act explicitly carves "payment stablecoins" out of securities law.) This does not follow. Stablecoin issuers can be investment companies even if the

[189] *Id.* at 473.
[190] SEC v. Binance Holdings Ltd., 738 F. Supp. 3d 20 (D.D.C. 2024).
[191] *Id.*
[192] *Id.* at 34.
[193] *Id.*
[194] *Id.* at 59–61.
[195] *Id.* at 59.
[196] *Id.* at 20.

stablecoins they issue are not securities. Even assuming that stablecoins are not securities, the major stablecoin issuers may be issuers for the simple reason that they *sold ordinary securities to raise capital early in their development*. In fact, for Circle it is fairly unequivocal that it has done so.

There are two avenues through which Circle has issued securities. First, it went through multiple fundraising rounds to finance its business. By May 2021, Circle was raising funds in a Series E round.[197] In April 2022, it entered an agreement for $400 million in financing from BlackRock, Inc., Fidelity Management and Research, Fin Capital, and Marshall Wace LLP.[198] While we have no insight beyond the limited public information on these capital raising rounds, it certainly seems like Circle has raised equity multiple times through traditional equity sales.

Circle also operated an investment option called the Circle Yield Account, which enabled certain customers to lend their USDC to Circle for a fixed term in return for a fixed return.[199] The Circle Yield Account, because of its return characteristics, is a much likelier candidate for a security under *Howey*. Indeed, the Circle entity, Circle Bermuda International, also made several Form D filings in connection with the Circle Yield Account.[200] In the filings, Circle declared that it was *offering securities* in the form of "Circle Yield, a yielding loan product for customers who invest USDC stable coin and earn a yield under the terms of a line of credit agreement."[201] In a January 2023 filing, the same entity declared that it had sold a total of $486,245,616.[202] Circle conceded that Circle Yield was a security and sought specific exemptions, such as rule 506(c) from registration

[197] *Circle Completes $440 Million Financing to Drive Growth and Market Expansion*, CIRCLE (May 28, 2021), https://investor.circle.com/news/news-details/2021/Circle-Completes-440-Million-Financing-to-Drive-Growth-and-Market-Expansion/default.aspx [https://perma.cc/CG5Y-BGXX].

[198] *See Circle Announces $400M Funding Round*, PR NEWSWIRE (Apr. 12, 2022), https://www.prnewswire.com/news-releases/circle-announces-400m-funding-round-301523647.html [https://perma.cc/KBJ2-DDN5].

[199] *See* Jeremy Fox-Green, *Circle Yield*, CIRCLE (Jul. 6, 2022), https://www.circle.com/blog/circle-yield-built-differently [https://perma.cc/HWJ9-A4NM].

[200] *E.g.*, Circle Int'l Bermuda, Ltd., Notice of Exempt Offering of Securities (Form D) (Jan. 24, 2023).

[201] *Id.* at 4.

[202] *Id.* at 5.

requirements under the securities laws.[203] Avoiding registration requirements does not mean, however, that it was not an issuer; instead, it means it was an issuer and sought to issue securities in a manner exempt from the need for registration. Eventually, Circle finally went through its initial public offering and is now a public company.

One major caveat should be inserted here. We have argued that the major stablecoin creators are "issuers" with a primary business of investing in securities. Yet they could meet the definition of an investment company and elude the most straightforward implications if they qualified for the "private fund" exemptions, under which venture capital or private equity operate.[204] This would require them to have sold securities either to 100 or fewer investors, or exclusively to "qualified purchasers" who are individuals with $5 million or more in investable assets or larger institutional investors. If USDC and/or USDT are securities, there is no chance of the exemptions being applicable. But if Tether is an issuer only because it has sold ordinary stocks or bonds, it is at least possible. We would need more data on whom Tether has raised money from. We assume below that they do not qualify for these exemptions.

* * *

The core argument of this section has been complex, so it is worth summarizing here. To be an investment company, there must be an issuer whose primary business is investing in securities. Both Tether and Circle probably issued ordinary securities to fund their early operations. That would make them issuers, regardless of whether their stablecoin tokens are securities. The next question is whether their primary business is investing in securities. When the question is a close one, securities law turns to the *Tonopah* factors. The *Tonopah* analysis involves the nature of assets, present income, the activities of officers and directors, the history of firm policy, and how the firm holds itself out to the general public.

---

[203] Rachel Mayer, *Fixed-Income Investing: A New Option With Circle Yield*, CIRCLE (May 4, 2022), https://www.circle.com/blog/fixed-income-investing-a-new-option-with-circle-yield [https://perma.cc/7HF2-NY65]. The article acknowledges that "[f]or investors in the United States, investments described in this communication are offered by Circle Bermuda to 'accredited investors' only in accordance with Regulation D, Rule 506(c) of the Securities Act of 1933, as amended. Neither the SEC nor any other regulatory body has approved or disapproved Circle Yield." *Id.*

[204] 15 U.S.C. §§ 80a-3(c)(1), 80a-3(c)(7).

At least for Circle—about which more is public—it is clear that the principal source of its net income assets arises from investing in securities. Its assets consist almost exclusively of securities, and it owns an enormous amount of them. Tether's assets are also mostly securities, and it makes astonishing profits from investing in securities and other assets. Yes, Tether and Circle hold themselves out as payments companies that also invest in highly liquid and safe securities using customer assets. While it is not a slam dunk, we think the judgment is also not on a knife's edge: Circle's primary business is investing in securities. It is an investment company. While we know less of Tether, the analysis is plausible there as well.

As we turn from the analytical to the prescriptive, it is important to note another advantage of the primary business test as well. If stablecoin issuers only qualified as investment companies because of the asset-based test, relatively simple changes to the composition of their "reserves"—to the portfolio of investments backing their tokens' redeemability—could move them out of investment company status. They could switch from one type of repo to another, or improve the collateralization of their repo portfolio, or hold more Treasuries directly. Or they could shift further investments into commodities like Bitcoin and gold, rather than hold investment securities. The more fundamental feature of the major stablecoin issuers is that they rely on holding a portfolio of highly liquid assets for their very basic functions of redeeming claims while making profits from net income on assets.

D. *Consequences for Unregistered Investment Companies*

If we reach the conclusion that stablecoins—particular those not directly compliant with the GENIUS Act—are unregistered investment companies, two consequential questions will quickly follow. First, what can the SEC do to putatively unlawful actors who are operating in this space without registering? Second, for stablecoin issuers who wish to comply with the Investment Company Act, what can the SEC do to make compliance possible?

The most obvious intervention by an SEC seeking to affirm that stablecoins are unregistered investment companies would be to issue a cease and desist order under section 7(a) of the Company Act.[205]

[205] *Id.* § 80a-7(a).

That capacious provision prohibits any investment company, unless it registers with the SEC, from—among other things—offering securities, redeeming securities, or engaging in any business in interstate commerce, all of which are activities in which stablecoin issuers currently engage.[206] Section 7(b) similarly prohibits underwriters from performing any of a similar array of activities for an unregistered investment company.[207] Of course, to the extent that stablecoins are securities, then sections 5(a) and 5(c) of the Securities Act would similarly prohibit them from operating their businesses without registration.[208] Ultimately, unregistered stablecoin issuers could be terminated, with the SEC ordering a liquidation and distribution of their funds to the underlying investors. In essence, a motivated SEC that is prepared to litigate the matter could functionally extinguish an unregistered stablecoin.

A slightly less aggressive approach would be to impose civil and monetary penalties upon a stablecoin issuer under sections 20(d) of the Securities Act and section 42(e) of the Company Act.[209] Typically, this gentler approach is followed when the SEC is attempting to work with a registrant to pursue changes in their business model and a path to compliance. When the SEC settled with BlockFi in February 2022, for example, it imposed a $100 million penalty while simultaneously extracting a commitment by BlockFi to "attempt to bring its business within the provisions of the Investment Company Act within 60 days."[210] Thus, the arrangement was not intended to terminate BlockFi's business model but to direct it into compliance with the Investment Company Act.

If compliance with the Investment Company Act were simple, however, one might readily assume some crypto issuers would already have done so. As it happens, one stablecoin issuer has come close. Circle, the issuer of the USDC stablecoin, holds a significant amount of its reserves in a BlackRock 2a-7 money market fund that is fully compliant with the SEC's specific regulatory requirements for such

[206] *See id.*

[207] *Id.* § 80a-7(b).

[208] *Id.* §§ 77e(a), 77e(c).

[209] *Id.* §§ 77t(d), 80a-41(e).

[210] Press Release, Security and Exchange Commission, BlockFi Agrees to Pay $100 Million in Penalties and Pursue Registration of its Crypto Lending Product (Feb. 14, 2022), https://www.sec.gov/newsroom/press-releases/2022-26 [https://perma.cc/F466-RNUN].

funds.[211] But for the stablecoins themselves to be registered with the agency, an array of thorny issues would have to be resolved. Some of those questions are relatively technical and could probably be addressed through no-action relief or other exemptive processes.[212] But the most significant challenge relates to the custody of assets. The Investment Company Act imposes stringent requirements on a fund's assets being held with a third-party qualified custodian, independent of the fund or its adviser.[213] Because crypto is often traded outside the control of such an institution, custody has proven to be a difficult challenge to resolve.[214]

But the SEC has worked with industry to midwife two relatively large fund innovations: money market funds and exchange-traded funds. Both of those developments required exemptive relief from the agency, and the Investment Company Act grants the Commission broad exemptive authority under section 6(c).[215] That statutory provision allows the Commission to "conditionally or unconditionally exempt any person, security or transaction . . . from any provision or provisions of [the Act]."[216] In practice, such exemptions come with conditions developed following intricate discussions between registrants and the staff, so it is not a quick process.[217] Were the staff directed to begin such a process in earnest,

[211] BLACKROCK, SUMMARY PROSPECTUS: CIRCLE RESERVE FUND 7 (Aug. 28, 2025), https://www.blackrock.com/cash/literature/summary-prospectus/spro-crf-us.pdf [https://perma.cc/B6E4-92VF].

[212] *See, e.g.*, Alexander C. Drylewski et al., *Crypto Litigation Brought Against the SEC and the Implications of a New Administration*, REUTERS (Jan. 10, 2025, at 12:02 ET), https://www.reuters.com/legal/legalindustry/crypto-litigation-brought-against-sec-implications-new-administration-2025-01-10/ [https://perma.cc/Q969-QW8G].

[213] *See* Investment Company Act of 1940 § 17(f), 15 U.S.C. § 80a-17(f) (requiring registered investment companies to place and maintain their securities and similar investments with specified custodians, including banks or other entities subject to federal or state supervision). *See also* 17 C.F.R. § 270.17f-2(b) (requiring a registered management investment company to deposit portfolio securities and similar investments in safekeeping with a bank or other qualified custodian); 17 C.F.R. § 270.17f-4 (establishing conditions for custody of fund assets through securities depositories and intermediaries).

[214] *See, e.g.*, Safeguarding Advisory Client Assets, SEC Release No. IA-6240 (Feb. 15, 2023), https://www.sec.gov/files/rules/proposed/2023/ia-6240.pdf (on file with Columbia Business Law Review).

[215] 15 U.S.C. § 80a-6(c).

[216] *Id.*

[217] Amendments to Procedures with Respect to Applications Under the Investment Company Act of 1940, 85 Fed. Reg. 57,089, 57,091 (Sept. 15, 2020)

it might still take several months to accomplish, during which time Congress might have pursued a legislative alternative, or the Commission itself might have promulgated a regulatory alternative through its rulemaking process.[218]

The challenge to accommodating stablecoins within the Investment Company Act framework is less a matter of regulatory authority and more a concern with unintended consequences. Were the SEC to grant exemptions from custody requirements without carefully circumscribing conditions, one might fear that other registered investment companies could attempt to take advantage of the reprieve, thus allowing potentially trillions of dollars held in non-stablecoin investment companies to avoid the custody requirements.[219]

And though custody requirements might seem arcane, they are but one example of the Investment Company Act rules that particularly bedevil stablecoins. They are also rules partly responsible for avoiding scenarios in which investment advisers can simply abscond with all the assets in a fund's portfolio. If that possibility seems far-fetched, consider that this is precisely how Bernie Madoff defrauded his investors.[220] And, for something closer to stablecoins, the radical failure of sound custody was high amongst the sins of FTX that divorced Sam Bankman-Fried's customers from their own investments.[221]

("Over time, some applicants have expressed concern regarding the length of time required to obtain an order on both routine and novel applications.").

[218] *See, e.g.*, Dylan Tokar, *SEC's "Crypto-Mom" Tasked with Overhauling Regulator's Digital-Assets Approach*, WALL ST. J. (Jan. 21, 2025, at 18:51 ET), https://www.wsj.com/livecoverage/stock-market-today-dow-sp500-nasdaq-live-01-21-2025/card/sec-s-cryptomom-tasked-with-overhauling-regulator-s-digital-assets-approach (on file with Columbia Business Law Review).

[219] *See* Caroline Crenshaw, SEC Commissioner, Remarks at the Third Crypto Roundtable – Know Your Custodian: Key Considerations for Crypto Custody (Apr. 25, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-crypto-roundtable-042525 [https://perma.cc/FQJ4-BKWU].

[220] *See generally* DIANA B. HENRIQUES, THE WIZARD OF LIES: BERNIE MADOFF AND THE DEATH OF TRUST (2011) (discussing the history of the Madoff scandal).

[221] *See* Andrew Scurria & Soma Biswas, *FTX Collapses Into Bankruptcy System That Still Hasn't Figured Out Crypto*, WALL ST. J. (Nov. 16, 2022, at 05:30 ET), https://www.wsj.com/articles/ftx-collapses-into-bankruptcy-system-that-still-hasnt-figured-out-crypto (on file with Columbia Business Law Review).

III. THE LOGIC AND LIMITS OF THE INVESTMENT COMPANY ACT

In this Part, we consider the regulatory logic and limits of the Investment Company Act. When contemplating whether a novel instrument does or ought to fall within the ambit of a law, the rationales motivating the enactment of the legislation are useful conceptual guidelines or policy tiebreakers. The original passage of the Investment Company Act eighty-five years ago was motivated primarily by a catalog of abuses perpetrated by the sponsors of investment funds in the early twentieth century, and the Act's central features were intended to redress those abuses. The extent to which those rationales apply to stablecoin issuers will be an important factor in determining how compelling the argument is for subjecting stablecoin issuers to the Act.

A. *The Upside of Investor Protection*

As the timing of its enactment suggests, the Investment Company Act of 1940 was inspired by the widespread failure of investment companies in the 1920s and 1930s.[222] Congress, concluding that the Securities Act of 1933 and Securities and Exchange Act of 1934 were inadequate to address those Depression-era vulnerabilities, added the Investment Company Act to the SEC's regulatory toolkit.[223] As with its sibling securities laws, the Act forces a range of disclosures from investment companies; notably, however, the Act also imposes more substantive requirements that regulate the types of investment funds can hold, the independence of their boards, and other imperatives designed to protect investors. Indeed, the fact that retail investors often entrust their life savings to these funds drives the goal of investor protection in fund regulation. The regulatory logic of the Act is, therefore, that disclosure alone may be insufficient to protect investors, and that more specific rules are necessary.

Importantly, investment funds were developed primarily as a means to aid unsophisticated investors.[224] Funds, unlike direct investments, provide their shareholders with access to professional investment advice, instant diversification to a potentially broad array

[222] *See* MATTHEW P. FINK, THE RISE OF MUTUAL FUNDS: AN INSIDER'S VIEW 44 (2nd ed. 2011).

[223] *Id.*

[224] MICHAEL S. BARR ET AL., FINANCIAL REGULATION: LAW AND POLICY 1124 (4th ed. 2025).

of investments, and comparatively simple redemption. In dealing with ordinary, retail investors, the advisers running funds enjoy a large comparative advantage in knowledge and sophistication. Prior to the enactment of the Act, those advisers were able to capitalize on that imbalance by, among other things, changing the fund's investment policies without notice and by embezzling a fund's comparatively liquid portfolio of stocks and bonds.[225]

To counter those vulnerabilities, the Investment Company Act emulates the tool of forcing disclosure seen in the Securities Act and the Exchange Act. More specifically, managers must make a joint Securities Act and Company Act registration filing on Form N-1A on behalf of the fund that sets forth the investment policy of how the manager will invest the fund's assets.[226] Funds must also make regular filings on forms such as Form N-PORT and N-MFP to disclose the precise holdings contained within the fund's portfolio.[227] This ongoing stream of disclosure thus alerts investors to whether the fund is being managed as the promoters claimed. The Investment Company Act is thus built to enhance investor protection via transparency. For example, money market funds "breaking the buck" in the past was largely a result of fraud.[228] Generating greater transparency reduces the idiosyncratic risk of failure via fraud.

Another Depression-era problem was the practice of fund managers engaging in self-dealing with a fund's portfolio.[229] Since managers control the disposition of a fund's portfolio, they have the ability to enrich themselves through a variety of conflicted transactions.[230] Managers could, for instance, direct the fund to purchase worthless securities or other investments from an entity affiliated with the managers.[231] Similarly, managers could direct the fund to issue new, preferential stock to only the managers and their affiliates at terms notably superior to those enjoyed by ordinary fund

[225] *Id.* at 1126–28.

[226] *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 13436, 48 Fed. Reg. 37928, 37947–51(Aug. 22, 1983).

[227] *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32314, 81 Fed. Reg. 81870, 81872–73 (Nov. 18, 2016).

[228] *See, e.g.*, William A. Birdthistle, *Breaking Bucks in Money Market Funds*, 2010 WIS. L. REV. 1155 (2010).

[229] *See* MICHAEL S. BARR ET AL., *supra* note 224, at 1125–26.

[230] *Id.*

[231] *Id.*

shareholders.[232] These sweetheart deals for managers and their affiliates were among the kinds of transactions prohibited by section 17 of the Investment Company Act, which bars affiliated transactions.[233]

Some funds were run with perilously high concentrations in single components of the portfolio or using large amounts of leverage. These practices, too, came to be constrained by the Investment Company Act, which mandates minimal amounts of diversification in a fund's portfolio and restricts just how much a fund can borrow.[234] Broadly construed, the Act imposes guardrails around the investment operations of registered investment companies that force their portfolios into generally less risky, more moderate compositions.[235] Funds that find these limitations anathema to their business model—such as venture capital, private equity, and hedge funds—can structure themselves to avoid the reach of the Act. But for the ordinary investor lacking the sophistication to participate in such exempted funds, the Act establishes an array of defensive obligations designed to lower risks in collective investment vehicles, so that retirement savings can accumulate in comparative safety.

The Investment Company Act was also paired with another law of 1940, the Investment Advisers Act. In the Advisers Act, Congress imposed a powerful fiduciary duty upon entities and individuals who provide investment advice to others, including firms that manage funds.[236] The essence of these broad fiduciary duty obligations is generally to require that an adviser puts the interests of its clients ahead of their own.[237] Thus, investors who entrust their money to funds covered by the Investment Company Act and the Investment Advisers Act—particularly those investing in the closest analogs to stablecoins, money market funds—operate within a regulatory system that furnishes them with access to transparent registration statements describing how their money will be invested, to periodic reports that will reveal how their money actually is invested, to restraints on their investment advisers from engaging in self-dealing,

[232] *Id.*

[233] 15 U.S.C. § 80a-17.

[234] *See* 17 C.F.R. § 270.2a-7(d) (2025).

[235] *Id.*

[236] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, 84 Fed. Reg. 33669, 33671 (July 12, 2019) (to be codified at 17 C.F.R. pt. 276).

[237] *Id.*

risky borrowing, or dangerous portfolio concentrations, and to a broad, catch-all fiduciary obligation not to enrich themselves at investors' expenses. Investors in stablecoins might reasonably expect, or at least would certainly benefit from, a similar array of protections in their space.[238]

B. *The Downside of Systemic Risk*

Financial market regulation has historically been largely "mircroprudential."[239] In other words, it focuses on ensuring the safety and soundness of, and providing protection for investors in, individual financial institutions. "Macroprudential" regulation, on the other hand, is concerned with safeguarding the integrity and stability of the financial system as a whole.[240] In the wake of the Global Financial Crisis and its revelation of widespread fragilities in the global financial system, macroprudential considerations have emerged as a key animating goal of regulatory reform.[241] Indeed, the hard lesson learned during that period was that the safety and soundness of individual institutions does not necessarily translate into the stability of the system as a whole.[242]

There are, as the World Bank justly points out, numerous definitions for financial stability.[243] But a core element is ensuring that financial systems are self-correcting and self-stabilizing in the face of unforeseen shocks to avoid those shocks impacting real economic activity or spilling over into other segments of the financial system. That imperative means blunting the potential for certain elements of the system to amplify and more broadly distribute risks. As it turned out, money market funds, which are regulated under rule 2(a)7 of the

---

[238] *See* Tokar, *supra* note 218.

[239] *See* Steven L. Schwarcz, *Banking and Financial Regulation*, *in* OXFORD HANDBOOK OF LAW AND ECONOMICS: PRIVATE AND COMMERCIAL LAW 425 (Francesco Parisi, ed., 2017).

[240] *See* Turalay Kenç, *Macroprudential Regulation: History, Theory and Policy* 1 (BIS Papers No. 86, 2016), https://www.bis.org/publ/bppdf/bispap86c.pdf [https://perma.cc/B9UM-UQBC].

[241] *See* Jeremy C. Kress & Jeffery Y. Zhang, *The Macroprudential Myth*, 112 GEO. L.J. 569, 572 (2024) (describing the pivot to macroprudential regulation in the aftermath of the crisis).

[242] *Id.*

[243] The World Bank Group, *Key Terms Explained: Financial Stability,* https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/financial-stability [https://perma.cc/3AZJ-S4YQ] (last visited Jan. 12, 2026).

Investment Company Act,[244] were a key amplifier of the Global Financial Crisis and threatened to be so once again during the onset of the Covid-19 pandemic.[245]

The run on money market funds highlighted the importance of information sensitivity in financial assets. Prior to the Global Financial Crisis, shares in money market funds were presumed to be cash equivalent. Like paper money and insured bank deposits, they were thought to be devoid of credit risk and redeemable at par any time and at any size.[246] History supported that sanguine view. Redemptions of money market fund shares below par, which would constitute a "breaking of the buck," were exceptionally rare prior to the crisis. What few cases occurred were typically the result of fraud and mismanagement.[247]

The day after the failure of Lehman Brothers took markets by surprise in September 2008,[248] the Reserve Primary Fund, the first money market fund which was listed in 1971, was forced to mark down its portfolio and thus broke the buck. That failure triggered a flood of withdrawals, not just from Reserve Primary, but across the money market fund universe, spreading even to funds with no direct exposure to Lehman.[249] Widespread forced liquidations cascaded into commercial paper markets—the markets for unsecured, short-term debt by which operating companies often fund their immediate needs

[244] *See* Rauterberg & Zhang, *supra* note 67, at 602.

[245] *Id.* at 583.

[246] RICKS, *supra* note 60, at 31–32 (describing "moneyness" and when it disappears).

[247] The First Multifund for Daily Income, issued by First Multifund Advisory, broke the buck a few years after it was listed in 1974. Although it was initially advertised to investors as invested "solely in Short-Term (30-90 days) money market obligations," an SEC investigation later revealed numerous long-term investments, some with approximately four years remaining maturity. In the Matter of First Multifund Advisory Corp., Admin. Proc. File No. 3-5881, 1982 SEC LEXIS 2646 at *6 (Dec. 29, 1982). In 1978, the fund's net asset value was restated at 94 cents on the dollar. *Id.* at *16. The second failure was the Community Bankers U.S. Money Market Fund, which took losses on derivatives and was liquidated at 94 cents on the dollar. *See* Leslie Eaton, *New Caution About Money Market Funds*, N.Y. TIMES (Sep. 29, 1994), https://www.nytimes.com/1994/09/29/business/new-caution-about-money-market-funds.html (on file with Columbia Business Law Review).

[248] *See* Nicholas K. Tabor & Jeffery Y. Zhang, *Capital, Contagion, and Financial Crises: What Stops a Run from Spreading?*, 2020 COLUM. BUS. L. REV. 575, 580–81 (2020) (showing how the market was shocked by Lehman's bankruptcy).

[249] THE FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT 356–60 (2011). *See also* Lawrence Schmidt, Allan Timmermann & Russ Wermers, *Runs on Money Market Mutual Funds*, 106 AM. ECON. REV. 2625, 2625 (2016).

for payroll or inventory—instantly depriving large companies of sources short-term capital.[250] As Patrick McCabe, an economist at the Federal Reserve Board of Governors, later recalled, "It was overwhelmingly clear that we were staring into the abyss—that there wasn't a bottom to this."[251] Rather than absorb the shock, money market funds had acted as amplifiers, spreading distress not just across the financial system but even into the real economy.

That run was ultimately stopped by aggressive government action, including a temporary federal guarantee for all rule 2a-7 money market fund assets.[252] But that episode highlighted a key vulnerability in the financial system. As cash equivalents, money market funds were, in the phrasing of Gary Gorton and George Pennacchi, information-insensitive assets.[253] That gives them money-like properties and attracts extremely risk-averse investors. One theory of how a financial crisis originates is the sudden switch, in response to some shock, of information-insensitive to information-sensitive assets.[254] In that sense, avoiding such an abrupt transition through macroprudential financial regulation is a key plank of financial stability. In the case of money market funds, in particular, several rounds of reform have been designed to address precisely this issue.[255] Yet the problem remains complex,[256] as the far more recent events of March 2020 clearly demonstrated.

When it became apparent that mandatory lockdowns were forthcoming in response to the Covid-19 pandemic in March 2020, investors rushed for cash—among other items like toilet paper—and ran on money market funds.[257] In the ensuing chaos, the short-term

[250] PRESIDENT'S WORKING GRP. ON FIN. MARKETS, U.S. DEP'T OF TREASURY, MONEY MARKET FUND REFORM OPTIONS 1 (2010).

[251] FIN. CRISIS INQUIRY COMM'N, *supra* note 249, at 357.

[252] Press Release, Treasury Announces Temporary Guarantee Program for Money Market Funds (Sept. 29, 2008), https://home.treasury.gov/news/press-releases/hp1161 [https://perma.cc/5JGY-N4D2].

[253] Gary Gorton & George Pennacchi, *Financial Intermediaries and Liquidity Creation*, 45 J. OF FIN. 49, 49 (1990).

[254] *See* Tri Vi Dang et al., *The Information View of Financial Crises*, 12 ANN. REV. OF FIN. ECON. 39, 40 (2020).

[255] *See* Jill E. Fish, *The Broken Buck Stops Here: Embracing Sponsor Support in Money Market Fund Reform*, 93 N.C. L. REV. 935, 950–51 (2015).

[256] *See generally* Patrick E. McCabe et al., *The Minimum Balance at Risk: A Proposal to Mitigate the Systemic Risks Posed by Money Market Funds*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2013, 211, at 217.

[257] *See* Mark E. Van Der Weide & Jeffery Y. Zhang, *Tale of the Tape: Lessons from the 2008 and 2020 Financial Crises*, 26 STANFORD J. OF L., BUS. & FIN. 413, 426 (2021).

commercial paper market froze once more as money market funds, large holders of commercial paper, were rushing to meet redemptions. Thus, despite the rounds of money market fund reforms put in place between 2010 and 2020, the federal government had to step in a second time to backstop the industry.[258] This time, the Federal Reserve's section 13(3) emergency lending facility offered even more generous terms given the size of the pandemic shock to the money market fund industry.[259] Indeed, in 2008, the Federal Reserve rolled out the "*Asset-Backed Commercial Paper* Money Market Mutual Fund Liquidity Facility."[260] In 2020, the facility simply became the "Money Market Mutual Fund Liquidity Facility."[261] Standards were lowered given the magnitude of the financial shock and the way in which money market funds were amplifying stress into the real economy.[262]

The parallels between money market funds and stablecoin issuers have been drawn numerous times—in the prior scholarship and in this Article.[263] Like shares of money market funds, stablecoins are designed to be redeemed at par: one money market fund share for $1, one stablecoin for $1. Both money market fund shares and stablecoins are backed by assets (namely, commercial paper) that can drop in value during times of panic. Thus, if the stablecoin industry were ever to approach the size, scale, and penetration of the money market fund industry, stablecoin issuers could become another key amplifier of financial stress—one that might necessitate the Federal Reserve to roll out a future "Stablecoin Issuer Liquidity Facility" someday.[264]

It is worth noting, however, that stablecoins in their comparatively short history have already "broken the buck" far more

---

[258] *See, e.g.*, PRESIDENT'S WORKING GRP. ON FIN. MARKETS, OVERVIEW OF RECENT EVENTS AND POTENTIAL REFORM OPTIONS FOR MONEY MARKET FUNDS 17 (Dec. 2020); GOV'T ACCOUNTABILITY OFF., MONEY MARKET MUTUAL FUNDS: PANDEMIC REVEALED UNRESOLVED VULNERABILITIES REPORT TO CONGRESSIONAL COMMITTEES 17 (Feb. 2023).

[259] Van Der Weide & Zhang, *supra* note 257, at 425–27, 431.

[260] *Id.* at 432 (emphasis added).

[261] *Id.*

[262] *Id.* at 433.

[263] *See supra* Part I.B.

[264] The analogy, of course, is to the Federal Reserve's "Money Market Mutual Fund Liquidity Facility", established during the head of the Covid-19 pandemic, to provide liquidity to money market mutual funds. The Federal Reserve made non-recourse advances to certain institutions to purchase specific asset types from MMMFs. *See Money Market Mutual Fund Liquidity Facility FAQs*, FED. RSRV. (May 26, 2020), https://www.federalreserve.gov/monetarypolicy/files/mmlf-faqs.pdf [https://perma.cc/VU3X-35SW].

often than money market funds. Even though stablecoins have only been around for a few years, there have already been several major incidents of their values dropping significantly below par. The most dramatic such incident was the failure of TerraUSD, a large algorithmic stablecoin which collapsed in the spring of 2022.[265] That failure might not be particularly surprising to more traditionally minded market participants, since algorithmic stablecoins do not back their liabilities with assets denominated in the currency to which they are pegged. But, importantly, the two major asset-backed stablecoins have also broken the buck in the past few years. In 2022, following the collapse of TerraUSD, Tether also dropped significantly, at one point trading at only 92 cents on the dollar on some exchanges[266] and precipitating a wave of redemptions.[267] Less than a year later, USDC came under similar pressure after disclosing significant exposure to uninsured deposits at Silicon Valley Bank, a tech-focused commercial bank that was taken into receivership in March 2023.[268]

Note also that market prices for USDT and USDC are constantly breaking the buck, albeit in less dramatic fashion: both tokens have traded noticeably below par on more than ten percent of days over the past five years. An informative way to summarize this behavior is to compare the volatility of daily changes in USDT and USDC to that for "pegged" fiat currencies (i.e., foreign currencies that are maintained at a fixed exchange rate relative to another currency, often the U.S. dollar). USDT and USDC have exhibited a daily volatility of roughly 0.2% per day over the past five years. That is more than five times the volatility of the Hong Kong Dollar (HKD; 0.04%

[265] *See generally* Harald Uhlig, *A Luna-tic Stablecoin Crash* (Nat'l Bureau of Econ. Rsch., Working Paper No. 30256, 2022), https://www.nber.org/system/files/working_papers/w30256/w30256.pdf (on file with Columbia Business Law Review); Liu et al., *supra* note 57.

[266] Omkar Godbole, *Tether Finds Stable Dollar After Terra's Collapse*, COINDESK (May 11, 2023), https://www.coindesk.com/markets/2022/07/26/tether-finds-stable-dollar-peg-after-terras-collapse [https://perma.cc/YSX6-BZ8E].

[267] Krisztian Sandor, *Tether Sees New Wave of Redemptions as Fear of Market Contagion Spreads*, COINDESK (Apr. 9, 2024), https://www.coindesk.com/markets/2022/06/15/tether-sees-new-wave-of-redemptions-as-fear-of-market-contagion-spreads [https://perma.cc/RF9W-AXNB].

[268] Ashley Capoot, *Stablecoin USDC Breaks Dollar Peg After Firm Reveals It Has $3.3 Billion in SVB Exposure*, CNBC (Mar. 11, 2023), https://www.cnbc.com/2023/03/11/stablecoin-usdc-breaks-dollar-peg-after-firm-reveals-it-has-3point3-billion-in-svb-exposure.html [https://perma.cc/KTB7-D5QG].

per day); more than ten times that of the Saudi Riyal (SAR; 0.02% per day); and nearly one hundred times that of the Emirate Dinar (DAR; 0.002% per day).[269]

This greater propensity to break the buck may occur because stablecoins also are a medium of exchange, whereas money market fund shares are merely a store of value.[270] As something closer to a truly monetary instrument, stablecoins will likely be subject to a higher set of market expectations for information insensitivity than short-term debt and other more traditional "money market" instruments. As Gary Gorton, Chase Ross, and Sharon Ross describe, true "money" circulates at par with "no questions asked."[271] That level of trust is very difficult in practice for private actors to achieve in the first instance, particularly without explicit protections like deposit insurance or backstop lending from the central bank.[272]

Stablecoins may be shifting toward the direction of no questions asked, but progress is slow and, as the old proverb goes, trust is hard to establish and easy to lose. Importantly, ad hoc interventions and fixes may struggle to resolve any serious concerns that may arise. Once questions are asked, it is difficult to return to a no-questions-asked standard. Or, to quote Lady Gaga and Beyoncé: "Trust is like a mirror, you can fix it if it's broken, but you can still see the crack in [its] reflection."[273] This loss of trust would not be destabilizing under the current payments architecture; stablecoins still occupy too narrow a use case in our financial system. But to the extent industry predictions

[269] Daily data as of London closing levels for spot FX rates from J.P. Morgan DataQuery. Daily closing levels for USDT and USDC are from CoinMarketCap, as of February 28, 2026. Volatility is defined as the standard deviation of daily percentage changes. *See Tether*, COINMARKETCAP, https://coinmarketcap.com/currencies/tether/ [https://perma.cc/JN32-J5RZ]; *USDC*, COINMARKETCAP, https://coinmarketcap.com/currencies/usd-coin/ [https://perma.cc/R2ZK-K4GX].

[270] *See* Jack Spira & David Wessel, *What are stablecoins, and how are they regulated?*, BROOKINGS (Oct. 24, 2025), https://www.brookings.edu/articles/what-are-stablecoins-and-how-are-they-regulated/ [https://perma.cc/9S2G-CNF8].

[271] Gary B. Gorton et al., *Making Money* (Nat'l Bureau of Econ. Rsch. Working Paper No. 29710, 2022), https://www.nber.org/system/files/working_papers/w29710/w29710.pdf (on file with Columbia Business Law Review).

[272] *See e.g.*, Douglas W. Diamond & Philip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity*, 91 J. POL. ECON. 401 (1983).

[273] LADY GAGA, *Telephone ft. Beyoncé (Official Music Video) ft. Beyoncé*, at 05:22–05:30 (YouTube, Mar. 15, 2010),

https://www.youtube.com/watch?v=EVBsypHzF3U&list=RDEVBsypHzF3U&start_radio=1.

are realized, any collective loss of faith could come to constitute a major systemic risk.

Perhaps surprisingly, this run risk may be exacerbated by the emergence of stablecoins issued by more traditional financial institutions. At the moment, the most significant such project is PYUSD, which is issued by a third party and backed by "high-quality liquid assets" while integrated into PayPal's financial infrastructure through its redemption features.[274] But U.S. and European commercial banks, lured by the promise of non-interest bearing liabilities, are also reportedly developing tokens intended to rival crypto-native instruments USDC and Tether.[275] Banks are a potentially appealing issuer of stablecoins, as they already enjoy wide carve-outs from federal securities laws and pre-existing extensive regulatory compliance procedures. The list of institutions developing such projects includes some considered too big to fail and who thus benefit from implicit government guarantees. That status may be the closest stablecoins get to proper federal insurance in the financial system as it is currently constructed. It also creates a potentially appealing destination for those running from USDC, USDT, and other stablecoins without implicit backing but who require the functionality of tokenized payments. In that sense, the run risk inherent in stablecoin arrangements appears likely to get worse as more traditional financial intermediaries enter along with their more direct official sector connectivity.

Though money market funds may be the best example of the frailties of the Investment Company Act's ability to police systemic risk, they are not the only ones. Any fund with a portfolio comprising of ostensibly safe investments, and thus considered to be safe or money-like by the fund's investors, may be similarly vulnerable. Following the market stress of March 2020, the SEC proposed amendments to both the rules specifically governing money market funds as well as the rules for open-ended mutual funds more

[274] PAYPAL & PAXOS, PYUSD ON SOLANA 2, 5 (n.d.), https://www.paypalobjects.com/devdoc/community/PYUSD-Solana-White-Paper.pdf [https://perma.cc/G2NE-HH4K].

[275] Olga Kharif & Yizhu Wang, *Banks Want In on Tether's Billions in Stablecoin Profits*, BLOOMBERG NEWS (Dec. 28, 2024), https://www.bloomberg.com/news/articles/2024-12-28/banks-want-in-on-tether-s-billions-in-stablecoin-profits [https://perma.cc/F8N5-Q3FM].

generally.[276] Short-term bond funds, as one particular example, were capable of behaving like money market funds in moments of market stress and high redemption. Those rules were finalized for money market funds but not for open-end funds.[277]

The SEC's approach to addressing this systemic risk was to focus upon the liquidity of these funds. Greater liquidity generally facilitates a smoother redemption process, reducing the run risk. If a fund investor knows that she will be made whole when she leaves the fund, she may have less incentive to run. Thus, by requiring a fund to hold a certain proportion of its portfolio in highly liquid investments—and, conversely, to limit the degree to which a fund holds illiquid investments—the SEC focused its Investment Company Act tools on lessening the run risk.

* * *

We began this Part by discussing the logic and limits of the Investment Company Act. After laying out its strengths and weaknesses, we are confronted with a threshold question: does the Investment Company Act provide the "right" regulatory framework for stablecoin issuers? Not surprisingly, the general answer is "it depends." Specifically, the answer depends on how the stablecoin industry evolves over the next decade-plus. But, as of January 2025, we believe that the Investment Company Act provides a necessary stopgap measure. The SEC could implement this stopgap measure without new action from Congress.

While stablecoin issuers closely resemble money market funds, the stablecoin industry is presently nowhere near the size of the money market fund industry.[278] It is safe to say that stablecoins issuers do not pose a risk to the stability of the financial system in its current form.[279] Relatedly, stablecoins are used almost exclusively to trade crypto assets,

[276] *See* Open-End Fund Liquidity Risk Management Programs and Swing Pricing, Securities Act Release No. 33-11130, Investment Company Act Release No. 34746 (Nov. 2, 2022) (to be codified at 17 C.F.R. pts. 270 & 274), https://www.sec.gov/files/rules/proposed/2022/33-11130.pdf [https://perma.cc/6ABS-GJRX].

[277] *See* Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A, 88 Fed. Reg. 51,404 (Aug. 3, 2023) (codified at 17 C.F.R. pts. 270, 274, & 279), https://www.sec.gov/files/rules/final/2023/33-11211.pdf [https://perma.cc/FP9N-PD5R].

[278] *Id.*

[279] *Id.*

which means they are currently isolated in the crypto ecosystem.[280] During the previous "crypto winter" in 2022, the crypto industry experienced a significant collapse across the board, yet the rest of the economy barely noticed.[281] The reason, as noted by many commentators, is that the crypto sector was disconnected from the rest of the economy.[282] Nobody was using crypto to settle real economic transactions. Thus, if the stablecoin industry folds tomorrow, contagion is unlikely to spread to banks and the broader economy. Assuming this disconnect continues, the Investment Company Act has a lot of purchase because the dangers we care about would be primarily related to protecting individual consumers and investors, and the Investment Company Act is primarily an investor protection framework.

So why do we say, "it depends"? In the coming years, as the Trump Administration seeks to loosen the reins on the crypto industry, it's more than possible that the stablecoin industry balloons in size by an order of magnitude and deepens its connections with the real economy—for example, by becoming a means of payment settlement. In that case, the systemic risk concern would be pushed to the forefront, and the optimal regulatory framework would be more macroprudential in nature, more bank-like in nature. The Investment Company Act would, and should, fade into the background under those circumstances. But, as of now, given the present and glaring need for investor protection, the SEC should impose the guardrails provided by the Investment Company Act on stablecoin issuers.

IV. INVESTMENT COMPANY REGULATION AND THE CRYPTO UNIVERSE

In this Part, we suggest that stablecoins are only the beginning. Many esoteric and novel crypto financial instruments and entities may in fact fall into familiar investment fund-related categories. When it comes to the Investment Company Act, stablecoins are, unsurprisingly, not the whole story. There are many products throughout the universe of digital assets which could, in principle, already be subject to regulation under its terms. Given the diversity of

[280] *Id.*

[281] *See* Gary B. Gorton & Jeffery Y. Zhang, *Bank Runs During Crypto Winter*, 14 HARV. BUS. L. REV. 297, 307–11 (2024).

[282] *See id.* at 318–21.

the crypto ecosystem and its continued rapid development, a fulsome accounting is not as important as a good example. For that, we turn to decentralized finance lending protocols.

Before proceeding, a brief primer is in order. Decentralized finance, or "DeFi", refers to a class of digital assets which utilize smart contacts and blockchain settlement to perform various types of financial intermediation without the involvement of a third party.[283] As of the beginning of 2025, there is roughly $125 billion of "total value locked" (TVL) in DeFi protocols, a bit below the prior peak of $166 billion in late 2021.[284] This value is generally split among three major categories of intermediation: staking, lending, and market making.[285]

These protocols are typically not organized into traditional corporations or partnerships. Rather, they are organized into Decentralized Autonomous Organizations, or "DAOs." DAOs are not legal entities in the traditional sense. They are a decentralized community of owner/operations for which ownership is evidenced by possession of "governance tokens" issued by the smart contracts underlying the DeFi protocol. In other words, as Weinstein et al. observe, DAOs are "[e]ssentially an internet community with a shared purpose and the equivalent of a shared online bank account."[286] DAOs raise funds by selling governance tokens which then entitle their holders to voting rights regarding potential changes to the protocols as well as a share of the profits generated. Most DAOs are involved exclusively in crypto-native financial transactions, but some have purchased or attempted to purchase "real world" assets, including fast food franchises,[287] forty acres of raw land in Wyoming,[288] an original

[283] *See generally* Raphael Auer et al., *The Technology of Decentralized Finance (DeFi)*, (BIS Working Paper No. 1066, 2023), https://www.bis.org/publ/work1066.pdf [https://perma.cc/V2K2-JW78].

[284] *Total Value Locked*, DEFILLAMA, https://defillama.com/ (last visited Jan. 5, 2025).

[285] *Protocol Categories*, DEFILLAMA, https://defillama.com/categories (last visited Jan. 5., 2025).

[286] Gail Weinstein et al., *A Primer on DAOs*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Sep. 17, 2022), https://corpgov.law.harvard.edu/2022/09/17/a-primer-on-daos/ [https://perma.cc/G7CZ-3AZW].

[287] Danny Nelson, *FriesDAO Wants to Start a Crypto-Crowdfunded Fast-Food Franchise*, COINDESK (May 11, 2023), https://www.coindesk.com/business/2022/01/28/friesdao-wants-to-start-a-crypto-crowdfunded-fast-food-franchise [https://perma.cc/Y33P-BCUQ].

[288] Helena Rong & Zeslene Mao, *Deep-Dive Into CityDAO: An Experiment in Collective Land Ownership and Decentralized Governance*, HARV. KENNEDY SCH. BELFER CTR. FOR SCI. & INT'L AFFS. (May 2023),

copy of the U.S. Constitution,[289] and even the Denver Broncos.[290] At this point, it is not uncommon for DAOs to raise tens if not hundreds of millions of dollars, even for these unexpected applications.

We focus on DeFi lending protocols. Lending protocols are one of the largest and fastest growing segments of the DeFi landscape. As of January 2025, they had more than $50 billion in TVL. They are the second largest category of DeFi protocol, more than doubling in size over a year and above their prior peak.[291] They act as intermediaries, typically soliciting "deposits" from investors and offering loans, usually collateralized with free-floating tokens like Bitcoin, to borrowers.[292] The use of collateral is critical. Like all blockchains, DeFi users are pseudonymous, making traditional credit evaluations nearly if not fully impossible. The rates of interest on these liabilities (deposits of stablecoins) and assets (crypto-collateralized loans) are variable and determined algorithmically based on the balance between the supply of deposits and demand for loans.[293]

If DAOs were traditional corporations, it seems fair to say that they would easily be considered investment companies under the Investment Company Act. They are clearly an association of persons in a collective endeavor. And, unlike stablecoins and many other free-floating crypto coins, their tokenized liabilities are interest-bearing, plausibly satisfying *Howey* (an "expectation of substantial profit").[294] Their assets may even qualify as "notes" under *Reves*, as was the case

https://www.belfercenter.org/sites/default/files/2024-08/CaseStudy_TAPP_CityDAO_Helena_Rong.pdf [https://perma.cc/E7MS-HVWJ].

[289] Nilay Patel, *From a Meme to $47 Million: ConstitutionDAO, Crypto, and the Future of Crowdfunding*, THE VERGE (Dec. 7, 2021), https://www.theverge.com/22820563/constitution-meme-47-million-crypto-crowdfunding-blockchain-ethereum-constitution [https://perma.cc/P8YT-5V4T].

[290] *Web3 DAO Aiming to Buy NFL Team, BuyTheBroncos, Plans Non-saleable NFTs*, LEDGER INSIGHTS (May 12, 2022), https://www.ledgerinsights.com/web3-dao-aiming-to-buy-nfl-team-buythebroncos-plans-non-saleable-nfts/ [https://perma.cc/YG8B-6U2K].

[291] *Lending TVL Rankings*, DEFILLAMA, https://defillama.com/protocols/lending (last visited Jan. 5, 2025).

[292] *See* Giulio Cornelli et al., *Why DeFi lending? Evidence from Aave V2*, (BIS Working Paper No. 1183, 2024), https://www.bis.org/publ/work1183.pdf [https://perma.cc/U8AJ-7NLE].

[293] Jean Barthélemy et al., *Interest Rates in Decentralized Finance*, BANQUE DE FRANCE (Apr. 9, 2024), https://www.banque-france.fr/en/publications-and-statistics/publications/interest-rates-decentralised-finance [https://perma.cc/6W39-FFTB].

[294] *See* SEC v. W.J. Howey Co., 328 U.S. 293, 296 (1946).

with BlockFi, Gemini EARN, and other SEC actions.[295] Most DeFi lending protocols also clearly hold themselves out as investment companies. For example, in a white paper, Aave, the largest such protocol, describes itself as "a pool-based" lending strategy in which loans are not "individually matched."[296]

The key question is not whether DAOs are appropriately described as investment companies, but whether they are companies at all. The holders of DAO governance tokens may be compensated in a manner similar to dividend distributions to the owners of equity in a traditional corporation, but the organization itself exists in a legal gray zone. Only a handful of states recognized DAOs as legal entities in the first instance.[297] That has introduced a range of challenges in both litigation and regulatory enforcement.[298] In particular, identifying responsible parties in any judgment or action can be difficult when ownership is represented on a blockchain, and therefore is both pseudonymous and decentralized.

That is not to say DAOs can never be considered investment companies. There is, in fact, one recent example in which the SEC took aim at one "purportedly decentralized" DeFi lending protocol: BarnBridge DAO, issuing cease and desist orders against the organization[299] and its founders in December 2023.[300] In their complaint, the SEC alleged that the group's founders were both selling

[295] *See, e.g.*, Robin M. Bergen et al., *SEC Takes Aim at Crypto Lending in BlockFi Settlement; Calls on Market to "Come into Compliance": Is Regulatory Clarity Coming Soon?* (Feb. 28, 2022), https://www.clearygottlieb.com/news-and-insights/publication-listing/sec-takes-aim-at-crypto-lending-in-blockfi-settlement-calls-on-market-to-come-into-compliance-is-regulatory-clarity-coming-soon [https://perma.cc/6ZAZ-LXK4].

[296] AAVE, AAVE PROTOCOL WHITEPAPER V 1.0, 1 (2020), https://github.com/aave/aave-protocol/blob/master/docs/Aave_Protocol_Whitepaper_v1_0.pdf [https://perma.cc/2CAG-6AP2].

[297] Weinstein et al., *supra* note 286.

[298] Andrew Chissick, *Litigation Against Decentralized Autonomous Organizations (DAOs): Navigating the Legal Frontier*, WALKERS (Oct. 22, 2024), https://www.walkersglobal.com/en/Insights/2024/10/Litigation-Against-Decentralised-Autonomous-Organisations [https://perma.cc/HFB4-CHSA].

[299] In re Barnbridge DAO, Securities Act Release No. 11262, Investment Company Act Release No. 35079, File No. 3-21817 (Dec. 22, 2023), https://www.sec.gov/files/litigation/admin/2023/33-11262.pdf [https://perma.cc/48TK-SMNM].

[300] In re Tyler Ward and Troy Murray, Securities Act Release No. 11261, Investment Company Act Release No. 35078 (Dec. 22, 2023), https://www.sec.gov/files/litigation/admin/2023/33-11261.pdf [https://perma.cc/J7R9-AY8E].

unregistered securities and acting as an unregistered investment company.[301] The key to the SEC's argument was the nature of the DAOs operations and its relationship to its founders.[302] The SEC alleged that the DAO was not truly decentralized.[303] Its founders owned a controlling stake in BarnBridge governance tokens and engaged in extensive public promotion of its products on social media.[304] Revenue generated by the protocol was also used to pay salaries, support operations teams, and cover various expenses (website hosting fees, blockchain-related fees, and communication and marketing expenses). They also noted that the founders held a controlling stake in the DAO governance tokens as well as their public promotion of the protocol on social media. The case was eventually settled when BarnBridge agreed to disgorge profits and its founders to pay civil penalties, although they did so without admitting or denying the Commission's findings.[305]

BarnBridge may have been a particularly egregious case of a "purportedly decentralized"[306] organization which was, in reality, quite similar to a traditional corporation. But that case highlights a key area in which the Investment Company Act can attach to the burgeoning crypto ecosystem. Further, to the extent that DeFi is viewed by many crypto evangelists as a key area poised for explosive growth, the Investment Company Act may give regulators tools to be a party to its evolution.

The BarnBridge case also highlights the necessity of resolving the legal status of DAOs, ideally as part of any reform legislation meant to cover the broader crypto industry. Some states have attempted to

---

[301] *See In re Barnbridge DAO*, *supra* note 299.

[302] *Id.*

[303] *Id.*

[304] Practical Law Finance, *SEC Settles Charges Against BarnBridge DAO for Unregistered Offer and Sale of Structured Finance Crypto Product*, THOMSON REUTERS (Dec. 28, 2023), https://1.next.westlaw.com/Document/Ie3e185a5a59d11ee8921fbef1a541940/View/FullText.html?transitionType=Default&contextData=(sc.Default)&oWSessionId [https://perma.cc/B4V4-3PXL].

[305] Press Release, SEC, *BarnBridge DAO Agrees to Stop Unregistered Offer and Sale of Structured Finance Crypto Product* (Dec. 22, 2023), https://www.sec.gov/newsroom/press-releases/2023-258 [https://perma.cc/24ZD-XL2K].

[306] *Id.*

do so, most notably Wyoming,[307] which has generally taken a proactive posture with respect to digital assets.[308] But clarifying their status under federal securities law would allow regulators to use the tools they already have, notably the Investment Company Act, more effectively.

All in all, this Part shows that, when viewed against the broader crypto ecosystem, stablecoin issuers are not an anomaly but a particularly salient example of a recurring regulatory pattern. As crypto markets mature, a growing number of firms intermediate customer funds, pool assets, and exercise discretionary control over investment portfolios while avoiding the legal labels traditionally associated with those functions. The Investment Company Act thus provides a useful lens for evaluating these arrangements, not because it offers a complete solution to crypto regulation, but because it reflects a longstanding judgment about the risks posed by pooled investment vehicles managed for the benefit of others. Going forward, our analysis suggests that the future of crypto regulation will turn less on whether particular tokens fit familiar definitions, and more on whether firms' economic activities replicate the core features that have historically justified regulatory intervention.

CONCLUSION

This Article has argued that the largest stablecoin issuers fit comfortably within the statutory definition of "investment company" under the Investment Company Act of 1940. As a matter of assets, these firms hold portfolios composed predominantly of securities. As a matter of income, they derive substantial revenues from those portfolios. And as a matter of structure, they issue redeemable claims to the public while retaining centralized control over pooled investment assets. That stablecoin tokens themselves may or may not qualify as securities does not alter this conclusion. Under longstanding doctrine, the Act regulates firms that *engage in the business of investing in*

[307] Jenny Cieplak et al., *Wyoming Adopts New Legal Structure for DAOs,* GLOBAL FINTECH & DIGITAL ASSETS BLOG (Apr. 1, 2024), https://www.fintechanddigitalassets.com/2024/04/wyoming-adopts-new-legal-structure-for-daos/ [https://perma.cc/ZVJ5-CAK9].

[308] *See also State of Wyoming Plans Stablecoin Issuance*, LEDGER INSIGHTS (Apr. 26, 2024), https://www.ledgerinsights.com/state-of-wyoming-plans-stablecoin-issuance/ [https://perma.cc/74LA-HK7E]; Ciaran Lyons, *Wyoming Proposes Bill for Strategic Bitcoin Reserve*, COINTELEGRAPH (Jan. 18, 2025), https://cointelegraph.com/news/united-states-wyoming-introduces-bill-for-strategic-bitcoin-reserve [https://perma.cc/ZYR5-GVFY].

securities, not merely those that label their liabilities as such. By that measure, major stablecoin issuers operate as investment companies in all but name.

The recent passage of the GENIUS Act does not render this analysis obsolete. To the contrary, it underscores the continued relevance of the Investment Company Act. The GENIUS Act adopts a targeted regulatory framework for a defined subset of "payment stablecoins," while expressly excluding other stablecoin arrangements and leaving unresolved the legal status of issuers that fall outside its scope or structure themselves to evade its requirements. Moreover, the Act focuses primarily on payment functionality and reserve backing, not on the governance, conflicts of interest, or portfolio risks associated with pooled investment activity. As a result, even in a post-GENIUS landscape, significant segments of the stablecoin market remain governed—if at all—by preexisting federal law.

Recognizing stablecoin issuers as investment companies would therefore have immediate and independent regulatory consequences. It would place these firms within the SEC's existing supervisory authority, subjecting them to disclosure obligations, governance requirements, and substantive constraints designed to mitigate the risks inherent in pooled investment vehicles. These protections address several of the concerns commonly raised about stablecoins, including opacity, conflicts of interest, and the incentives of managers who control large portfolios funded by redeemable public claims. At the same time, investment company regulation is not a panacea. The Act was not designed to manage macro-financial stability or to prevent runs on instruments that function as money substitutes. Treating stablecoin issuers as investment companies would improve investor protection, but it would not eliminate the systemic risks that accompany large-scale private money creation.

This dual insight helps reframe the broader regulatory debate. Much of the existing discussion treats stablecoins as either a banking problem or a payments problem, with the GENIUS Act cast as a comprehensive solution. The analysis here suggests that stablecoins are also, and more fundamentally, a fund regulation problem—one for which Congress has already supplied a detailed statutory framework. That framework operates alongside, rather than in opposition to, newer legislative efforts. The GENIUS Act may shape the future of payment stablecoins, but it does not displace the Investment Company

Act's application to firms whose core business remains the pooled investment of customer funds.

More broadly, this Article illustrates how new financial technologies often evade regulation not because they fall outside existing law, but because they sit uncomfortably across inherited doctrinal categories. The Investment Company Act was drafted for mutual funds, not cryptocurrencies. Yet its core logic—protecting the public from the risks of pooled investment managed by others—maps surprisingly well onto the stablecoin business model. Whether regulators choose to invoke that authority will shape not only the future of stablecoins, but also the evolving boundary between securities law and the architecture of modern finance.