



Ethena

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VIA WEBSITE SUBMISSION

U.S. Securities and Exchange Commission
Crypto Task Force Staff
100 F Street, NE
Washington, DC 20549

Re: Response To Crypto Task Force Request For Comment

Dear Members of the Crypto Task Force:

Ethena Labs, S.A. (“Ethena Labs”) respectfully submits this letter in response to Commissioner Peirce’s February 21, 2025 Statement, “There Must Be Some Way Out Of Here” (the “Statement”).¹

Ethena Labs appreciates the opportunity to share its viewpoints with the U.S. Securities and Exchange Commission (the “Commission”) and the Crypto Task Force, particularly on the appropriate regulatory “first principles” that should apply to consumer-oriented digital assets intended to maintain stable value and be used as a payment instrument.

I. The Purpose Of This Submission

Commissioner Peirce’s Statement requests feedback from industry participants concerning, among other things, a regulatory taxonomy for crypto assets (Request 1); whether the security status of certain categories of crypto assets, such as stablecoins, should be addressed (Request 5); how the Commission can establish a workable taxonomy while remaining merit- and technology-neutral (Request 6); and the types of regulatory, technical, and operational barriers – both in the U.S. and abroad – pose the biggest challenges to innovation (Requests 47-48).

Ethena Labs developed the on-chain and off-chain infrastructure for the Ethena Protocol, a protocol enabling the creation of USDe, a synthetic dollar. At base level, a synthetic dollar protocol is a system that enables the creation of a digital asset that is backed by non-fiat assets and the value of which typically approximates \$1. Although synthetic dollars like USDe are not specifically mentioned in the Statement, Commissioner Peirce does seek comment on matters that are critical to

¹ Commissioner Hester M. Peirce, There Must Be Some Way Out of Here (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.



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these types of assets, which share similarities with stablecoins and other stable value tokens. Ethena Labs is uniquely well-situated, and has the particularized knowledge, to address many of the questions Commissioner Peirce posed, as discussed below.

II. The Ethena Protocol and USDe

Ethena Labs is a private limited liability company incorporated in, and domiciled in, Portugal. Ethena Labs developed the on-chain and off-chain infrastructure for the Ethena Protocol and the digital asset USDe.

The Ethena Protocol consists of a network of Ethereum blockchain-based smart contracts, digital asset custodians, market makers, a programmatic off-chain execution system, and products traded on centralized exchanges.

USDe is a digital asset commonly referred to as a synthetic dollar, launched in February 2024 by an Ethena Labs subsidiary. USDe is minted on a private, reverse-solicitation basis by exclusively off-shore institutional firms and high net worth individuals with a need or use for it in their respective businesses. The objective of USDe is to provide a relatively-stable fully-backed digital asset, for which the backing is comprised entirely of crypto assets and related hedging positions.

Following KYC and AML checks and once otherwise permissioned, users may mint USDe by transferring their digital assets (specifically, USDC or USDT) to the Ethena Protocol's minting smart contract to serve as backing for USDe. USDe is minted to the user's wallet within the same Ethereum block as the transfer transaction. Users of the Ethena Protocol maintain their own keys to their digital wallets and custody and control of their own digital assets, including USDe.² Permissioned users can also utilize the Ethena Protocol to redeem USDe for digital assets supported by the Ethena Protocol at the time a redemption is requested, typically USDC or USDT.

The Ethena Protocol execution system then programmatically and algorithmically determines the most capital-efficient and risk-mitigated path to exchange the USDC or USDT for an alternative asset (e.g., BTC, ETH, SOL) and execute an equal, offsetting hedging transaction in order to maintain the overall value of the backing assets within the Ethena Protocol to be delta (*i.e.*, price change risk) neutral, creating a relatively stable and approximate 1:1 backing position for the USDe in circulation. The market value and backing of each USDe generally approximates 1 U.S. Dollar in most market conditions due to the delta-neutral hedging mechanism used for the backing.

While the construction of USDe's backing results in its reserves being valued at approximately \$1 per USDe, USDe is not intended to be a "stablecoin" as traditionally defined; users are not made a promise that the value of each USDe will always be \$1, or that USDe will be redeemable for exactly

² Ethena Labs and its subsidiaries operate entirely outside of the United States, and U.S. persons are not permitted to interact with the Ethena Protocol or mint or redeem USDe.



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\$1 of value. Rather, the value is intended to approximate \$1 utilizing the underlying delta-neutral positioning of the backing assets, and USDe is redeemable for a proportionate share of the backing assets. Furthermore, USDe is not redeemable for fiat currency.

III. The Legal Landscape Pertaining To Stable Value Tokens

The overwhelming global consensus is that stable value tokens are not, and should not be, regulated as securities or investments. Instead, as borne out by the Commission’s statements, recent U.S. court decisions, potential U.S. legislation being considered by Congress, and foreign legislation, stable value tokens (including synthetic dollars) should be regulated prudentially as a consumer product, with rules that are a practical fit for issuers and consumers alike.

a. The SEC’s Views On Stablecoins

i. SEC’s Statement on Covered Stablecoins

In April 2025, the SEC’s Division of Corporation Finance issued a Statement on Stablecoins, which clarified that certain “Covered Stablecoins,” *i.e.*, those designed to maintain a stable value relative to the U.S. dollar, fully backed by liquid, low-risk assets, redeemable for USD on a one-for-one basis, and marketed solely for payment, money transmission, or value storage, are not considered securities under the federal securities law. Division of Corporation Finance, *Statement on Stablecoins*, April 4, 2025, *available at*: <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

The Statement on Stablecoins is important, and Ethena Labs is grateful for the Division of Corporation Finance’s views. Nevertheless, its effect is limited in force and scope. For instance, the Statement on Stablecoins applies only to stablecoins that meet certain criteria (“Covered Stablecoins”); it does not apply to alternatively-backed stablecoins or synthetic dollars such as USDe, or those redeemable in non-USD assets. The Statement on Stablecoins also lacks any legal force or effect, and only represents the views of the staff of the Division of Corporation Finance; it is not a rule, regulation, guidance, or statement of the Commission, and the Commission neither approved or disapproved its content. *Id.* n.2, n.4.

ii. Prior Stablecoin-Related Enforcement Activity

Although there has been limited public enforcement activity related to stablecoins or other stable value assets, two particular enforcement actions are instructive.

First, in *SEC v. Terraform Labs Pte. Ltd.*, the SEC charged, and a federal District Court found, that UST, a digital asset marketed as a yield-bearing algorithmic stablecoin that would maintain its \$1 peg through interaction with another token, LUNA, was offered and sold as security (and under false pretenses). Key to the court’s holding was that “holders of UST could deposit their tokens in the Anchor Protocol, which [the same] defendants’ efforts developed” and marketed. Hence, the court



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found, “UST in combination with the Anchor Protocol constituted an investment contract,” notwithstanding that “not all holders of UST deposited tokens in the Anchor Protocol.” 708 F.Supp.3d 450, 473 (S.D.N.Y. 2023).

Second, in *SEC v. Binance Holdings Limited*, the SEC alleged that Binance offered and sold BUSD, a reserve-backed stablecoin, as an investment contract. In July 2024, a federal District Court dismissed the SEC’s claim, finding that the SEC failed to plausibly allege that BUSD was offered and sold as a security namely because token holders were not investing in a common enterprise with a reasonable expectation of profits from the efforts of others, notwithstanding allegations that “Binance marketed BUSD’s profit-earning potential and promoted BUSD profit opportunities.” 738 F.Supp.3d 20, 59-60 (D.D.C. 2024).

The through-line of these two cases is that where a digital asset is offered and sold as having a stable value, with no inherent profit generation features for token holders’ benefit built into the instrument that are based predominantly on the efforts of the issuer, the transaction does not “align with the prongs of the *Howey* test.” *Id.* at 59.

b. Proposed U.S. Legislation Concerning Stablecoins

i. GENIUS Act

The Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (“GENIUS Act”) was introduced in the Senate in February 2025. It lays out a licensing framework for payment stablecoin issuers.

Under the GENIUS Act, a “payment stablecoin” is a digital asset that, subject to certain exclusions, is or is designed to be used as a means of payment or settlement; and the issuer of which is obligated to convert, redeem, or repurchase for a fixed amount of monetary value, not including a digital asset denominated in a fixed amount of monetary value, or represents that such issuer will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value. The definition excludes national currencies, deposits, instruments that offer a payment of yield or interest, and securities.³

In short, payment stablecoin issuers must be either federally approved or regulated by state authorities (where approved). Under the federal regime, the “primary federal payment stablecoin regulator” for most types of entities will be the entity’s preexisting primary federal regulator (either the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, as applicable), or for nonbank entities without a preexisting primary federal regulator, the Office of the Comptroller of the Currency (“OCC”).

³ <https://www.congress.gov/bill/119th-congress/senate-bill/919/text#id0c2008b2-b455-403f-9a8e-1de90afaad88>.



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The GENIUS Act sets out several baseline requirements for payment stablecoin issuers: (i) to maintain 1:1 reserves (with high-quality liquid assets, such as cash or U.S. treasuries) and to publicly disclose their composition; (ii) to publicly disclose redemption policies; (iii) to submit certifications from a public accounting firm to its regulator; and (iv) to maintain specified standards around capital, liquidity, risk management, operations, and information technology.

In addition, the GENIUS Act includes consumer protection provisions. For instance, payment stablecoin issuers must segregate customer assets from proprietary assets for protection in case of insolvency. The GENIUS Act also restricts issuers from engaging in lending or other high-risk financial activities using reserves.

Finally, the GENIUS Act clarifies that payment stablecoins are not securities.

ii. STABLE Act

The Stablecoin Transparency and Accountability for a Better Ledger Economy Act (“STABLE Act”) was introduced in the House of Representatives in March 2025. It similarly lays out a licensing framework for payment stablecoins.

The STABLE Act defines a “payment stablecoin” similarly to the GENIUS Act. It means a digital asset that is or is designed to be used as a means of payment or settlement; that is denominated in a national currency; and the issuer of which is obligated to convert, redeem, or repurchase for a fixed amount of monetary value, or represents that the digital asset will maintain or creates the reasonable expectation that the digital asset will maintain a stable value relative to the value of a fixed amount of monetary value. It similarly excludes national currencies, deposits, and securities, and may not pay interest or yield to holders.⁴

Issuers are limited to federally chartered banks or credit unions, licensed non-bank institutions under the OCC, or state-chartered entities meeting or exceeding equivalent federal standards.

The STABLE Act requires, among other things, issuers to maintain 1:1 reserve backing with high-quality and liquid U.S. assets, monthly reserve disclosures, and consumer protections, including asset segregation, the priority of customer claims in insolvency, and clear redemption rights. The STABLE Act also excludes payment stablecoins from being securities.

iii. Application to USDe

USDe does not meet the criteria of a “payment stablecoin” under either of the proposed legislation, at least because no issuer of USDe is obligated to redeem USDe for a fixed amount of monetary value. And neither the GENIUS Act nor the STABLE Act address synthetic dollars, or other assets like USDe, that fall outside the narrow definition of a payment stablecoin. Consequently, both

⁴ <https://www.congress.gov/bill/119th-congress/house-bill/2392/text#H00BBD84421134B4B827266081BE97D3F>.



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pieces of proposed legislation would leave uncertainty in the markets regarding how stable value assets would be treated under the federal securities laws, or otherwise. When taken together with the SEC’s Statement on Stablecoins, the regulatory treatment of other stable value assets is left wholly uncertain.

c. The EU’s Approach To Regulating Stablecoins

i. Summary of MiCA Rules

The European Union’s Markets in Crypto-Assets Regulation n. 1114/2023 (“MiCA”), adopted in 2023 and fully applicable as of December 2024, establishes a comprehensive regulatory framework for crypto-assets, including a specific regime for stablecoins. Under MiCA, stablecoins and other stable value tokens fall into two distinct categories: asset-referenced tokens (“ARTs”) and electronic money tokens (“EMTs”). ARTs are crypto-assets that aim to maintain a stable value by referencing one or more assets (including baskets of currencies or commodities), whereas EMTs are limited to referencing a single official currency and are functionally equivalent to electronic money.

ARTs represent a distinct and innovative category of stablecoins and stable value assets. Unlike traditional stablecoins such as USDC, which fall under the classification of EMTs, ARTs derive their value by referencing a basket of assets – which may include multiple fiat currencies, commodities, or even other crypto-assets. This multi-asset backing is what makes ARTs particularly attractive to users seeking diversification and broader stability mechanisms.

ARTs are subject to a standalone regulatory regime under MiCA: Issuers of ARTs must obtain prior authorization from a competent EU authority and are bound by stringent obligations around reserve composition and custody, white paper disclosures, governance, and redemption rights. ARTs must also be redeemable at par value on demand, meaning holders are entitled to redeem their tokens at a 1:1 ratio based on the value of the underlying reference assets.

ii. Common Problems Facing Issuers Under MiCA

Within the EU, compliance hurdles have so far created serious friction for market participants, and no applications by issuers of ARTs have been authorized to date. First, the ambiguity in ART classification – particularly around whether a token qualifies as an ART or an EMT – has deterred issuers from launching in the EU. In addition, MiCA imposes strict custody and investment obligations on issuers of ARTs. Issuers must hold fully segregated and unencumbered reserves through independent and qualified custodians, while avoiding both asset and custodian concentration. Beyond logistics, MiCA’s mandate for detailed custody frameworks, real-time redemption access, and binding contractual arrangements further increases complexity and cost. Issuers managing multiple token reserves across jurisdictions must implement robust governance and legal infrastructure, making market entry capital- and resource-intensive.



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In addition, issuers of ARTs are required to hold certain amounts of reserves within EU institutions generally tracking the redemption rights of users solely within the EU. As most tokens are fully fungible and are readily traded on secondary markets (including decentralized venues) between users across jurisdictions in an anonymous fashion, it is generally impossible to know the composition of a holder base at a given point in time, and whether a specific unit of an ART was issued to an EU user, rendering identifying the required “reserve of assets” impossible. As a result, issuers with global businesses involving fully fungible ARTs find it practically impossible to comply with MiCA’s reserve requirements.

Compounding these challenges, MiCA restricts investment of reserves to only highly liquid, low-risk financial instruments. This severely limits potential returns from the reserve pool, as issuers must also bear any losses without affecting token holders’ redemption rights. The implicit prohibition of more dynamic financial strategies – such as DeFi protocols or staking of crypto-assets – prevents issuers from exploring innovative liquidity or yield-generating mechanisms that are increasingly common in digital asset markets.

This conservative framework, while aimed at stability and investor protection, inadvertently stifles innovation. It disincentivizes the development of ARTs backed by diversified or blockchain-native assets and curtails their integration with emerging decentralized financial ecosystems. The result is a regulatory environment that, while comprehensive, risks deterring technological experimentation and limiting the practical utility of ARTs as programmable, composable components in Web3 infrastructure. This is presently being borne out in the market, as no issuers of ARTs have obtained authorization under MiCA in any EU country to date.

Issuers of EMTs are also subject to particularly stringent reserve management obligations that, in practice, may create more friction than financial security. At least 30% of the funds received in exchange for EMTs must be deposited in segregated accounts with credit institutions in the EU – and this threshold rises to 60% for significant issuers that exceed certain thresholds in capitalization and transaction volume. The remaining funds may only be invested in highly liquid, low-risk financial instruments denominated in the same official currency as the EMT.

Although these provisions are designed to ensure redemption rights and overall stability, they impose substantial operational and economic constraints. The requirement to hold large portions of capital idle introduces structural inefficiencies and does not come without risk. Notably, the credit institution accounts where these reserves are kept are not protected by deposit guarantee schemes. In the event of a bank failure, these reserves could be at risk, creating a potential systemic vulnerability despite the regulation’s protective aims. Furthermore, the requirement that these assets be held in EU institutions – with no exceptions for foreign regulated banks or custodians – creates operational constraints and concentration risk.

Additionally, the conservative limitations on how reserves can be invested restrict any opportunity for yield generation. This significantly weakens the economic sustainability of EMT



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issuance and limits the attractiveness of the model, particularly for firms operating in fast-moving, innovation-driven digital asset markets.⁵

I. There Is An Opportunity For The U.S. To Uniquely Succeed In The Regulatory Oversight Of Stable Value Digital Assets

a. *Current Taxonomy Of Stable Value Tokens*

Commissioner Peirce asked for, among other things, industry comment on a regulatory taxonomy for crypto assets (Request 1) and how the Commission can establish a workable taxonomy while remaining merit- and technology-neutral (Request 6).

Generally, stablecoins are categorized based on their collateral structures and stabilization mechanisms. We have observed that the taxonomy for stablecoins has converged into four primary types: fiat-backed, crypto-backed, commodity-backed, and algorithmic.

- Fiat-backed stablecoins refer to those backed 1:1 by fiat currency and held in reserve by a centralized issuer. Fiat-backed stablecoins include Covered Stablecoins, as defined in the SEC’s Statement on Stablecoins, but not all fiat-backed stablecoins are necessarily Covered Stablecoins.
- Commodity-backed stablecoins are pegged to physical commodities, such as gold, where reserves are stored by a centralized issuer. Commodity-backed stablecoins share many of the features of fiat-backed stablecoins, but often face liquidity constraints relative to fiat-backed stablecoins.
- Crypto-backed stablecoins refer to those that are collateralized – and typically overcollateralized – by cryptocurrencies locked in smart contracts, and for which minting, redemption, and reserve management is usually managed autonomously by protocols.
- Finally, algorithmic stablecoins are not backed by traditional collateral. Rather, price stability is accomplished algorithmically through smart contract-based supply adjustments.

Synthetic dollars have, to date, been excluded from the taxonomy of stablecoins, despite serving similar consumer and payments-focused purposes. When we refer to synthetic dollars, we mean to distinguish tokens like USDe and similar instruments from traditional stablecoins. Like stablecoins, synthetic dollars aim to maintain a stable value in U.S. dollar terms. However, unlike stablecoins, they are not backed by fiat currencies or physical commodities, but by cryptocurrencies;

⁵ The United Kingdom is also in the process of developing new legislation that would regulate the issuance and custody of a qualifying stablecoin, as well as other activities. *See, e.g.*, DP23/4: Regulating cryptoassets Phase 1: Stablecoins; CP25/14, *available at*: <https://www.fca.org.uk/publication/discussion/dp23-4.pdf>; Stablecoin issuance and cryptoasset custody, *available at*: <https://www.fca.org.uk/publication/consultation/cp25-14.pdf>.



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they do not rely on traditional banking or physical infrastructure; they utilize alternative strategies, including delta-neutral hedging, to preserve the dollar value of the reserves; and due to these differences, a 1:1 redemption value is not guaranteed, but rather a single unit's redemption value is tied to the value of the underlying reserves. The unique benefits of synthetic dollars include capital efficiency and reduced reliance on fiat or traditional banking systems, while remaining highly effective for payments and the transmission and storage of value. If the growth of decentralized perpetual futures exchanges continues, the issuance, redemption, and maintenance of reserves for synthetic dollars can also be done in a fully decentralized manner.

Notwithstanding that they share most characteristics with stablecoins, synthetic dollars are not addressed in the pending U.S. legislation or Commission guidance. Although some jurisdictions have attempted to enact frameworks that would apply to synthetic dollars, these regimes often impose operational and legal constraints that hinder innovation.

Although many regulatory requests remain within the purview of Congress, we submit that stable value tokens, like synthetic dollars, are not securities, and should instead be legislated prudentially under a consumer protection regime.

b. Synthetic Dollars, Like All Stable Value Tokens, Are Not Securities Regardless Of How Their Stable Value Is Achieved

Commissioner Peirce asked whether the security status of certain categories of crypto assets, such as stablecoins, should be addressed (Request 5). We believe it should, and that any such guidance should explicitly address stable value tokens, including synthetic dollars.

The features of synthetic dollars do not align with the elements of an “investment contract” under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) or a security note under *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the two categories of “securities” under the Securities Act of 1933 that could potentially apply to these instruments.

Synthetic dollars, like other stable value tokens, are designed to facilitate on-chain payments. The primary feature of synthetic dollars is their stable value – *not* any expectation of profit or capital appreciation, which is the key element required by both *Howey*⁶ and *Reves*.⁷

⁶ An investment contract under *Howey* is a contract or scheme that involves an investment of money in a common enterprise made with a reasonable expectation of profits predominantly based upon the entrepreneurial or managerial efforts of the promoter or other third parties. *Howey*, 328 U.S. 293.

⁷ A note is not a security if it bears a strong resemblance to one of the types of notes that courts have determined are not securities. Courts analyze the motivations of the seller and buyer, the plan of distribution of the instrument, the reasonable expectations of the investing public, and the presence of other significant risk-reducing factors. *Reves*, 494 U.S. 56.



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The touchstone for whether a transaction or instrument is an investment contract or a security note is whether the purchaser can reasonably expect a profit based predominantly on the entrepreneurial or managerial efforts of the issuer. *See Howey*, 328 U.S. at 298-99; *Reves*, 494 U.S. at 66. Synthetic dollars do not grant holders the right to participate in any revenue, earnings, cash flow, or capital appreciation. Quite the opposite – token holders acquire synthetic dollars precisely because they are a functional substitute for dollars (or another fiat currency), aim to maintain a stable value relative to fiat, have payment or other consumptive utility, and can provide these benefits without interacting with traditional banking services.

This is the case no matter how the token’s reserves are maintained or managed. Put differently, whether a stable value token’s backing is held in fiat, commodities, cryptocurrencies, or – like USDe – cryptocurrencies combined with delta neutral hedging strategies, consumers acquire the stable value token for its utility, and not an investment purpose. Form should not override function.

Synthetic dollars do not satisfy the other elements of a *Howey* investment contract or *Reves* security note, either. Under *Howey*, synthetic dollars do not require purchasers to make an “investment of money” as contemplated by *Howey* because a token holder is not subjected to the prospect of an investment-type loss in exchange for an expectation of profit. Nor are token holders engaged in a common enterprise with each other or an issuer, within the meaning contemplated by *Howey*.

Likewise, under *Reves*, purchasers acquire synthetic dollars for a commercial or consumer purpose: to make payments, store value, and transmit value. Synthetic dollars are not marketed or sold as investments, and they are typically backed by reserves that reduce any risks associated with the instrument.

c. The Fact That Promotional Rewards From Third-Parties May Be Available To Stable Value Token Holders Does Not Alter The Token’s Legal Status

That synthetic dollars (and other stable value tokens) are not securities holds true even if users can use synthetic dollars to enter into separate transactions that might produce returns – just as one can do with dollars. *Binance*, 738 F.Supp.3d at 59-60. Put differently, the fact that users can receive returns through third-party programs or platforms does not, in and of itself, transform a synthetic dollar (or a transaction involving one) into a security. Dollars can be used to earn interest or rewards without being securities themselves, and synthetic dollars function in the same way.⁸

⁸ As a specific example, users can stake USDe in exchange for sUSDe, which is a distinct asset issued autonomously via an immutable smart contract and that accrues rewards in the form of USDe sourced from the revenue generated from the Ethena Protocol reserves. The Ethena Foundation, a Cayman Islands exempted foundation company that is unaffiliated with Ethena Labs and its subsidiaries, directly and via its wholly-owned subsidiary owns and operates certain components of the architecture for the Ethena Protocol, including maintaining the smart contracts that enable users to stake or unstake USDe and thereby mint or redeem sUSDe, and administering revenue earned by the Ethena Protocol. The Ethena Foundation and its subsidiary operate entirely outside of the United States, and U.S. persons are not permitted to stake USDe to receive sUSDe.



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Two common examples are illustrative. First, there exist arrangements in which an issuer of a stable value token, or a stakeholder in an ecosystem surrounding a stable value token, enters into a co-marketing agreement with a third-party exchange. The exchange is paid a marketing fee, and the exchange independently chooses to distribute a portion of that value to its customers who hold the token on their platform. Second, in some cases, the issuer may fund a reward program operated by a third-party, but participation requires users to take affirmative steps, such as opting into a staking-like program.

In both scenarios, the stable value token holder has not invested money in the token with an expectation of profits derived from the issuer's efforts. Rather, the user has acquired a payment tool, and may optionally participate in separate programs with third-parties. Nothing about such arrangements transforms the token into something inherently yield-bearing. There are still no embedded rights or entitlements with the token itself that guarantee returns. Any return still depends on independent, discretionary actions taken by the user. The existence of these programs does not negate that synthetic dollars' key feature – the reason why users acquire the token itself – is their stable value and utility for payments as a stand-in for fiat dollars.

This remains true even if the third-party rewards are funded by revenue generated by the issuer's reserves strategy. In that case as well, the issuer still does not owe the user any contractual claim to the yield generated by the reserves, and the rewards program is still initiated and operated by a third-party platform, and not the issuer – which is typically made clear in the third-party's marketing materials and in any joint publications. The issuer's business development choice, such as funding these third-party promotional programs, does not convert a stable value token into a security.

These arrangements are fundamentally different from investment contracts. The central element of that security is a promise of profit dependent on an issuer's efforts. That is why courts who have found investment contracts did so where an asset was sold *with* other commitments by the issuer that turn the overall transaction into a passive investment opportunity. In contrast, the feature of synthetic dollars is that they will hold a stable value, because that stability is what makes them useful for payments. Where users do not have rights to the issuer's profits; the token does not represent an interest in the issuer; users must independently choose to engage with third-party programs, which engagement is entirely optional; and returns, if any, are owed by third-parties and not the issuer, there is no investment contract.

The legal analysis must reflect these economic realities: these promotions or programs are business development strategies, not securities offerings. The stable value token itself remains a neutral asset, like a dollar, that users may deploy for yield where available without changing its legal character.

d. Regulating Synthetic Dollars As Securities Would Be Unworkable



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Commissioner Peirce asked for information about the types of regulatory, technical, and operational barriers – both in the U.S. and abroad – that pose the biggest challenges to innovation (Requests 47-48). We submit that regulating synthetic dollars and other stable value tokens as securities is inherently unworkable and would pose intractable barriers to cross-border compliance, especially in jurisdictions that treat these assets as consumer products or payment instruments.

The political, regulatory, and legislative consensus is that stable value tokens, such as stablecoins and synthetic dollars, should be treated as forms of payment, and not securities. Ongoing legislative activity in Congress, as well as public statements by the Commission, reinforce that securities laws are a poor fit for regulating digital assets intended for use in payments. These assets are better overseen under a consumer protection regime.

Ethena Labs concurs that prudential oversight of stablecoins and stable value tokens is sensible. Nevertheless, subjecting these instruments to a disclosure-based regulatory regime designed for investment products would create unworkable friction in routine consumer payment transactions. Instead, regulation that directly addresses the safety and consumer protections of the payment method, which is beyond the remit of the federal securities laws, is more appropriate.

The regulatory obligations attached to securities transactions make the use of investment contracts or notes impractical as a means of payment in everyday commercial transactions. It would be impossible for stable value token issuers to comply with the registration requirements (or exemptions) under the Securities Act of 1933. And consumers would balk at prospectus-style disclosures when deciding whether to use a payment medium.

The legal framework governing secondary market securities transactions is similarly ill-suited to stable value tokens. Intermediaries in securities markets are subject to extensive regulation and supervision by the Commission and self-regulatory organizations. These rules were not designed for basic commercial activities, such as making payments or storing value. *See* Statement on Stablecoins (“While the federal securities laws apply to transactions in investments, they do not apply to consumer transactions.”).

These considerations align with the Division of Corporation Finance’s analysis in the Statement on Stablecoins. Although that statement focused on Covered Stablecoins, its reasoning applies equally to other stable value tokens. Synthetic dollars share the same essential characteristics, and their differences are immaterial to a securities law analysis. Hence, the conclusion that they should not be regulated as securities applies with equal force.



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Characteristic	Covered Stablecoins	Synthetic Dollars
Crypto assets designed and marketed for use as a means of making payments, transmitting money, or storing value	Yes	Yes
Designed to maintain a stable value relative to USD	Yes	Yes
Backed by USD and/or other assets that are considered low-risk and readily liquid so as to allow an issuer to honor redemptions on demand	Yes	USDe's backing includes liquid and relatively non-volatile cryptocurrencies and delta-neutral hedging positions
Backing assets are held in a reserve with a USD-value that meets or exceeds the redemption value of the stable value tokens in circulation.	Yes	The overall value of the backing assets within the Ethena Protocol are designed to be delta (i.e., price change risk) neutral, creating a relatively stable and approximate 1:1 backing position for the USDe in circulation in most market conditions
Through a fixed-price, unlimited mint-redeem structure, the market price of a stable value token is likely to remain stable relative to USD absent an extraordinary event	Yes	Yes, provided that the framework is not fixed to a single unit of fiat currency
The market price of a stable value token on secondary markets can (and often does) fluctuate from its redemption price	Yes	Yes
Marketed solely for use in commerce, as a means for making payments, transmitting money, and/or storing value	Yes	Yes
An issuer mints and redeems the stable value tokens on a one-for-one basis with USD at any time and in unlimited quantities	Yes	Synthetic dollars can be minted and redeemed in exchange for crypto assets
Backing assets are: (1) not used by the issuer for operational or general business purposes; (2) not otherwise lent, pledged, or rehypothecated for any reason; (3) held in a manner designed not to subject them to claims of third parties; (4) not used for trading, speculation, or discretionary investment strategies	Yes	An issuer may employ delta neutral hedging strategies to maintain a stable value in USD terms as disclosed

Finally, it is impractical to regulate stable value tokens as securities when equivalent products are treated as consumer products or payment instruments in other jurisdictions. Imposing a disclosure-based regime (and concomitant secondary market strictures unique to securities) on U.S. issuers and consumers, while global competitors operate under payment or consumer focused frameworks, would pose enormous regulatory, technical, and operational barriers to offering and using these products in the U.S.



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e. Guidance That Reinforces A Narrow Set Of Principles Related To Stable Value Tokens Would Mitigate Barriers And Enhance Innovation And Consumer Choice

Prudential regulatory oversight of synthetic dollars under a regime that protects consumers and mitigates regulatory, technical, and operational barriers is sensible policy. With these goals in mind, Ethena Labs respectfully recommends that the Commission adopt the following principles to provide much needed clarity to issuers, consumers, lawmakers, and others who utilize synthetic dollars and other stable value digital assets:

- The Commission should acknowledge that the core purpose of synthetic dollars and similar stable value tokens is transactional and consumptive, not speculative or investment-oriented.
- The Commission should provide clear guidance for developers, issuers, and users of synthetic dollars to prevent regulatory uncertainty from chilling innovation or deterring legitimate use.
- Among that guidance, the Commission should recognize that stable value tokens, including synthetic dollars and stablecoins that do not necessarily meet each of the criteria of Covered Stablecoins, are not securities, or offered or sold as securities.
- The Commission should recognize that synthetic dollars, and other tokens designed to maintain a stable value that are not marketed as investments, are not securities, or offered or sold as securities.
- Issuers of synthetic dollars should be permitted to innovate with decentralized and alternative reserve models, provided that they meet clear operational standards regarding transparency, resiliency, and consumer redemptions. Regulation should be technology-neutral and allow for alternative types of issuance and backing.
- Regulation of stable value tokens should rely on objective criteria, such as the structure, function, and use of the token, rather than subjective or promotional language in marketing materials.
- Legislation and rulemaking should foster U.S. leadership in payments innovation by providing regulatory clarity that attracts the use of a variety of responsible stable value digital assets domestically.
- Because stable value tokens are a global product consumed across the world, U.S. legislation and rulemaking should aim to be consonant with foreign legislation that applies to the same products, so as to reduce the regulatory, technical, and operational barriers that could arise from contradictory or irreconcilable requirements in different jurisdictions,



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while learning from gaps or missteps in that foreign legislation which may impose unduly burdensome or unworkable requirements on potential applicants.

We appreciate the Crypto Task Force's desire to engage transparently on issues relating to digital assets, and in particular, the matters discussed above. We look forward to being a resource to the Crypto Task Force, and continuing this productive dialogue with the Staff.

Respectfully,

/s/ Zach Rosenberg

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cc:

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