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Blockchain Bites: SEC provides bright-line guidance on 'covered stablecoins', SEC greenlights options trading for spot Ether ETFs, Hyperliquid sets Jelly trades renewing code is law debate

Steven Pettigrove, Jake Huang, Luke Higgins and Luke Misthos of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Rebalancing the scales? SEC provides bright-line guidance on 'covered stablecoins'

The Division of Corporation Finance of the U.S. Securities and Exchange Commission (SEC) has released an unexpected and important statement clarifying its position on certain types of stablecoins, marking a significant development in the regulatory landscape for crypto assets and a dramatic shift away from the lack of guidance which occurred under the previous SEC leadership.

The statement declares that the offer and sale of 'covered stablecoins' will not be considered by the SEC to involve the offer and sale of securities under the US federal securities laws. This is dramatic shift from the past chair's view of stablecoins, who described them as little more than poker chips.

This statement makes clear that the significant use of existing stablecoins will not be at threat of US regulatory action. Guidance from the SEC is non-binding but gives the market a clear understanding of what the SEC views as acceptable or not-acceptable behaviour.

Covered Stablecoins

The statement defines 'covered stablecoins' as:

1. crypto assets designed and marketed for use as a means of making payments, transmitting money, or storing value;
2. issued and redeemed 1:1 with US dollars;
3. backed by USD and/or other assets considered low-risk and readily liquid (e.g. US treasuries) so redemptions on demand are able to be honoured.

The redemption requirement is extended to permit redemption only by designated intermediaries (so the underlying issuer need not offer redemption to all and sundry).

Not securities under US federal law

The SEC has a long history of regulation by enforcement, asserting that the offer of cryptocurrencies has involved unregistered issuance of securities, and this change brings covered stablecoins in from the cold. The SEC uses the *Reves* test (for notes and debt instruments) and the *Howey* test (for investment contracts).

Reves Test

In the *Reves* decision, the US Supreme Court found a presumption that a note, being an instrument listed in the US Securities Act, is a security, but that this presumption could be rebutted if the note strongly resembles a type of note issued in connection with typical commercial transactions. This 'family resemblance' test involves looking at:

1. Motivations of Seller and Buyer. What prompts a reasonable seller and buyer to enter into the transaction;
2. Plan of Distribution of the Instrument. Whether the note is an instrument in which there is a "common trading for speculation or investment.";
3. Reasonable Expectations of the Investing Public. Whether the investing public holds any reasonable expectation that the note is to be a regulated security; and
4. Risk-Reducing Features. Whether there is some feature of the note, such as a regulatory scheme, which significantly reduces the risk in the note, making application of the Securities Act unnecessary

The statement concludes that covered stablecoins are not securities under *Reves* because:

1. They are purchased for stability and use in commercial transactions, not profit expectations;
2. Their fixed-price, unlimited mint-redeem structure minimizes speculation;
3. They are marketed as payment tools, not investments and do not entitle the holder to any interest, profit or other returns or governance rights;
4. The reserve structure provides risk-reducing features

Howey Test

The *Howey* test is famously well known among those in crypto, and specifically considers whether there is:

1. an investment of money;
2. in a common enterprise; with
3. a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.

The Guidance notes this test looks to the 'economic realities' of the transaction, and in applying that, the motivation of investors (those looking for returns) and consumers (looking to use or consume the item purchased) is important and draws a line between when securities laws apply and when they do not. Covered stablecoins are not considered by the SEC to be securities under *Howey* for reasons including:

1. buyers do not purchase covered stablecoins with any reasonable expectation of profit from the entrepreneurial or managerial efforts of others; and
2. covered stablecoins are not marketed to suggest otherwise; and
3. buyers are motivated to use or consumer covered stablecoins in the same way they would use US dollars.

Firm Dissent

A dissenting opinion was published at the same time, with a lone SEC Commissioner attacking 'proof of reserves' published by stablecoin issuers and stating that the guidance 'fails to unpack the consequences of this market structure and how it affects risk'. The dissent does not give legal analysis on the position put forward in the guidance, but criticises privately issued stablecoins generally.

Global regulatory developments

While the US SEC has clarified its approach, with the STABLE Act and the GENIUS Act currently being considered by Congress to regulate stablecoins, other jurisdictions are taking different regulatory paths:

Europe's Strict Stance

The European Union's Markets in Crypto Assets (MiCA) regulation has expressly outlawed yield-bearing stablecoins. This regulatory shift has already prompted action from major players – Tether announced discontinuation of their EUR-denominated stablecoin, with users required to exit by November 2025. Meanwhile, exchanges have begun delisting USDT, and Coinbase has terminated rewards for EU users holding USDC.

Australia's Payment System Approach

Australia is planning to regulate stablecoins under its payment systems framework, focusing on their function as digital payment instruments rather than securities. This approach aligns with Australia's recently announced strategy to provide licensing for the crypto industry. The Treasury has stated that it will not require exchanges dealing in stablecoins to hold a markets licence in order to do so.

Growing Institutional Interest

Despite regulatory challenges, traditional finance institutions are rushing to enter the stablecoin space. The global stablecoin market has reached approximately US$210 billion, with major players like Tether (USDT) and Circle (USDC)

dominating the landscape.

Major banks and fintech companies including Bank of America, PayPal, Standard Chartered, Revolut, and Stripe have announced plans to launch or expand stablecoin offerings. Even Klarna's CEO has announced their intention to "embrace crypto" after being "the last large fintech in the world" to do so.

What's Next?

The statement from the SEC is rightly interpreted as a positive endorsement of crypto and creates a safe space for non-yield generating stablecoins, such as US issued USDC, while Congress considers codified regulation. As Circle has announced an upcoming IPO, this will give more confidence to investors backing the growth of stablecoins, which in turn will likely drive greater use of smart contracts and use of blockchain technology.

As traditional finance continues to embrace stablecoins, we can expect further regulatory developments and market growth in this rapidly evolving sector. The race to capture a share of the cross-border payments market through stablecoins is starting to heat up.

Written by Steven Pettigrove with Michael Bacina

SEC greenlights options trading for spot Ether ETFs

In a quiet but notable development for the crypto sector, the US Securities and Exchange Commission (SEC) has approved options trading on a series of spot Ether exchange-traded funds (ETFs), marking another incremental shift toward broader acceptance of digital assets within traditional markets.

The approval, announced on 9 April 2025, follows a rule change proposal first lodged by BlackRock for its iShares Ethereum Trust (ETHA) in July 2024. The green light extends beyond BlackRock, covering other funds such as the Bitwise Ethereum ETF (ETHW), Grayscale's Ethereum Trust (ETHE) and Ethereum Mini Trust (ETH), as well as Fidelity's Ethereum Fund (FETH).

The SEC's notice clarified that options on these ETFs will offer investors another tool to access Ether, the native token of the Ethereum blockchain, not only for exposure but also as a hedge. This step makes Ether products more versatile, especially for institutional investors seeking to manage risk across crypto-asset holdings.

Options are a common feature in equity and commodity markets, and their availability in relation to spot Ether ETFs may help legitimise Ether's role as a portfolio asset. While initial flows into Ether ETFs have been modest compared to the dominant interest in Bitcoin equivalents, this new layer of optionality could make Ether more attractive for professional investors who are accustomed to hedging strategies.

According to VettaFi, BlackRock's ETHA fund has seen its net assets fall 56% this year, now sitting at approximately USD $1.8 billion. These numbers point to a market still testing the waters (or perhaps reflective of broader market sentiment and activity in recent times). That said, regulatory support for new instruments around Ether indicates a slow but steady maturing of the digital asset space.

Behind the scenes, the regulatory tone in the US appears to be shifting. Since President Trump's return to office, the administration has signalled a softer stance on enforcement in the crypto industry. This is being seen not only in rule-making, but in practice, as investigations into firms such as Coinbase, Gemini, Robinhood, Uniswap Labs and OpenSea have reportedly been wound down. While the long-term implications are still playing out, the trend suggests greater space for innovation, particularly among well-resourced firms.

Meanwhile, US lawmakers are advancing several crypto-related bills. The STABLE Act and GENIUS Act, both progressing through key committees, aim to establish clearer rules around stablecoin issuance and usage.

From an Australian perspective, these developments are worth watching. While our own approach to digital assets regulation has been more cautious, institutional interest is growing locally. For blockchain developers and financial services providers alike, these changes hopefully suggest a slow but meaningful shift toward clearer rules and broader market participation.

Written by Steven Pettigrove and Luke Higgins

Hyperliquid sets Jelly trades renewing code is law debate

A trader on the Hyperliquid decentralised exchange has been implicated in an alleged market manipulation scheme involving the small cap JELLY token. The scheme sparked a short squeeze which resulted in the decentralised exchange taking action to close out positions, renewing debates over whether code is law and decentralisation in crypto markets.

The trader in question held $4.85 million worth of JELLY, combining a short position on HyperLiquid with on-chain spot buys. The combination of these actions led to a liquidation of the short position, which the market-making arm of HyperLiquid, called Hyperliquidity Provider (HLP) inherited. The trader then aggressively bought JELLY on decentralised exchanges, pushing up the price on these exchanges and temporarily causing HLP's unrealised losses to skyrocket.

Binance, the world's largest cryptocurrency exchange by trading volume, then announced it was listing futures tied to JELLY, causing spot prices to skyrocket by 560%. Other exchanges followed with new listings. The move likely deepened the short squeeze affecting the JELLY token.

In an attempt to minimize losses, the HyperLiquid exchange force-closed the JELLY market following a governance vote by validators, settling the position at $0.0095 instead of the $0.50 "market price" fed by decentralized exchanges.

HyperLiquid wrote on X explaning the decision to close the market,

After evidence of suspicious market activity, the validator set convened and voted to delist JELLY perps,

All users, apart from flagged addresses, will be made whole from the Hyper Foundation. This will be done automatically in the coming days based on on-chain data.

HyperLiquid's actions sparked outrage in some quarters on social media. The trader who manipulated the JELLY market ended up with a small loss.

This incident draws parallels to an exploit on Mango Markets in 2022, where a trader named Avraham Eisenberg manipulated oracle prices to secure gains on derivative markets. Both incidents sparked controversy renewing the code is law debate, that is the question of whether trading activities which are possible via smart contracts are therefore legally permissible. In the Mango Markets case, Eisenberg was eventually prosecuted and convicted on commodities fraud and market manipulation charges. The forced close out of JELLY contracts at a favourable price and bail out by Hyper Foundation also raised concerns over the ability of the validator group to effectively intervene in a decentralised market to override the Hyperliquid automated market maker.

Similar to the Mango Markets incident, this incident highlights the vulnerability of decentralised exchanges to market manipulation involving illiquid tokens. As regulators around the world increasingly scrutinise crypto-asset markets, market misconduct including insider trading and market manipulation are likely to come under increasing scrutiny.

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