I. Introduction

The first cryptocurrency, Bitcoin, was released to the public in 2009.¹ Just 12 years after trading at around $0.0008 per Bitcoin, Bitcoin reached an all-time high price of $64,863 on April 14, 2021.² Bitcoin’s success paved the way for an explosion of other tokens, such as Litecoin, Dogecoin and Binance Coin.³ In just a few years,
Cryptocurrencies went from being held by about one percent of Americans in 2015 to about sixteen percent of Americans in 2021. As new tokens were created, so were new types of cryptocurrencies, one being stablecoins.

In 2014, the Brock Pierce, Craig Sellars and Reeve Collins created Tether ($USDT), the first of a new cryptocurrency class of assets known as stablecoins. Unlike Bitcoin and traditional cryptocurrencies, stablecoins are cryptocurrencies that are backed by an external asset class, allowing its value to remain stable. A stablecoin’s value can be pegged to fiat currency, such as the United States dollar (“USD”), or valuable commodities traded on exchanges, such as gold or precious metals. Unlike traditional cryptocurrencies, whose prices can be extremely volatile, the price volatility of stablecoins is diminished due to its backing by a comparatively stable commodity or currency. With Tether and other stablecoins’ consistent value, multi-national corporations view stablecoins as a new solution to cross-border payments, allowing for more efficient, faster and cheaper transactions than traditional fiat currency.

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4 See Davide Yaffe-Bellany, Erin Griffith & Ephrat Livni, Cryptocurrencies Melt Down in a ‘Perfect Storm’ of Fear and Panic, N.Y. TIMES (May 21, 2022), archived at https://perma.cc/4QBX-G7SW (discussing the growth of cryptocurrencies and the ultimate melt down of prices).
6 See What is Tether?, MESSARI (Apr. 1, 2022), archived at https://perma.cc/75NH-YPKX (outlining the creation of Tether). See also McKeon, supra note 5 (examining the evolution of stablecoin after the creation of Tether). “As of May 11, 2022, there were about US $83 billion in Tether outstanding, or a bit less than half of the $172 billion market capitalization of all stablecoins worldwide.” Id.
7 See Complete Guide, supra note 3 (explaining the characteristics of stablecoins that differ from traditional cryptocurrencies). Stablecoins can be pegged against (backed by) external assets to remain stable in value. Id.
8 See id. (highlighting the different commodities that can back stablecoins). “The most prominent stablecoins are pegged against the world’s unofficial global fiat currency, the U.S. Dollar, on a 1:1 ratio.” Id.
9 See Complete Guide, supra note 3 (explaining how collateral backed stablecoins help reduce volatility). “Investors see a fiat-backed virtual currency as an acceptable asset class that will help mitigate the damage caused by huge swings in value from speculative digital assets.” Id.
10 See id. (sharing how companies have adopted and utilized stablecoins). “Multi-national corporations like JP Morgan and Wells Fargo increasingly view stablecoins...
As stablecoins become more popular and institutions begin to utilize these new currencies, regulation is needed. Although stablecoins’ values are pegged to external assets, there must be regulation in place to ensure that these stablecoins are actually backed by the assets said to back the tokens. The federal government has limited regulatory oversight over stablecoins because stablecoins have not been classified and therefore, do not fall under existing categories of regulated assets. Until the federal government affirmatively decides to classify stablecoins, they will remain largely unregulated. While the federal government determines how to classify stablecoins, many states have found ways to regulate stablecoins through state securities laws or money transmitter laws. These state regulations are a huge step in guaranteeing consumer protection against inadequately backed stablecoins as the federal government determines how they will regulate stablecoins. Stablecoins should be classified as money transmitters and regulated as such, allowing for consumers to have the utmost confidence that their stablecoin is properly backed, while also allowing for the federal government to intervene when necessary.

II. History

A. Digital Assets and the Creation of Cryptocurrencies

A “digital asset” is an electronic record in which an individual has a right or interest.¹¹ Unlike physical assets, digital assets do not exist in physical form.¹² For example, “a bitcoin is a digital asset because it is an electronic record that is created and stored exclusively on the Bitcoin blockchain.”¹³ However, a “digitized” asset is an asset, as a lucrative new solution to settle cross-border payments.” ¹⁴ See also Hilary J. Allen, Payments Failure, 62 B.C. L. Rev. 453, 495 (2021) (highlighting JP Morgan’s creation of the JPMCoin). JPMCoin is a prototype virtual currency that is being tested with the bank’s institutional clients for potential future uses. ¹⁴ See id. at 30 (explaining digital assets do not have a physical form). “The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.” ¹⁴ See id. (highlighting how bitcoin is a digital asset). A bitcoin itself does not exist in physical form, it is an electronic record. ¹⁴
which may be a security or a physical asset, where the ownership of the asset is represented in an electronic ledger.\textsuperscript{14} For example, an electronic record of the ownership of real estate stored on a digital ledger would be a digitized asset.\textsuperscript{15}

Digital assets can and are structured differently in terms of their fundamental properties, and depending on the features of the particular digital assets, different regulatory regimes may be implicated.\textsuperscript{16} Tokens, which are digital assets, can be divided into four main groups: (1) Payment Tokens; (2) Utility Tokens; (3) Asset Tokens (not discussed); and (4) Stablecoins.\textsuperscript{17} Although there are four different categories of tokens, some tokens fall under multiple categories or their uses may change over time, changing the token’s categorization.\textsuperscript{18}

1. Payment Tokens

In 2009, Bitcoin was introduced as the first ever payment token.\textsuperscript{19} Payment tokens, otherwise known as cryptocurrencies, “are tokens which are intended to be used, now or in the future, as a means of payment for acquiring goods or services or as a means of money or value transfer... [c]ryptocurrencies give rise to no claims on their issuer.”\textsuperscript{20} Bitcoin was created to be a decentralized, digital currency,

\begin{footnotesize}
\begin{enumerate}
\item See id. (defining digitized asset).
\item See DIGITAL ASSETS, supra note 11, at 30 (providing an example of a digitized asset). By using an electronic record to record the ownership of the asset makes the electronic record a digitized asset. Id. at 30–31.
\item See id. (highlighting the multiple forms of digital assets).
\item See id. (outlining the four types of tokens). The classifications of tokens come from the Swiss Financial Market Supervisory Authority (“FINMA”). Id. at 32. Although FINMA includes Asset Tokens under these classifications, this paper will not be discussing Asset Tokens. Id.
\item See DIGITAL ASSETS, supra note 11, at 32 (highlighting changing uses and characterizations of tokens as use cases for tokens evolve).
\item See Martucci, supra note 1 (discussing the creation of Bitcoin and cryptocurrencies). By late 2010, other similar cryptocurrencies began appearing, including popular alternatives like Litecoin. Id. See James Royal & Kevin Voigt, What Is Cryptocurrency? Here’s What You Should Know, NERDWALLET (Oct. 22, 2021), archived at https://perma.cc/XH4T-B4P3 (defining cryptocurrency). According to CoinMarketCap.com, a market research website, more than 13,000 different cryptocurrencies are trading publicly. Id.
\item See DIGITAL ASSETS, supra note 11, at 32 (defining payment tokens).
\end{enumerate}
\end{footnotesize}
meaning there is no single administrator, but rather a public ledger of transactions that anyone can store on their computer.\textsuperscript{21} The public ledger used for Bitcoin is blockchain.\textsuperscript{22} Blockchain allows for the movement of assets or information between parties, while simultaneously recording encrypted digital data for each transaction in an open, distributed ledger in an efficient and permanent way.\textsuperscript{23} Blockchain has allowed for Bitcoin to be decentralized yet secure, creating value for Bitcoin through its potential uses, but Bitcoin also derives some value from its scarcity.\textsuperscript{24}

Bitcoin derives its value, similarly to fiat currencies, from supply and demand.\textsuperscript{25} However, unlike fiat currencies where supply

\textsuperscript{21} See Satoshi Nakamoto, \textit{Bitcoin: A Peer-to-Peer Electronic Cash System} 1, 1 (2008) (explaining why bitcoin was created and its characteristics). \textit{See Coryanne Hicks, The History of Bitcoin, YAHOO!} (Sept. 1, 2020), archived at https://perma.cc/Q5C4-6VBK (explaining the decentralization of Bitcoin). Quoting Hemang Subramanian, assistant professor in Florida International University’s business information systems department, “[i]t is an asset that is not controlled by a central entity, that is secure, international and fungible, liquid and is available in a limited supply for trade.” \textit{Id.} See also Michael Lewis, \textit{What Is Blockchain Technology (Explained) – How It Will Change the Future}, \textit{MONEY CRASHERS} (Aug. 16, 2018), archived at https://perma.cc/G32H-F2YH (defining ledger and how they are used). “A ledger is a database that contains a list of all completed and cleared transactions involving a particular cryptocurrency, as well as the current balance of each account that holds that cryptocurrency.” \textit{Id.}

\textsuperscript{22} See \textit{blockchain, supra note 21 (explaining how blockchain is used as a ledger). Using blockchain technology, “[e]ach transaction’s details are stored in a digital ‘block,’ permanently time-stamped, and linked to the preceding block to create a chain.” \textit{Id.} \textsuperscript{23} See \textit{id.} (explaining the technology behind blockchain). Blockchain is revolutionary due its characteristics of transparency, authentication, permanency, and programmability. \textit{Id.} Transparency allows for all members of the network to verify each transaction, eliminating the need for third parties. \textit{Id.} Since transactions in blockchains are unchangeable, all transactions are authenticated and permanent. \textit{Id.} Finally, since blockchain is a self-executing software, it “eliminates the need for human intervention, reduces costs, and speeds up transactions by executing them automatically.” Lewis, supra note 21.

\textsuperscript{24} See \textit{Frequently Asked Questions, BITCOIN} (Feb. 16, 2022), archived at https://perma.cc/P6HJ-QU5 (explaining how Bitcoin derives its value). Bitcoins have value because they are a form of money that is useful. \textit{Id.}

\textsuperscript{25} See John P. Kelleher, \textit{Why Do Bitcoins Have Value?}, \textit{INVESTOPEDIA} (Oct. 19, 2021), archived at https://perma.cc/7SR9-SZ6M (explaining the value of Bitcoin). Bitcoin has many of the key attributes of currency: scarcity, divisibility, acceptability, portability, durability and resistance of counterfeiting. \textit{Id.} However, Bitcoin lacks the backing by government authorities or a system of monetary authority like fiat currency. \textit{Id.} This makes it very difficult to value Bitcoin, with
and demand is regulated by governments, Bitcoin has a limited quantity of twenty-one million. This restriction on the supply allows the value of Bitcoin to increase as demand increases, due to the availability of the supply decreasing. Although this limit on supply helps determine prices, its price can be extremely volatile and fluctuate, giving consumers very little protection.

Although Bitcoin is one of the most popular payment tokens, there are other categories of digital assets, including utility tokens.

2. Utility Tokens

Utility tokens “are tokens which are intended to provide access digitally to an application or service by means of blockchain-based infrastructure.” An example of a utility token is Ether. Ether (“ETH”) is a cryptocurrency that allows users to access Ethereum’s blockchain and develop applications. Ethereum is a “decentralized blockchain platform that establishes a peer-to-peer network that securely executes and verifies application code, called smart

some experts believing a large part of its value is due to its scarcity and blockchain technology that allow for effective use in remittances across borders. Id. See id. (highlighting the quantity restriction of Bitcoin). Some experts argue that Bitcoin’s main source of value is due to its scarcity, as the cryptocurrency is limited to a quantity of 21 million, making its value more similar to a commodity. Id. Similar to commodities like gold, Bitcoins are rarely used in retail transactions yet still have value because of its potential applications. Kelleher, supra note 25.

See id. (explaining how the supply restriction and demand effect the value of Bitcoin). The value of Bitcoin is a function of its scarcity. Id. See Nathan Reiff, Why Is Bitcoin Volatile? INVESTOPEDIA (Jan. 4, 2022), archived at https://perma.cc/44G6-JEQ8 (examining the factors that influence Bitcoin’s volatility). The price of Bitcoin fluctuates as much as it does because of the influence of supply and demand, investor and user sentiments, government regulations, and media hype. Id.

See Digital Assets, supra note 11, at 32–33 (outlining the creation of utility tokens). See id. (defining utility tokens). See id. at 33 (providing Ether as an example of utility tokens). See Vitalik Buterin, Ethereum: A Next-Generation Smart Contract and Decentralized Application Platform 13 (2014) (explaining the use of Ether). “‘Ether’ is the main internal crypto-fuel of Ethereum, and is used to pay transaction fees.” Id.
contracts.” Smart contracts allow users to execute transactions between Ethereum accounts without a trusted central authority. These transactions are recorded on Ethereum’s blockchain, creating immutable, verifiable and securely distributable transactions, which allow participants to have full ownership and visibility of the transaction data. If a user wants to develop an application on Ethereum, they must include a payment in the form of an Ether token. This payment allows for the transaction to be recorded on the Ethereum blockchain and grants the developer the ability to access and use Ethereum’s block chain.

3. Stablecoins

Stablecoins are a cryptocurrency that fix their value to an external asset class in order to create price stability. Such tokens are

33 See What is Ethereum?, AWS (Apr. 2, 2022), archived at https://perma.cc/EA3K-9ZHE (defining Ethereum and the benefits of this new platform). Ethereum offers a flexible platform for building decentralized applications. Id. See also BUTERIN, supra note 32, at 13 (explaining the intent behind the creation of Ethereum). “The intent of Ethereum is to merge together and improve upon the concepts of scripting, altcoins and on-chain meta-protocols, and allow developers to create arbitrary consensus-based applications that have the scalability, standardization, feature-completeness, ease of development and interoperability offered by these different paradigms all at the same time.” Id.

34 See What is Ethereum?, supra note 33 (explaining how smart contracts eliminate a central, trusted authority). See also BUTERIN, supra note 32, at 13 (explaining the use of smart contracts). Ethereum allows anyone to write smart contracts and decentralized applications, allowing the creator to create their own arbitrary rules for ownership, transactions formats, and state transition functions. Id.

35 See What is Ethereum?, supra note 33 (explaining the benefits of the transaction records under smart contracts).

36 See BUTERIN, supra note 32, at 20 (explaining how Ether tokens are used on the Ethereum platform). Users first need to “activate” their accounts with ether. Id.


38 See Jake Frankenfield, Tether (USDT): Meaning and Uses for Tethering Crypto Explained, INVESTOPEDIA (Jan. 29, 2023), archived at https://perma.cc/2WUS-ZZ94 (explaining the creation of Tether, the most popular stablecoin). Stablecoins are a type of cryptocurrency that aim to stabilize the price of their tokens by tying it to the
a useful alternative to other cryptocurrencies, such as Bitcoin, that may fluctuate wildly in value. Stablecoins minimize volatility in their value by keeping each token’s value fixed against the value of a real-world asset, such as a currency or a commodity traded on an exchange. Tether, one of the most prominent stablecoins, is pegged against the US dollar and was introduced as the first stablecoin in 2014. According to Tether, all tokens are pegged 1:1 with a matching fiat currency and is currently backed by 78 billion USD. Originally used as a means to buy other cryptocurrencies, stablecoins have been increasingly used to facilitate commercial transactions and to promote cross-border payments due to their alleged stable value. Like other digital assets, stablecoins are relatively new, leading to debate on if and how the government should regulate them.

Price of an underlying asset, such as currency, or a commodity such as gold or precious metals. See also McKeon, supra note 5 (defining stablecoins). Stablecoins can be backed by currencies or assets. Id. See generally Tether, TETHER: FIAT CURRENCIES ON THE BITCOIN BLOCKCHAIN 1, 4 (outlining the creation of Tether using Bitcoin’s blockchain).

39 See Reiff, supra note 28 (analyzing the volatility of Bitcoin’s price).
40 See Complete Guide, supra note 3 (explaining the benefits of pegging cryptocurrencies to a valuable commodity or asset). “The most prominent stablecoins are pegged against the world’s unofficial global fiat currency, the U.S. dollar, on a 1:1 ratio.” Id.
41 See Frankenfield, supra note 38 (explaining the asset Tether is backed by). Although Tether is backed by the U.S. dollar in terms of value, there is no guarantee provided by Tether, and Tether was found by New York state to have insufficient fiat reserves to back USDT Tether tokens in circulation. Id.
43 See Legal Examiner Staffer, What Is a Stablecoin?, LEGAL EXAM’R (Sept. 20, 2021), archived at https://perma.cc/37YM-MUKE (explaining the many uses and benefits for stablecoins). “Stablecoins provide the benefits associated with cryptocurrencies, including quick transaction times, low transaction fees, cross-border functionality, decentralization, an immutable ledger for transparency, and access to all.” Id.
44 See PRESIDENT’S WORKING GRP. FIN. MKTS., REPORT ON STABLECOINS 14–15 (2021) (reporting on regulatory developments and proposals for stablecoins). Currently, stablecoin arrangements are not subject to a consistent set of federal regulatory standards that address the risks of stablecoins. Id. at 14.
B. Securities Regulation in the United States

Securities are fungible and tradable financial instruments that hold some type of monetary value and are used to raise capital in public and private markets. There are many types of securities, but there are three primary types: equity, debt, and hybrids. Securities can be bought and sold publicly on the primary or secondary markets, or they can be sold to people in a private placement. Primary markets allow for investors to buy securities directly from corporations, typically in an initial public offering, while secondary markets allow holders of securities to sell them to other investors for cash. On the other hand, private placement is used by companies to raise funding through selling securities privately, usually to a small number of chosen

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46 See Will Kenton, Security, INVESTOPEDIA (Mar. 20, 2021), archived at https://perma.cc/NY2N-JMY8 (explaining the three main types of securities). There are other types of securities, such as certificate securities, which are “those represented in physical, paper form.” Id. Another type is bearer securities that “are negotiable and entitle the shareholder to the rights under the security” and are “transferred from investor to investor.” Id. Registered securities “bear the name of the holder and other necessary details maintained in a register by the issuer” and are “undivided, meaning the entire issue makes up one single asset[.]” Id. There are also letter securities, which “are not registered with the SEC and cannot be sold publicly in the marketplace.” Id. In addition, there are cabinet securities, but these types are not actively traded. Id.
48 See id. (explaining the differences between primary markets and secondary markets).

For the primary market to thrive, there must be a secondary market, or aftermarket that provides liquidity for the investment security—where holders of securities can sell them to other investors for cash. Otherwise, few people would purchase primary issues, and, thus, companies and governments would be restricted in raising equity capital (money) for their operations.

Id.
investors. Although there are different markets for purchasing securities, all sales of securities are regulated.

Security regulation in the US began because states started individually adopting legislation to regulate the sale of securities. In the 1916 case *Hall v. Geiger-Jones Co.*, the Supreme Court upheld individual states power to regulate the offer, sale, and purchase of securities in their state. Known as Blue Sky Laws, these laws gave states power to regulate securities sold in their states before federal security law was enacted. Although the Blue Sky Laws differed from state to state, they provided oversight of the sale process and created liability for fraudulent sales in two ways. First, states required

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49 See id. (explaining how securities are sold in a private placement). Since privately placed securities are not publicly traded, these securities cannot be as easily sold on the secondary market. Id.

50 See Kenton, supra note 46 (explaining securities regulation on the federal level).


52 See Hall v. Geiger-Jones Co., 242 U.S. 539, 550 (1917) (holding that Ohio had the power to regulate securities). The court reasoned that “the law is a regulation of business . . . the purpose being to protect the public against the imposition of unsubstantial schemes and the securities based upon them.” Id. See generally Blue Sky Law, supra note 51 (explaining the evolution of Blue Sky laws).

53 See Blue Sky Law, supra note 51 (explaining why Blue Sky laws were being developed by states). “Blue sky laws developed in the frenzied years leading up to the Great Depression, in response to fact that more and more ordinary investors were losing money in highly speculative or fraudulent schemes promising high investment returns, such as oil fields and exotic investments in foreign countries.” Id. See also Hall, 242 U.S. at 550 (explaining where the term Blue Sky law came from).

The name that is given to the law indicates the evil at which it is aimed; that is, to use the language of a cited case, ‘speculative schemes which have no more basis than so many feet of ‘Blue Sky’; or, as stated by counsel in another case, ‘to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations.

Id.

54 See Blue Sky Law, supra note 51 (highlighting the two common characteristics that most state security laws share). Blue Sky Laws provide for oversight of the sales process and create liability for fraudulent sales in two ways. Id. First, state laws require securities to be registered if they were to be offered or sold within the state. Id. In addition, issuers selling their own securities and brokers must be registered and licensed by the state. Id. “Second, [B]lue [S]ky laws have antifraud provisions that create liability for any fraudulent statements or failure to disclose information as required.” Id. Acts or statements that can be the basis of a fraud claim depends on each state’s own law. Id.
registration of securities that would be sold within the state, unless it qualified for a special exemption.\textsuperscript{55} Second, Blue Sky Laws included antifraud provisions, which created liability for failure to disclose required information or making fraudulent statements.\textsuperscript{56} Blue Sky laws allowed people to confidently invest knowing they would be protected against fraud.\textsuperscript{57} Since Blue Sky laws varied state by state, selling securities became complex for companies, leading to the creation of federal security laws.\textsuperscript{58}

In the wake of the stock market crash of 1929 and the ensuing calamity in financial market over the next several years, Congress enacted the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”).\textsuperscript{59} The Securities Act and Exchange Act allow for private causes of action where investors may recover for fraud and certain violations of the registration and

\textsuperscript{55} See Blue Sky Law, supra note 51 (explaining the registration process for selling securities in a state). “[B]rokerage firms, issuers selling their own securities, and individual brokers must be registered with and licensed by the state[.]” Id. This registration process is designed to prevent fraudulent transactions by allowing states to review securities offerings and ensure the offerings in the securities markets are qualified and regulated by the state. Id.

\textsuperscript{56} See id. (explaining how states utilize antifraud provisions). The statements and acts that can be the basis of a fraud claim depends on a state’s statutes and case law. Id. In addition, the ability to bring action and the remedies available to investors bringing private suits varies from state to state. Id. See also The Role of Disclosure in a Securities Offering, WASH. STATE DEP’T FIN. INST. (Jan. 25, 2022), archived at https://perma.cc/9U8U-GNLR [hereinafter Role of Disclosure] (analyzing the benefits and reasons for required disclosures in the sale of securities).

\textsuperscript{57} See Blue Sky Laws, supra note 51 (highlighting the benefits of state securities laws). Blue Sky laws protect individuals from fraudulent or overly speculative investments by imposing standards for offering and selling securities. Id.

\textsuperscript{58} See id. (highlighting the issues created by securities being regulated on a state by state basis). “Given the size of many companies and brokerage firms and the fact that most wish to sell securities in multiple states, the Blue Sky laws make transactions more difficult because companies must comply with the law of each state where they sell or offer securities.” Id.

disclosure processes that federal securities laws mandate. The Exchange Act also created the Securities and Exchange Commission (“SEC”), a federal agency to regulate the securities industry. Then in 1946, in a U.S. Supreme Court case, the Howey Test was created. The Howey Test was created in order to determine whether certain transactions qualify as investment contracts, which would classify those transactions as securities subject to the Securities Act and Exchange Act. Under the Howey Test, there is an investment contract if: (1) a person invests his money (2) in a common enterprise and (3) is led to expect profits (4) solely from the efforts of the promoter or a third party. Despite new federal securities laws, states still have their individual Blue Sky laws. The main difference between state laws and federal laws are the kinds of products and transactions covered by the laws, the registration requirements for brokers, dealers and issuers, and the breadth of action available under anti-fraud provisions.

60 See Securities History, supra note 59 (explaining the goals of the Securities Act and the Exchange Act). See also Securities Act of 1933 history, CORNELL L. SCH. (Oct. 24, 2021), archived at https://perma.cc/6ZFW-P36H [hereinafter Securities Act 1933] (explaining the required disclosures under this law). “The Securities Act effectuates disclosure through a mandatory registration process in any sale of any securities.” Id. In addition, SEC enforcement actions are the main way to enforce federal securities laws, but also allows individual investors to bring civil actions. Id. 61 See Securities History, supra note 59 (explaining the creation of the SEC). The SEC has power to promulgate rules pursuant to the federal securities acts, and to enforce federal law and its own rules. Id. “Under the Exchange Act, the SEC has the authority to register, regulate and discipline broker-dealers, regulate the securities exchanges, and review actions of the securities exchanges' self-regulatory organizations[.]” Id. 62 See Sec. & Exch. Comm’n v. W.J. Howey Co., 328 U.S. 293, 298–99 (1946) (creating the Howey test for investment products). 63 See id. (determining whether a transaction qualifies as an investment contract and therefore would be considered a security and subject to disclosure and registration requirements under the Securities Act and the Exchange Act). 64 See id. (outlining the criteria for the Howey Test). “[A]n investment contract for purposes of the Securities Act means a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party[.]” Id. 65 See id. at 298 (highlighting that Blue Sky laws still exist even with the creation of federal securities laws). 66 See JOSEPH C. LONG, MICHAEL J. KAUFMAN, & JOHN M. WUNDERLICH, BLUE SKY LAW § 1:41 (2022) (showing where federal laws and state laws differ). The six major differences are: “(1) regulatory philosophies; (2) registration requirements in the
1. SEC Regulation of Cryptocurrency

With the creation and rise of cryptocurrency, the federal government has been navigating the best, and possible ways, to regulate cryptocurrencies. One way the federal government has found success is regulating utility tokens as securities. On July 25, 2017, the SEC released the DAO report, finding that the DAO and Slock.it UG (“Slock.it”) may have violated federal securities laws. After an investigation by the SEC due to a security breach of Slock.it, the SEC determined that utility tokens should be categorized as securities under federal securities law and therefore, Slock.it would be selling unregistered securities in the form of DAO tokens. The heart of the SEC’s conclusion that the utility tokens at issue were securities rested on an application of the well-known Howey Test for an investment contract. According to the SEC, Howey’s first element, the investment of money, was met because investors in the DAO used

secondary market; (3) treatment of offers and sales; (4) who may register securities; (5) antifraud coverage in the secondary market; and (6) practical focus of the acts.”

Id.

67 See PRESIDENT’S WORKING GRP. FIN. MKTS., REPORT ON STABLECOINS 16 (2021) (addressing the risks posed by stablecoins). To address the risks associated with stablecoins, Congress should act promptly to ensure that payment stablecoins are subject to appropriate federal prudential oversight. Id.

68 See SEC. & EXCH. COMM’N, REPORT OF INVESTIGATION PURSUANT TO SECTION 21(A) OF THE SECURITIES EXCHANGE OF 1934: THE DAO 1 (2017) (explaining that utility tokens are securities under the Securities Act of 1933).

69 See id. at 1–2 (investigating the DAO’s selling of utility tokens). The Commission deemed it was in the public’s interest to issue this report in order to advise those who raise capital using distributed ledgers or blockchains must comply with federal securities laws. Id.

70 See id. at 1 (analyzing the SEC’s jurisdiction over utility tokens). “Based on the investigation, and under the facts presented, the Commission has determined that DAO tokens are securities under the Securities Act of 1933 (‘Securities Act’) and the Securities Exchange Act of 1934 (‘Exchange Act’).” Id.

71 See id. at 11 (analyzing DAO tokens under the Howey test). See SEC. & EXCH. COMM’N, REPORT OF INVESTIGATION PURSUANT TO SECTION 21(A) OF THE SECURITIES EXCHANGE OF 1934: THE DAO 11 (2017) (recognizing that “[a]n investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”).
ether to make their investments.\textsuperscript{72} The second and third requirements, in a common enterprise with the expectation of profit, were met because investors sent ether to the DAO’s blockchain for DAO tokens and were paid profits that derived from dividends, other periodic payments, or the increased value of the investment.\textsuperscript{73} The final requirement, to be derived from the effort of others, was met through the reliance of investors on the managerial efforts and expertise of the DAO’s founders.\textsuperscript{74} Therefore, companies offering utility tokens must register these offerings as securities as they fall under the Security Exchange Act.\textsuperscript{75}

\textbf{C. Commodity Regulation in the United States}

A commodity is a basic good used in commerce that is interchangeable with other goods of the same type.\textsuperscript{76} Traditional

\footnotesize
\textsuperscript{72} See id. (explaining how the first requirement under the \textit{Howey} test is met). Although ether is not money in the form of cash, the court is \textit{SEC v. Shavers} held that an investment of Bitcoin, a virtual currency, meets the first prong of the \textit{Howey} test. \textit{Id.}

\textsuperscript{73} See \textit{id.} at 11–12 (explaining how the second and third requirements under the \textit{Howey} test are met). “Investors who purchased DAO Tokens were investing in a common enterprise and reasonably expected to earn profits[,]” \textit{Id.} at 11. A reasonable investor would have been motivated by the prospect of profits on their investment of ether in the DAO. \textit{Id.} at 12.

\textsuperscript{74} See \textit{SEC \& EXCH. COMM’N, REPORT OF INVESTIGATION PURSUANT TO SECTION 21(A) OF THE SECURITIES EXCHANGE OF 1934: THE DAO 12 (2017)} (highlighting the investors’ reliance on the managerial and entrepreneurial efforts of Slock.it and its co-founders). This reliance fulfilled the requirement of to be derived from the effort of others. \textit{Id.}

\textsuperscript{75} See \textit{id.} at 16 (concluding that “[t]he DAO, an unincorporated organization, was an issuer of securities”). The DAO was responsible for the enterprise and therefore, investors needed information that was material to their investment decision. \textit{Id.}


The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, \textit{Solanum tuberosum} (Irish potatoes), wool, wool tops, fats and oils...cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by section 13–1 of this title) and motion picture box
examples of commodities include gold, grains, beef, oil and gas, and now include certain financial products, such as currencies and indexes. Commodity markets rely heavily on derivative securities, such as futures contracts and forward contracts, allowing buyers and sellers to easily transact without needing to exchange the physical commodity itself. Many buyers and sellers of commodity derivatives trade based on price speculation of the underlying commodity for purposes such as hedging risk and protection against inflation.

1. CFTC Regulation of Cryptocurrency

In 1936, the Commodity Exchange Act ("CEA") was passed, establishing the statutory framework for the Commodity Futures Trading Commission ("CFTC"). The purpose of the CFTC is to serve the public interests through a system of effective self-regulation of trading facilities, clearing systems, market participants and market office receipts..., and all services, rights, and interests...in which contracts for future delivery are presently or in the future dealt in. Id.

77 See Futures and Commodities, FINRA (Jan. 10, 2023), archived at https://perma.cc/TP4C-CSUJ (highlighting the inclusion of the financial products into the definition of commodity).

78 See id. (explaining how commodities are bought and sold). Commodities can be purchased through direct investment, which involves taking immediate delivery of or physically holding the commodity. Id. This is less common among retail investors because of the logistics involved in the transportation and storage of physical commodities. Id.

79 See id. (explaining common ways to purchase commodities). Commercial enterprises that depend on commodities for their business activities trade commodity futures often. Id.

80 See Futures and Commodities, supra note 77 (diversifying a portfolio with commodities can help offer protection against inflation, but commodity prices can be highly volatile).

professionals. The goal of these regulations is deter and prevent price manipulation, to ensure financial integrity of all transactions and the avoidance of systemic risk, protect market participants from fraudulent or abusive sales practices, and to promote responsible innovation and fair competition.

Originally created to regulate futures trading in the agricultural sector, the CFTC’s role has expanded as the futures industry has become more varied and complex. With the expansion of the CFTC’s jurisdiction, the CFTC has been found to have jurisdiction over accounts, agreements and transactions involving swaps or contracts of sale of a commodity for future delivery. Falling under this jurisdiction, the Court in *CFTC v. McDonnell* held that virtual currencies, specifically Bitcoin, can be regulated by the CFTC as a commodity. Under the ECA, the CFTC’s jurisdiction is “implicated when a virtual currency is used in a derivatives contract, or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.” The CEA grants CFTC authority over certain categories of derivatives, with the jurisdiction depending, in part, on whether the derivative or other transaction involves a

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82 See Commodity Exchange Act, 7 U.S.C. § 5 (2000) (defining the purpose of the CEA and CFTC). The purpose of this chapter is to serve the public interests involved in interstate and international commerce through a system of self-regulating trading facilities, clearing systems, market participants and market professionals under the oversight of the CFTC. *Id.*

83 See *id.* (highlighting the goals of the CEA and the CFTC).

84 See *The Commission*, CFTC (Mar. 22, 2022), archived at https://perma.cc/955J-YVBK (explaining the history of the CFTC). Futures contracts for agricultural commodities have been traded for more than 150 years in the US and have fallen under federal regulation beginning in the 1920s. *Id.*

85 See *CFTC v. McDonnell*, 287 F. Supp. 3d 213, 223 (E.D.N.Y 2018) (explaining the enforcement power of the CFTC). All commodities traded as a future must be traded on a commodity exchange that is approved by the CFTC. *Id.*

86 See *id.* at 226 (noting that Bitcoin is a commodity and therefore, falls under CFTC regulation). The CFTC can exercise its regulatory powers over fraud related to virtual currencies that are sold in interstate commerce. *Id.*

87 See U.S. COMMODITY FUTURES TRADING COMM’N, BITCOIN BASICS (explaining how Bitcoin falls under CFTC jurisdiction). See also *McDonnell*, 287 F. Supp. 3d at 217 (explaining how a virtual currency falls under the CEA). “A ‘commodity’ encompasses virtual currency both in economic function and in the language of the statute.” *Id.* The CFTC will have jurisdiction when a virtual currency is used in a derivatives contract, or if there is manipulation or fraud involving a virtual currency traded in interstate commerce. *Id.* at 242.
commodity, or there is fraud or manipulation in interstate commerce.\textsuperscript{88} In a settled enforcement action, the CFTC sanction and imposed civil penalties on Tether for making untrue or misleading statements and omissions of material fact regarding reserves backing outstanding stablecoins.\textsuperscript{89} Although stablecoins are not commodities, the CFTC has regulatory oversight over fraud or manipulation involving a virtual currency traded in interstate commerce, allowing for the CFTC to prevent fraud in the case of Tether.\textsuperscript{90}

\textit{D. State Regulation of Money Transmitters}

In addition to state securities laws, states regulate and license money transmitters.\textsuperscript{91} A money transmitter is a range of nonbank financial institutions that provide money transmission services, prepaid and other payment instruments, currency exchanges and check cashing.\textsuperscript{92} Money transmitters have three main functions: (1)
receiving and sending money on behalf of consumers; (2) providing products that receive, store, or send money for consumers; and, (3) providing an exchange for currencies.\textsuperscript{93} States typically require money transmitters to: apply for licensure and license renewal; have a minimum net worth; have security backing the company’s financial position; submit to regulatory and examination requirements; and, in some cases, allow for reciprocity between states with similar legal frameworks.\textsuperscript{94} Although money transmitter laws differ across states, the main goals of these regulations are to ensure safety, soundness and solvency of the applicant.\textsuperscript{95} Western Union, MoneyGram, and PayPal are three well known examples of money transmitters, and there are thousands more of smaller money transmitters throughout the country used by people daily.\textsuperscript{96} In addition to these well-known money transmitters, stablecoins have been classified as money transmitters in certain states, leading to state regulation of stablecoins.\textsuperscript{97}

\textit{(Merchant Payment Processor), FIN. CRIME ENF’T NETWORK (Nov. 19, 2003) (defining money transmitter).}

The definition of money transmitter for purposes of BSA regulations found at 31 CFR 103.11(uu)(5) includes: (A) [a]ny person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or (B) [a]ny other person engaged as a business in the transfer of funds.

\textit{Id.}

\textsuperscript{93} See Scott, \textit{supra} note 92, at 1 (explaining the three main purposes of money transmitter). Unlike traditional banks or financial institutions, money transmitters do not accept deposits or make loans but provide alternative mechanisms for people to make payments or obtain money. \textit{Id.}

\textsuperscript{94} See \textit{id.} (outlining the shared characteristics of state money transmitter laws).

\textsuperscript{95} See \textit{What Does It Mean to Have Money Transmitter Licenses?, PAYONEER (Apr. 3, 2022), archived at https://perma.cc/CP58-YEFH [hereinafter Money Transmitter Licenses]} (providing an overview of money transmitters laws across states). State money transmitter licensing laws address the safety and integrity of the payments system and provide protection to consumers and companies. \textit{Id.}

\textsuperscript{96} See Scott, \textit{supra} note 92, at 1 (highlighting well known money transmitters in the US). Money transmitters are used by Americans to pay bills, send funds to friends or families, and purchase items online. \textit{Id.}

\textsuperscript{97} See Gault-Brown & Fleisher, \textit{supra} note 91 (explaining the approaches states have begun to take in regulating stablecoins under state laws).
III. Facts

A. What Are Stablecoins?

There are two main types of stablecoins: algorithmic coins and collateral backed coins. Algorithmic stablecoins derive their value through an algorithm that determines the price of stablecoins by increasing or decreasing the supply of stablecoins available to the public based on the demand, thus stabilizing the price of the cryptocurrency. This approach relies on monetary supply policy dynamics, instead of collateral backing, but has not seen much success in the actual implementation in stablecoins. The other type of stablecoin, collateral backed coins, peg their value to an external asset,
which is then held as collateral backing for the value of the coin. These stablecoins can be backed by a fiat currency, such as the US dollar, or valuable commodities like gold and other precious metals. Pegging the value of the stablecoin to the value of an external asset serves to stabilize it price.

Although Bitcoin is one of the most popular cryptocurrencies, one of the issues investors face is Bitcoin’s extreme volatility. Bitcoin’s volatility can hurt investors who hold Bitcoin over long periods of time, so stablecoins were created in order to protect investors by decreasing volatility. By pegging the stablecoin to an asset, such as the USD, investors can have the confidence that the value of their coin will not change within a few minutes or even after months. Not only does reduced volatility help protect investors’

101 See Gault-Brown & Fleisher, supra note 91 (defining collateral backed stablecoins). Collateral-backed stablecoins are the more common variety of stablecoin currently in use. Id.

102 See id. (explaining the different collateral that can be used to back stablecoin). Some of the most well-known collateral backed stablecoins are Tether, USD Coin, Binance USD, Ture USD and Paxos Standard. Id. “All of these stablecoins are pegged to the U.S. dollar at a one-to-one ratio.” Id.

103 See Complete Guide, supra note 3 (explaining the benefits of stablecoins being backed by collateral). “A stablecoin is especially useful for users that need a more stable and trustworthy virtual currency that will allow them to enter and exit volatile cryptocurrency market cost-effectively and without the need to convert their assets back to a fiat currency.” Id.

104 See Izak Fritz, What are Stablecoins and Why are they Necessary?, BLOCKCHAIN BEACH (Aug. 27, 2018), archived at https://perma.cc/S2VD-YAJY (noting that cryptocurrencies are volatile). Since the price of Bitcoin and other cryptocurrencies are always changing, it makes them difficult to use as a medium of exchange. Id. This amount of fluctuation is fine if the cryptocurrency is being used as a speculative investment, but as a medium of exchange, this volatility proves to be difficult. Id. See also Complete Guide, supra note 3 (highlighting an extreme example of volatile cryptocurrencies). In 2010, a programmer bought two pizzas for 10,000 Bitcoin, which was worth less than $30. Id. Those Bitcoins are now worth $98 million. Id.

105 See Fritz, supra note 104 (explaining the need for stablecoins). Stablecoins attempt to solve the problem of volatility by pegging its value to some other asset in order to keep its value constant. Id. Stablecoins are able to provide the convenience and speed of using other cryptocurrencies without the volatility. Id.

106 See James Royal, What are stablecoins and why invest in them?, BANKRATE (Oct. 12, 2021), archived at https://perma.cc/8WH3-D5VM (explaining the benefits of pegging a cryptocurrency to a commodity). “This structure stands in contrast to most cryptocurrencies, such as Bitcoin and Ethereum, which are backed by nothing at all.” Id. “Unlike stablecoins, . . . [Bitcoin and Ethereum] fluctuate greatly, as speculators
interests, but it also allows for stablecoins to be utilized as a trading protection tool and a solution for cross-border payments.107

Stablecoins’ reduced volatility has led to the use of it as a trading protection tool.108 Originally used as a way to buy cryptocurrencies, stablecoins are now being used to protect investors when cryptocurrencies, such as Bitcoin, become volatile.109 Stablecoins allow users to enter and exit volatile cryptocurrency markets by converting their cryptocurrency into stablecoins and waiting until the user wants to purchase cryptocurrencies at an optimal price.110 Although users could always enter and exit cryptocurrency markets with fiat currency, stablecoins allow users to enter and exit markets easier and more efficiently because it allows consumers to circumvent traditional banks.111

push their prices up and down as they trade for profits.” Id. See also Fritz, supra note 104 (explaining how stablecoins were created to solve the volatility problem of cryptocurrencies). “Stablecoins attempt to solve this problem by pegging its value to some other asset in order to keep its value constant.” Id. 107 See Complete Guide, supra note 3 (highlighting the use of stablecoin as a trading protection tool). Stablecoins offer investors a lifeline when cryptocurrency markets become too volatile. Id. See also Legal Examiner Staffer, supra note 43 (explaining the many uses and benefits for stablecoins). Stablecoins provide the benefits of cryptocurrencies, including quick transaction times, low transaction fees, cross-border functionality, decentralization, an immutable ledger for transparency, and access to all. Id. Many people also see stablecoins as an alternative option for storing assets, especially in countries experiencing hyperinflation or political instability. Id. 108 See Complete Guide, supra note 3 (highlighting the trading protection use of stablecoins). Stablecoins offer investors and traders a lifeline when markets become too volatile. Id. See also Legal Examiner Staffer, supra note 43 (noting stablecoins can be used to protect against inflation). 109 See McKeon, supra note 5 (explaining the original use for stablecoins). Stablecoins were primarily used to buy other cryptocurrencies when they first were created because many cryptocurrency exchanges did not have access to traditional banking. Id. See also Ben McKenzie & Jacob Silverman, Untethered, SLATE (Oct. 19, 2021), archived at https://perma.cc/RT4W-DJHW (discussing the usefulness of the stablecoins in cryptocurrency exchanges).

110 See Complete Guide, supra note 3 (explaining the original use for stablecoins). A stablecoin is very useful for investors that need a more stable and trustworthy virtual currency that will allow them to enter and exit volatile cryptocurrency markets cost-effectively and without a need to be converting their crypto assets into fiat currency. Id. 111 See McKeon, supra note 5 (explaining the benefits of stablecoins when buying other cryptocurrency). Since many cryptocurrency exchanges did not have access to traditional banking, stablecoins’ primary use was to buy other cryptocurrencies. Id.
In addition to a trading protection tool and shield from volatility, stablecoins are increasingly being viewed as a solution for more efficient cross-border payments and money transmissions.\footnote{112} Cross-border payments are transactions where the payee and the transaction recipient are in different countries or jurisdictions.\footnote{113} Traditionally, cross-border payments involve a customer paying a merchant through a correspondent bank and a respondent bank.\footnote{114} This process can be costly and time-consuming, as the merchant must navigate the different laws of the territories, deal with multiple banks and their fees, and typically wait two to five business days for the payment to clear.\footnote{115} Unlike traditional bank transfers, stablecoins are

\begin{quote}
See also Complete Guide, supra note 3 (highlighting the original utilization of stablecoin). A stablecoin is useful for investors who need a stable and trustworthy virtual currency that will allow them to enter and exit cryptocurrency markets without the need to convert their assets back to a fiat currency. \textit{Id.} See also Royal, \textit{supra} note 106 (highlighting stablecoins ability to act as a currency). Stablecoins’ stability allows them to be used as a functional currency within a crypto brokerage. \textit{Id.} Traders can convert Bitcoin into a stablecoin, such as Tether, rather than into dollars, and since stablecoins are available 24/7, they are more accessible than cash obtained through the banking system. \textit{Id.}
\end{quote}

\begin{quote}
\textit{See Complete Guide, supra note 3 (highlighting the increased use of stablecoins in cross-border payments). “Multi-national corporations like JP Morgan and Wells Fargo increasingly view stablecoins as a lucrative new solution to settle cross-border payments.” Id.}
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\textit{See Darius Ghassemian, The Total Guide to Cross-Border Payments, TIPALTI (Nov. 15, 2021), archived at https://perma.cc/UPC6-XT5H (defining cross-border payments). “A cross-border payment is a transaction between banks, financial institutions, businesses or individuals operating in different countries that may or may not share a border.” Id. “Cross-border payments are expected to reach $26.2 trillion worldwide in 2022, up from $25.4 trillion in 2021.” Id.}
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\textit{See \textit{How does Cross-Border Payments work?}, EBANX (Nov. 15, 2021), archived at https://perma.cc/N4FK-MJ82 [hereinafter EBANX] (explaining how cross-border payments operate). “When a purchase is made, a 'correspondent bank,' or the entity requesting the money, speaks with the 'respondent bank,' which represents the entity buying something.” Id.}
\end{quote}

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\textit{See \textit{id.} (breaking down cross-border payments).}
Throughout the major cities of the world, each bank has a counterpart in another city. So funds will first leave the buyer’s bank and go to the bank’s counterpart in the merchant’s country to prepare for remittance. The merchant’s bank will then receive the remitted funds, and they will be settled into the merchant’s account. These banks often work with others to transfer the money, which often involves more than four banking locations dealing with one another, navigating currencies, varying taxes, and transaction fees.
\end{quote}

\begin{quote}
\textit{Id.}
\end{quote}
freely transferable, allowing for people to send and receive stablecoins almost instantly through the blockchain, bypassing the middleman and avoiding costly bank fees typically required when sending payments.\footnote{See Complete Guide, supra note 3 (highlighting the benefits of stablecoins when used as an intermediary for payments). Transactions with digital assets are more efficient, faster, and cheaper than current solutions involving fiat currency. \textit{Id}. In addition, transactions that require intermediary financial institutions can be costly and delay the process a few days. \textit{Id}. See also McKeon, supra note 5 (noting the benefits of stablecoins when utilized for cross-border payments). Stablecoins are more useful than country-issued currencies because you can use them 24 hours a day, seven days a week, and anywhere in the world without relying on a bank for money transfers. \textit{Id}.}

\textbf{B. State Regulation of Stablecoins Through Money Transmission Laws}

Since cryptocurrency is a value that can be received, held, and transmitted, some states have utilized money transmission laws to regulate stablecoins directly.\footnote{See Gault-Brown & Fleisher, supra note 91 (highlighting steps taken by states to regulate stablecoins). Every U.S. jurisdiction, with one exception, regulates nonbank money transmission licensing under jurisdiction-specific licensing regimes. \textit{Id}. See Gregory Lisa, \textit{FinCEN Director says stablecoins are “money transmission services” and so covered by its rules}, \textit{Hogan Lovells} (Nov. 22, 2019), archived at https://perma.cc/FV3Z-9J47 (defining money transmission services and the applicability to stablecoins). \textit{See The Fintech War Between the States and the OCC is Redefining What it Means to be a Bank in the United States}, \textit{Seward & Kissel LLP} (Oct. 15, 2020), archived at https://perma.cc/4FLC-CS4U [hereinafter \textit{Fintech War}] (analyzing the overlapping jurisdiction between the federal government and states over regulation over financial technology).} State money transmission licensing laws generally define activity that can be regulated very broadly to include receiving money for transmission or receiving money or monetary value for transmission.\footnote{See Gault-Brown & Fleisher, supra note 91 (noting how states define regulated activity under money transmission licensing laws). State transmission licensing laws typically define regulated activity broadly in order to include “receiving money for transmission” or “receiving money or monetary value for transmission.” \textit{Id}. Activity including selling or issuing stored value or prepaid access is also defined under state money transmission activity. \textit{Id}.} Statutory definition of “money” and “monetary value” differ among states’ money transmission laws,
allowing for some states to regulate stablecoins while others cannot.\textsuperscript{119} In general, states seem to be taking four different approaches: (1) states expressly regulating virtual currency activity as money transmission; (2) states expressly confirming that virtual currency activity is not money transmission, but related movement of fiat currency and may be subject to regulation; (3) states with broad exclusions for virtual currency activity from money transmission regulation; and (4) states taking a wait-and-see approach.\textsuperscript{120}

Some states, such as Georgia, North Carolina, and Rhode Island, have chosen to expressly regulate virtual currency activity as a money transmission.\textsuperscript{121} Under these states’ money transmission

\textsuperscript{119} See Matthew Koehn & Carlton Fields, \textit{State Regulations on Virtual Currency and Blockchain Technology}, JD SUPRA (July 15, 2020), archived at https://perma.cc/8V3D-PXKW (explaining state regulation of cryptocurrencies). “[S]tates have issued guidance, opinion letters, or other information from their financial regulatory agencies regarding whether virtual currencies are “money” under existing state rules, while other States have enacted piecemeal legislation amending existing definitions to either specifically include or exclude digital currencies from the definition.” \textit{Id. See Scott, supra} note 92, at 2–3 (explaining how regulation differs among states). 49 states have legal frameworks for MSBs and therefore require companies that operate in multiple states to have a license in each state. \textit{Id. at 2}. Each state’s regulatory framework is different, but there are similarities. \textit{Id. States usually have some combination of the following requirements for money transmitters: Initial Application for Licensure and License Renewal, Minimum Net Worth, Reciprocity, Security, and Examinations. \textit{Id. at 2–3}. See Paul H. Kupiec, \textit{Should stablecoins be regulated like banks, exchange-traded funds, or both?}, \textit{The Hill} (Dec. 7, 2021), archived at https://perma.cc/3VKX-Q6XW (arguing for federal regulation of stablecoins as banks).

\textsuperscript{120} See Gault-Brown & Fleisher, \textit{supra} note 91 (explaining the four main approaches to regulating stablecoins under money transmission laws). \textit{See generally Money Transmitter License By State, Shipkevich} (Nov. 19, 2021), archived at https://perma.cc/R23K-28CR (explaining money transmitter licenses for each state and if its applicable to cryptocurrency).

\textsuperscript{121} See Gault-Brown & Fleisher, \textit{supra} note 91 (explaining some states expressly regulate virtual activity). \textit{See GA. CODE ANN. \S 7-1-680(13) (2020)} (defining terms under Georgia laws in relation to money transmission licenses).

“Money transmission,” “transmit money,” or “transmission of money” means engaging in the business of receiving money or monetary value for transmission or transmitting money or monetary value within the United States or to locations abroad by any and all means, including, but not limited to, an order, wire, facsimile, or electronic transfer.

\textit{Id. See N.C. GEN. STAT. \S 53-208.24(13)} (defining money transmission).

To engage in the business of any of the following: . . . Receiving money or monetary value for transmission or holding funds incidental to
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licensing laws, receiving, storing, and transmitting virtual currency is the same as receiving, storing, and transmitting fiat currency. Therefore, these states can directly regulate stablecoins and require cryptocurrency firms to disclose specific information to residents in order to help prevent fraud, money laundering, and help protect investors.  

Other states, such as Maryland and Texas, have taken a different approach to regulation, issuing statements that virtual currency does not meet the definition of money or monetary value under money transmission statutes. However, regulators have transmission with the United States or to locations abroad by any and all means, including payment instrument, stored value, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes.  

Id. “This includes maintaining control of virtual currency on behalf of others.” Id. See R.I. GEN. LAWS § 19-14-1(4)(ii) (defining money transmission). “Receiving money or monetary value for transmission or holding funds incidental to transmission within the United States or to locations abroad by any and all means, including payment instrument, stored value, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes.” Id. “This includes maintaining control of virtual currency or transactions in virtual currency on behalf of others.” Id. See Jessica Keenum, Rhode Island Requires License for Virtual Currency Business Activity, ALSTON & BIRD (Aug. 5, 2019), archived at https://perma.cc/8YZP-6UG4 (explaining the requirements in Rhode Island for virtual business activity).

122 See Gault-Brown & Fleisher, supra note 91 (regulating stablecoins the same as receiving, storing and transmitting fiat currency).

123 See Kathryn L. Ryan & Christopher Robins, Navigating state money-transmission laws, C-SUITE FIN. SERVS. REV., Nov. 28, 2018, at 23 (explaining state licensing regimes). Once a company determines that it requires a license, it must navigate the application process and requirements, such as net worth requirements, surety-bond premiums and developing internal controls such as anti-money laundering controls and cybersecurity programs. Id. at 24. See Monsur Hussain, Stablecoins Could Pose New Short-Term Credit Market Risks, FITCHRATINGS (July 1, 2021), archived at https://perma.cc/9PPB-SA5D (analyzing the backing of cryptocurrencies). “Fewer risks are posed by coins that are fully backed by safe, highly liquid assets . . . .” Id. “Whereas stablecoins that use fractional reserves or adopt higher-risk asset allocation may face a greater run risk.” Id. See Sohale Andrus Mortazavi, Cryptocurrency is a Giant ponzi Scheme, JACOBIN (Jan. 21, 2022) archived at https://perma.cc/FL4S-E4TV (analyzing the impact of a stablecoin run on consumer and financial markets).

124 See Gault-Brown & Fleisher, supra note 91 (defining virtual currency does not meet the definition of money or monetary value under some state statutes). See ILL. DEP’T FIN. & PROF. REGUL., DIGITAL CURRENCY REGULATION GUIDANCE (2017) (defining the characteristics of digital currency). “A digital currency, by nature of its properties, is distinct from money.” Id. See MD. COMM’R FIN. REGUL., VIRTUAL
indicated that where virtual currency services involve the transfer of fiat currency, such activities could be regulated under money transmission laws. Therefore, a stablecoin could fall under regulation if it is backed by the USD.

In contrast, some states, including Wyoming and New Hampshire, have amended their money transmission laws in order to exclude specific cryptocurrency activity from regulation. Other

CURRENCIES: RISKS FOR BUYING, SELLING, TRANSACTING, AND INVESTING (2014) (explaining Maryland does not regulate virtual currency). Any company that offers to exchange, administer, or maintain virtual currencies may be subject to state regulation, but Maryland does not regulate virtual currencies. Id. See also Supervisory Memorandum from Charles G. Cooper, Banking Comm’n, Tx Dep’t of Banking, to All Virtual Currency Companies Operating or Desiring to Operate in Texas (Apr. 1, 2019) (explaining virtual currency does not fall under Texas Finance Code). Since neither centralized virtual currencies nor cryptocurrencies are coin and paper issued by the government of a country, they cannot be considered currencies under the statute. Id.

See Supervisory Memorandum, supra note 124 (noting stablecoins may be regulated as money in Texas). Since a sovereign-backed stablecoin may be considered money or monetary value under the Money Services Act, receiving it in exchange for a promise to make it available at a later time or different location may be money transmission. Id. Licensing will depend on whether the stablecoin provides the holder with a redemption right for sovereign currency, thus creating a claim that can be converted into money or monetary value. Id. See Evan Abrams, A Regulatory Fork for Stablecoins: Is New Texas Guidance a Sign of Things to Come?, STEPTOE (Feb. 5, 2019) archived at https://perma.cc/S2TL-RZ5A (highlighting the approach by Texas to regulate stablecoins). “Texas, [as well as other states,] have taken the position that their money transmitter laws apply only to fiat currency and not cryptocurrency.” Id.

See Abrams, supra note 125 (analyzing current laws in Texas regarding stablecoins). Under Texas Finance Code, stablecoins that are (1) backed by fiat currency and (2) issued with a redemption right to convert the stablecoin into fiat currency at a future date are considered “money or monetary value” and may be subject to money transmitter licensure requirements under state law. Id.

See WYO. STAT. ANN. § 40-22-104(a)(vi) (2021) (exempting virtual currency from regulation). “This act shall not apply to: . . . (vi) Buying, selling, issuing, or taking custody of payment instruments in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States by any means.” Id. See N.H. REV. STAT. ANN. § 399-G:3(VI-a) (2017) (exempting virtual currency from money transmitter laws). “The provisions of this chapter shall not apply to: . . . VI-a. Persons who engage in the business of selling or issuing payment instruments or stored value solely in the form of convertible virtual currency or receive convertible virtual currency for transmission to another location.” Id. See also New Hampshire Money Transmitter Laws, SHIPKEVICH (Feb. 7, 2023), archived at https://perma.cc/E8QG-TJGQ (explaining New Hampshire
states, such as Pennsylvania and North Dakota, have issued guidance’s stating that cryptocurrency would not be subject to regulation as money transmission even if fiat currency is involved in the exchange.\textsuperscript{128} Finally, California, is taking a unique approach by not making a decision to regulate cryptocurrencies yet.\textsuperscript{129} California’s Department of Financial Protection and Innovation has stated that the department has not determined whether cryptocurrencies constitutes a form of money or if a business engaged in the purchase and selling of cryptocurrencies would fall under money transmission laws.\textsuperscript{130} Although states have all taken different approaches to regulation, it is clear many states agree that some type of regulation of stablecoins is needed.\textsuperscript{131}
C. State Regulation of Stablecoin Through Blue Sky Laws

While the Federal Government is determining how to classify stablecoins, some states have regulated stablecoins indirectly pursuant to their Blue Sky Laws. For example, Texas and New Jersey have both pursued regulation, pursuant to Blue Sky laws, of Celsius Network (“Celsius”). Celsius is a cryptocurrency platform that allows users to take loans, make payments and receive interest on account holdings on crypto assets, which includes stablecoins. On

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132 See PRESIDENT’S WORKING GRP. ET AL., REPORT ON STABLECOINS 14–15 (2021) (reporting on regulatory developments and proposals for stablecoins). Currently, stablecoin arrangements are not subject to a consistent set of federal regulatory standards that address the risks of stablecoins. Id. at 14. “[A] consistent and comprehensive regulatory framework is needed both to increase transparency into key aspects of stablecoin arrangements and to ensure that stablecoins function in both normal times and in stressed market conditions.” Id. at 15. See Elise Hansen, States Flag Celsius’ Interest-Earning Crypto Accounts, LAW360 (Sept. 17, 2021), archived at https://perma.cc/CPH6-XYQE (highlighting state action taken to regulate cryptocurrency products). The New Jersey Bureau of Securities issued a cease-and-desist order against Celsius Network LLC for selling unregistered securities in the form of interest-earning crypto-asset accounts. Id. “The Texas State Securities Board called Celsius in for a February hearing in which the regulator says it will seek an order requiring Celsius to stop violating state securities laws.” Id. See generally Blue Sky Law, supra note 51 (explaining how Blue Sky Laws regulate securities at the state level). See Christopher Rugaber, Treasury report calls for stricter oversight of stablecoins, WPRI.COM12 (Nov. 1, 2021), archived at https://perma.cc/G5CK-B8AX (discussing the need for regulation of stablecoins and the steps the federal government could take). See generally QUINN EMANUEL UROQHART & SULLIVAN, ARE STABLECOINS SECURITIES? I (2022) [hereinafter ARE STABLECOINS SECURITIES?] (analyzing if securities laws are applicable to stablecoins).

133 See Hansen, supra note 132 (highlighting Texas and New Jersey’s pursuit of regulation for stablecoins). The Texas State Securities Board notified Celsius in May 2021 that is might be offering securities out of compliance. Id. The New Jersey Bureau of Securities issued a cease-and-desist order against Celsius Network LLC for selling unregistered securities in the form of interest-earning crypto-asset accounts. Id.

134 See Alex Mashinsky, What Is the Celsius Network?, CRYPTOPEDIA (Mar. 22, 2021), archived at https://perma.cc/WU8T-G3AW (explaining that “[t]he Celsius Network is a financial technology . . . platform that offers interest-bearing savings accounts, borrowing, and payments with digital and fiat assets.”). The Celsius is a blockchain integrated financial technology platform that provides access to financial services, including lending, yield creation, and payments solutions. Id. “Celsius’s earning network allows users to stake their cryptocurrency for borrowing and earn
September 17, 2021, the Texas State Securities Board filed for a hearing to impose a cease and desist against Celsius for not offering securities licensed at the state or federal level. On the same day, the New Jersey Board of Securities announced they issued a cease and desist alleging that Celsius funded its cryptocurrency lending operation and proprietary trading at least in part through the sale of unregistered securities in violation of state law. Both state regulators said the accounts are investment products and therefore fall under state security laws.

In addition to Celsius, BlockFi, another interest-paying crypto firm, has also faced regulation in New Jersey, Kentucky, Texas, interest in return.” Id. The platform accepts more than 35 tokens, including stablecoins like Tether, Gemini Dollar, and Dai. Id.

135 See Notice of Hr’g at 2-4, Texas State Securities Board v. Celsius Network, Inc., (2021) (No. 312-22-0160) (notifying Celsius of an administrative hearing for alleged securities law violations). Celsius provides consumer fiat and stablecoin loans secured by cryptocurrency deposits. Id. “Respondents are, in part, illegally funding their lending operations, proprietary trading, and other revenue generating activities through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts.” Id. “Investors open accounts by transferring eligible cryptocurrency to the Celsius Network to invest in Celsius Earn Interest-Bearing Accounts. Investors relinquish control over their cryptocurrency and the Celsius Network takes full legal and beneficial ownership of the investors’ cryptocurrency.” Id.

136 See New Jersey Bureau of Securities Orders Cryptocurrency Firm Celsius to Halt the Offer and Sale of Unregistered Interest-Bearing Investments, STATE N.J., DEP’T L. & PUB. SAFETY (Sept. 17, 2021), archived at https://perma.cc/UT9C-PZ44 [hereinafter New Jersey Order Against Celsius] (ordering Celsius to stop offering and selling unregistered interest-bearing investments). “Celsius and similar companies are not regulated by New Jersey or the federal government like traditional banks and brokerage firms, and investors’ losses are not insured against or protected by the Securities Investor Protection Corporation or the Federal Deposit Insurance Corporation.” Id. In addition, due to the volatility of the cryptocurrency market and the lack of regulatory oversight, investors face a heightened risk of loss on these platforms. Id.

137 See id. (explaining why New Jersey is pursuing regulation of Celsius). If a company sells securities in New Jersey, the company must comply with New Jersey’s investor protection laws. Id. Companies involved in cryptocurrencies are not immune from oversight. Id. See generally N.J. STAT. ANN. § 49:2-1 (West 1997) (explaining the state security laws of New Jersey). See Notice of Hr’g at 2–4, Texas State Securities Board v. Celsius Network, Inc., (2021) (No. 312-22-0160) (outlining the reason for Texas regulating Celsius). “The mere fact an investment is tied to a cryptocurrency, blockchain technology, or some type of digital asset does not remove it from securities regulation if it constitutes an investment contract, note, evidence of indebtedness, or other type of security.” Id.
Alabama, and New Hampshire under securities laws.\textsuperscript{138} Since BlockFi offers annual interest rates of more than 7\% on accounts holding cryptocurrency, including stablecoins, regulators argue that these are unregistered securities that need to be regulated.\textsuperscript{139} New Jersey’s state securities regulator gave BlockFi the ability to either stop offering their accounts or register them in the state as securities.\textsuperscript{140} Similarly, Kentucky brought action against BlockFi as a security, going into effect immediately.\textsuperscript{141} Although states have shown success in their

\textsuperscript{138} See Observer Content Studio, BlockFi Review: Does BlockFi Work? Is It Legit or Too Risky?, OBSERVER (Mar. 7, 2021), archived at https://perma.cc/TT5A-LFBS (explaining the risks and benefits associated with BlockFi). BlockFi is a bank-like platform that allows users to deposit cryptocurrency and earn interest, spend their crypto, and buy or sell crypto. \textit{Id.} See Damien Fisher, Crypto Bank Pulls NH Application, Cites State Regulation, N.H. J. (Sept. 20, 2021), archived at https://perma.cc/V8ZT-6GWE (noting New Hampshire is beginning to regulate BlockFi). Parties trading cryptocurrency among themselves do not need to worry about New Hampshire becoming involved. \textit{Id.} However, if cryptocurrency is pegged to fiat currency, the state must get involved. \textit{Id.} See also Joe Light, Crypto Accounts Yielding 7\% Spur Scrutiny as States Warn of Risk, BLOOMBERG (Sept. 2, 2021), archived at https://perma.cc/8JUV-WAK3 (examining the trend of states to start regulating BlockFi). Five state securities regulators in July 2021 brought actions against BlockFi, ordering it to provide more information on its accounts, or in the New Jersey and Kentucky cases, to stop offering some products in the state. \textit{Id.} State regulators say some interest-bearing crypto accounts with billions of dollars in deposits appear to be unregistered securities that do not disclose their risks to investors. \textit{Id.}

\textsuperscript{139} See Light, supra note 138 (highlighting the high interest rates on stablecoins). Some crypto firms are offering annual interest rates of more than 7\% on stablecoins backed by the US dollar, when the national average interest rate for savings accounts is 0.06\%. \textit{Id.} State regulators say the accounts look similar to securities that need to be registered at the state or federal level and without federal insurance, investors could lose their money if the crypto firms cannot make good on those deposits. \textit{Id.} Also, regulators argue that crypto firms are not doing enough to warn of the risks that investors could lose their principal. \textit{Id.}

\textsuperscript{140} See New Jersey Bureau of Securities Orders Cryptocurrency Company ‘BlockFi’ to Stop Offering Interest-Bearing Accounts, N.J. DIV. OF CONSUMER AFFS. (July 21, 2021), archived at https://perma.cc/7KKR-U6WK [hereinafter New Jersey BlockFi Order] (stating that BlockFi must stop selling unregistered securities in the form of interest-earning cryptocurrency accounts). “BlockFi already does not offer its interest-bearing accounts to residents in New York and certain other jurisdictions, presumably because of the laws in those jurisdictions.” \textit{Id.} See ARE STABLECOINS SECURITIES, supra note 132 (analyzing if stablecoins meets the definition of a security).

\textsuperscript{141} See Patrick Thompson, Kentucky’s cease and desist order to BlockFi, COINGEEK (Aug. 2, 2021), archived at https://perma.cc/2C54-XFR2 (ordering BlockFi to stop selling unregistered securities in Kentucky). A recent investigation found BlockFi
ability to indirectly regulate stablecoins in interest-bearing crypto accounts through Blue Sky laws, direct regulation of stablecoins is needed.142

IV. Analysis

A. Are Stablecoins Actually a Risk?

As the popularity of stablecoins increases, as well as the number and types of stablecoins, regulation is needed to protect consumers and cryptocurrency markets.143 One of the main risks regulation must address are stablecoin runs.144 In order for stablecoins to maintain their value against fiat currency, stablecoins, such as Tether, offer that the stablecoin is redeemable for fiat currency upon request.145 However, without proper regulation, it is unclear whether Tether actually has a 1:1 backing with respect to the dollar value to which it is pegged.146 In a recent settled action, the New York Attorney General found that the operators of the Bitifnexus trading is offering securities in the form of investment contract in relation to the deposit of virtual currencies with the company. Id.

142 See Gault-Brown & Fleisher, supra note 91 (explaining states have regulated stablecoins under Blue Sky Laws and money transmitter laws).

143 See PRESIDENT’S WORKING GRP. FIN. MKTS., REP. ON STABLECOINS 1–2 (2021) (highlighting the risks posed by unregulated stablecoins). Stablecoins and stablecoin-related activities, such as speculative digital asset trading, present risks related to market integrity and investor protection. Id. Market integrity and investor protection risks encompasses possible fraud and misconduct in digital asset trading, including market manipulation, insider trading, front running and lack of trading or price transparency. Id.

144 See id. at 12 (explaining the threat of a stablecoin run). To address risks to stablecoin users and against runs, legislation should require stablecoin issues to be insured depository institutions. Id.

145 See McKeon, supra note 5 (explaining how stablecoins derive their value). The majority of stablecoins in circulation currently use the dollar as their benchmark asset, but many others are pegged to currencies, such as the euro or yen. Id. See Lopatto, supra note 42 (highlighting the issues surrounding Tether). Stablecoins’ name reflects the idea that these cryptocurrencies are less volatile than others, such as Ethereum or Bitcoin, since stablecoins are pegged to other assets. Id.

146 See Lopatto, supra note 42 (highlighting the lack of transparency cryptocurrency companies have due to lack of regulations). Stablecoins are currently not subject to any standard disclosures regarding the assets that back them. Id.
platform, who also control Tether, covered up a $850 million loss of co-mingled client and corporate funds.\textsuperscript{147} In addition, the investigation revealed Tether had cash and cash equivalents of about $2.1 billion, backing only about 74 percent of current Tether coins at the time.\textsuperscript{148} However, Tether maintains each stablecoin is adequately backed, even as the amount of Tether coins in circulation has grown from 1.9 billion in January 2019 to 78 billion in January 2022.\textsuperscript{149} The absence of specific reserve requirements for stablecoins could set the stage for a stablecoin run.\textsuperscript{150}

A stablecoin run would be harmful both for consumers and financial markets.\textsuperscript{151} A majority of Bitcoin trades, 70 percent by volume, are conducted using Tether, rather than using fiat currency; the entire system relies on the premise that Tether has a 1:1 backing so

\textsuperscript{147} See id. (highlighting the facts of the settlement agreement reached between the Attorney General’s office and Tether).
\textsuperscript{148} See id. (analyzing the controversy surrounding Tether’s backing). On August 9th, 2021, Tether released an attestation about its reserves in order to reassure users that the more popular stablecoin is adequately backed. \textit{Id.} However, Tether’s lawyer admitted Tether was only 74 percent backed by cash and cash equivalents. \textit{Id.} See \textit{iFinex Settlement, supra} note 42, at 1 (outlining the terms of the settlement agreement between the Office of the Attorney General of New York and iFinex Inc. and Tether). Tether’s inability to conduct significant banking activity between June 1, 2017 and September 15, 2017 meant that Tether did not have sufficient backing for the new Tether coins that had entered the market. \textit{Id.} at 4. Until September 15, 2017, Tether backed approximately 442 million Tether coins in circulation with about $61 million at the Bank of Montreal. \textit{Id.} After the investigation, the Attorney General determined that the Bitfinex trading platform, who also controls Tether, engaged in a cover up to hide the apparent loss of $850 million dollars of co-mingled client and corporate funds. \textit{Id.} at 9.
\textsuperscript{149} See Lopatto, \textit{supra} note 42 (highlighting Tether’s stance that every Tether coin is adequately backed). Tether released a statement, saying “[e]very tether is always 100% backed by our reserves, which include traditional currency and cash equivalents and . . . may include other assets and receivables from loans made by Tether to third parties.” \textit{Id.}
\textsuperscript{150} See Hussain, \textit{supra} note 123 (analyzing the backing of cryptocurrencies). “Fewer risks are posed by coins that are fully backed by safe, highly liquid assets . . .” \textit{Id.} “Whereas stablecoins that use fractional reserves or adopt higher-risk asset allocation may face a greater run risk.” \textit{Id.}
\textsuperscript{151} See Mortazavi, \textit{supra} note 123 (analyzing the impact of a stablecoin run on consumer and financial markets). The entire cryptocurrency system relies on traders actually being able to exchange Tether coins for real dollars or other cryptocurrencies. \textit{Id.} If Tether’s value were to collapse, this would almost certainly cause a liquidity crisis on banked exchanges, as investors rush to cash out their crypto anywhere possible. \textit{Id.}
it can be exchanged for fiat currency or other cryptocurrencies.\footnote{See id. (explaining the issues of cryptocurrencies based on the current system). “The majority of Bitcoin trades are now conducted in Tether, about 70 percent by volume.” Id. “By comparison, only 8 percent of trade volume is conducted in real dollars, with the remainder being other crypto-to-crypto pairs.” Id.} If the price of Tether were to collapse, and Tether is not adequately backed, investors would not be able to cash out.\footnote{See Mortazavi, supra note 123 (explaining how a run would occur). “Should the market lose faith in Tether and exchanges become unwilling or unable to exchange them one for one with dollars or another cryptocurrency, Tether accepts no obligation to use whatever reserves they may or may not have to buy back Tether coins.” Id.} This would have a rippling effect across crypto markets, as investors with cryptocurrencies would not be able to cash out since they rely on converting their cryptocurrency to stablecoins in order to obtain fiat currency.\footnote{See id. (highlighting potential detrimental scenarios to the cryptocurrency market). If Tether’s backing to the dollar collapses, this would be a doomsday scenario for crypto markets, with investors holding or trading crypto assets on unbanked exchanges unable to cash out. Id. Unbanked cryptocurrencies cannot be sold only be traded for other cryptocurrencies so in order to redeem the token for its value, it must be first converted to a stablecoin or another cryptocurrency that is banked. Id.} In addition, it would most likely cause a liquidity crisis on crypto exchanges with investors rushing to cash out due to falling crypto prices.\footnote{See McKenzie & Silverman, supra note 109 (examining the effects of a run on Tether). If the price of Tether were to collapse or face major regulatory changes, market liquidity could dry up, resulting in major losses for a lot of people. Id.} Banks cannot process high volumes of exchanges as quickly as stablecoins, so many investors would be left waiting to cash out amid collapsing prices across crypto markets, including Bitcoin, due to its dependency on Tether.\footnote{See id. (analyzing what a run on Tether would result in). “Should Tether collapse under the weight of regulation, criminal investigation, or a bank run, it would be a major blow to the crypto industry and retail investors.” Id. “Imagine if you were at a blackjack table and the dealer suddenly announced that your chips were worth 50 percent less–or nothing at all.” Id.}

**B. State Regulation of Stablecoins as Money Transmitters**

Although states have found success regulating indirectly stablecoins under Blue Sky laws, states should regulate stablecoins as

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\textsuperscript{152} See id. (explaining the issues of cryptocurrencies based on the current system). “The majority of Bitcoin trades are now conducted in Tether, about 70 percent by volume.” Id. “By comparison, only 8 percent of trade volume is conducted in real dollars, with the remainder being other crypto-to-crypto pairs.” Id.

\textsuperscript{153} See Mortazavi, supra note 123 (explaining how a run would occur). “Should the market lose faith in Tether and exchanges become unwilling or unable to exchange them one for one with dollars or another cryptocurrency, Tether accepts no obligation to use whatever reserves they may or may not have to buy back Tether coins.” Id.

\textsuperscript{154} See id. (highlighting potential detrimental scenarios to the cryptocurrency market). If Tether’s backing to the dollar collapses, this would be a doomsday scenario for crypto markets, with investors holding or trading crypto assets on unbanked exchanges unable to cash out. Id. Unbanked cryptocurrencies cannot be sold only be traded for other cryptocurrencies so in order to redeem the token for its value, it must be first converted to a stablecoin or another cryptocurrency that is banked. Id.

\textsuperscript{155} See McKenzie & Silverman, supra note 109 (examining the effects of a run on Tether). If the price of Tether were to collapse or face major regulatory changes, market liquidity could dry up, resulting in major losses for a lot of people. Id.

\textsuperscript{156} See id. (analyzing what a run on Tether would result in). “Should Tether collapse under the weight of regulation, criminal investigation, or a bank run, it would be a major blow to the crypto industry and retail investors.” Id. “Imagine if you were at a blackjack table and the dealer suddenly announced that your chips were worth 50 percent less–or nothing at all.” Id.
money transmitters.157 Money transmitter laws may differ by state, but state money transmission licensing laws generally define activity that can be regulated very broadly to include receiving money for transmission or receiving money or monetary value for transmission.158 Stablecoins fit under this definition much better than they do under the Howey Test, since any type of stablecoin can be viewed as receiving money or monetary value for transmission.159 Rhode Island, for example, has sought to enforce regulation of stablecoins as money transmitters, rather than as a security.160 By regulating stablecoins as a money transmitter, Rhode Island is able to enforce reserve requirements, insurance of deposits, and periodic examinations of the company’s records.161 Having a reserve requirement helps mitigate the chances of a run because money transmitters are required to carry insurance on deposits, allowing owners of cryptocurrencies to have confidence that their coins are redeemable for cash in case of a stablecoin failure.162 In addition,

157 See Gault-Brown & Fleisher, supra note 91 (analyzing approaches states have taken in regulating cryptocurrency with money transmission laws as one approach).
158 See id. (defining money transmission licensing laws and how stablecoins can fall within this definition).
159 See id. (highlighting the broad definition of money transmitters). Since stablecoins can be deemed a virtual currency under state money transmission laws or be deemed to constitute money or monetary value in the absence of an expressly limiting definition, activities involving stablecoins can be subject to regulation as money transmission in many states. Id. See ARE STABLECOINS SECURITIES, supra note 132, at 2 (analyzing the potential issue for stablecoins being classified under the Howey test). “The third prong in the Howey test—whether an individual is led to expect profits—is one of the most discussed and is where stablecoins are more likely to diverge from other cryptocurrencies.” Id.
160 See Keenum, supra note 121 (explaining the requirements in Rhode Island for virtual business activity). “Currency transmission explicitly includes maintaining control of virtual currency or transactions in virtual currency on behalf of others.” Id. (internal quotations omitted). In the bill, virtual currency means “a digital representation of value that: (A) is used as a medium of exchange, unit of account, or store of value; and (B) is not legal tender, whether or not denominated in legal tender.” Id.
161 See id. (analyzing Rhode Island’s approach to regulating stablecoins). The bill requires licensees engaging in virtual currency business activities to provide specified disclosures to residents and must create and maintain certain compliance programs, such as business continuity and disaster recovery programs, anti-money laundering programs, and information and operational security programs. Id.
162 See Bank Run, supra note 59 (analyzing measures and regulations that help prevent bank runs). In response to the turmoil of the 1930s, the government took
money transmission laws allow states to protect investors against the main risks of stablecoins, which is lack of adequate backing and fraud.\textsuperscript{163} Therefore, investors can have the confidence that stablecoins will maintain their value and that they can redeem their stablecoin at any time for cash.\textsuperscript{164} Without these regulations, investors are not only investing blindly, but companies’ behaviors are not being monitored and may take unreasonable risks with investors’ money without repercussions.\textsuperscript{165}

Money transmitters laws may be the best approach for regulation of stablecoins by state, but there are still some drawbacks.\textsuperscript{166} Since money transmission license requirements vary by state, some states have chosen to not include stablecoins under their definition.\textsuperscript{167} Therefore, stablecoins in these states will go unregulated unless they are offered in interest-bearing crypto accounts and fall under state securities laws or the states find another way for regulation.\textsuperscript{168} While

\begin{itemize}
\item many steps to diminish the risk of bank runs, which included establishing reserve requirements. \textit{Id.} In addition, Congress established the FDIC, the agency which insures bank deposits. \textit{Id.}
\item See \textsc{President’s Working Grp. Fin. Mkts., Rep. on Stablecoins} 1 (2021) (highlighting the main risks for investors of stablecoins). \textsay{“These market integrity and investor risks encompass possible fraud and misconduct in digital asset trading, including market manipulation, insider trading, and front running, as well as a lack of trading or price transparency.”} \textit{Id.}
\item See \textit{id.} at 12 (explaining the need for user confidence in stablecoin). There must be confidence in an instrument’s ability to be a reliable means of payment or store of value in periods of stress in order for people to rely on it as currency. \textit{Id.}
\item See \textit{Rugaber, supra} note 132 (discussing the need for regulation of stablecoins and the steps the federal government could take). The primary concern with stablecoins is that if they are not stable, a large number of holders may decide to redeem their stablecoins for dollars and create a run on a specific stablecoin. \textit{Id.}
\item Banks, securities exchanges, and investment funds all have extensive regulations to protect customers and avoid market collapses, unlike stablecoins. \textit{Id.}
\item See \textit{Fintech War, supra} note 117 (analyzing the overlapping jurisdiction between the federal government and states over regulation over financial technology). Money transmitters are licensed and regulated solely by the states and are subject to minimal capital standards and less rigorous examination than at the federal level. \textit{Id.}
\item See \textit{Gault-Brown & Fleisher, supra} note 91 (sharing the measures taken by states to regulate stablecoins). Wyoming and New Hampshire are two states that have amended their money transmission laws to exclude certain virtual currency from regulation. \textit{Id.} Pennsylvania and North Dakota have also issued guidance indicating that virtual currency activity would not be subject to regulation as money transmission even if fiat currency is also handled to facilitate the virtual currency exchange. \textit{Id.}
\item See \textit{id.} (examining the current state of stablecoin regulation in the United States).
\end{itemize}
some states have chosen to regulate stablecoins as money transmitters, other states have declared that stablecoins are not money transmitters but could be regulated as money transmitters due to the involvement of fiat currency.\textsuperscript{169} For example, Texas, issued a guidance stating that stablecoins that are backed by fiat currency and issued with a redemption right to convert the stablecoin into fiat currency are considered “money or monetary value” under the Texas Finance code and therefore, may be subject to money transmitter licensing requirements.\textsuperscript{170} These requirements help protect investors by having net worth requirements and cyber security requirements.\textsuperscript{171} Although these requirements only apply to very specific stablecoins and are not as rigorous as other states, this regulation is a step in the right direction.\textsuperscript{172} Completely unregulated stablecoins pose a great risk to investors and the financial system, so Texas requiring some oversight of stablecoins can help prevent runs, as well as the cybersecurity

\textsuperscript{169} See id. (analyzing states that have chosen to regulate stablecoins due to the involvement of fiat currency instead of deeming stablecoins money transmitters). The Texas Department of Banking reasoned that a stablecoin that is “pegged to sovereign currency may be considered a claim that can be converted into currency and therefore is subject to regulation as money transmission because the issuer has taken on the obligation to provide sovereign currency in exchange for the stablecoin at a later time.” Id.

\textsuperscript{170} See Supervisory Memorandum, supra note 124 (announcing how stablecoins will regulated in Texas). “Money transmission licensing determinations regarding transactions with cryptocurrency and sovereign-backed stablecoins turn on the single question of whether either should be considered money or monetary value under the Money Services Act.” Id. “Stablecoins that are pegged to sovereign currency may be considered a claim that can be converted into currency and thus fall under the definition of money or monetary value under Finance Code § 151.301(b)(3).” Id.

\textsuperscript{171} See id. (explaining the requirements of a money transmitter license). Since “a money transmitter conducting virtual currency transactions conducts business through the Internet, the minimum net worth requirement under Finance Code § 151.307 is $500,000.” Id. In addition, “license applicants who handle virtual currencies in the course of their money transmission activities must submit current third-party security assessment of their relevant computer systems.” Id. The creation of cryptocurrencies has created new risks for consumers, so companies must be assessed for network security, website and application security, application server security, virtual currency wallet infrastructure security and controls, information security policy assessment, and application development controls and policy assessment. Supervisory Memorandum, supra note 124.

\textsuperscript{172} See Abrams, supra note 125 (discussing the new regulatory measures taken by Texas). This guidance by Texas is one of the first times a state regulator has explicitly addressed stablecoins. Id. “It remains to be seen whether other states with fiat-only money transmitter regimes will move to regulate fiat-backed stablecoins.” Id.
requirements can help protect investors from losing money due to a cyber-attack.  

Due to the variation of money transmitter laws between states, companies offering stablecoins may face difficulties operating across the country. One solution would be to create a set of uniform money transmitter laws across all states for the regulation of stablecoins. State lawmakers have attempted multiple times in creating a set of uniform money transmitters laws known, one being the Uniform Money Services Act (“USMA”) and the other being Vision 2020 by the Conference of State Bank Supervisors (“CSBS”). The goal of both was to create a sound framework for money transmitters that states could adopt, allowing for uniformity for money transmitters operating within these states. With states defining money transmitters differently, this would provide a uniform definition of terms and regulations allowing nonbanking financial institutions clarity when operating across states. For example, Vision 2020 is a series of initiatives to modernize state regulation of nonbank financial institutions focusing on protecting consumers, enabling barriers to entry for bad actors, and facilitating coordination among state agencies. Although these attempts have not been met with much success, creating uniform laws across states for stablecoin based

173 See Supervisory Memorandum, supra note 124 (highlighting the security requirements for cryptocurrencies that meet Texas’s standard for money transmitters). Pursuant to Finance Conde §151.203(a)(3), license applicants who handle virtual currencies in the course of their money transmission activities must submit a third-party security assessment of their relevant computer systems. Id.

174 See SCOTT, supra note 92, at 2 (analyzing how money transmitter laws vary by state). Each state’s regulatory framework is unique, but there are usually similar requirements that money transmitters must meet in each state. Id.

175 See id. at 4 (outlining attempts to unify money transmitter laws across states). There have been attempts to harmonize money transmitter laws in the absence of federal regulatory framework. Id.

176 See id. (highlighting attempts to unify state money transmitter laws). The Uniform Law Commission attempted to create unified laws under the USMA. Id. The CSBS created Vision 2020 in hopes of unifying state money transmitter laws. Id.

177 See SCOTT, supra note 92, at 4 (highlighting the shared goals of both conferences).

178 See id. at 4–5 (creating uniform definitions across states). The model law would provide a standard definition for key terms. Id.

179 See Scott, supra note 92, at 4. (highlighting the goals of Vision 2020). “Vision 2020 spans a range of industries and policy issues, including financial technology (fintech) and money transmitter supervision topics.” Id.
on current state regulations of stablecoins would allow for greater ease for stablecoin issuers while also protecting investors.\textsuperscript{180}

\textbf{C. Regulation of Stablecoin Under State Securities Law}

The federal government has discussed stablecoin regulation but has not determined how to classify stablecoins, or which government agencies should be charged with regulating stablecoins, leaving stablecoins currently unregulated.\textsuperscript{181} However, one action taken by states throughout the country has been regulating stablecoins through Blue Sky laws.\textsuperscript{182} By classifying stablecoins sold through interest-bearing crypto accounts as investment products, states, such as New Jersey and Texas, have been able to gain jurisdiction over stablecoins through security laws.\textsuperscript{183} New Jersey sanctioned Celsius because investors did not receive information about the investment strategies used by Celsius, the creditworthiness of counterparts Celsius does business with, and the use of leverage or other risky investment

\textsuperscript{180} See \textit{id.} at 4–5. (examining how a uniform framework would help money transmitters across states). Numerous efforts have taken aim at harmonizing state money transmitter laws in order to help nonbank financial institutions, such as money transmitters, operate with clarity. \textit{id} at 4.

\textsuperscript{181} See Gault-Brown & Fleisher, \textit{supra} note 91 (analyzing stablecoin regulation in the United States). Due to the unique characteristics of stablecoins, and virtual currencies generally, stablecoins are potentially exposed to the concurrent and potentially overlapping jurisdictions of regulators in the US. \textit{id}. See also \textit{PRESIDENT’S WORKING GRP. FIN. MKTS., REP. ON STABLECOINS} 2 (2021) (discussing potential federal regulation of stablecoins in the US). It is not clear what sort of regulatory framework would make the most sense for stablecoins. \textit{id}. There have been suggestions for bank regulations and mandatory FDIC insurance, while others have advocated for a securities-focused framework where stablecoins are regulated as securities. \textit{id}.

\textsuperscript{182} See Hansen, \textit{supra} note 132 (highlighting state action taken to regulate cryptocurrency products). The New Jersey Bureau of Securities issued a cease-and-desist order against Celsius Network LLC for selling unregistered securities in the form of interest-earning crypto-asset accounts. \textit{id}. The Texas State Securities Board called Celsius in for a February 2022 hearing in which the regulator says it will seek an order requiring Celsius to stop violating state securities laws. \textit{id}. See generally \textit{Blue Sky Law, supra} note 51 (explaining how Blue Sky Laws regulate securities at the state level).

\textsuperscript{183} See \textit{New Jersey Order Against Celsius, supra} note 136 (ordering Celsius to stop offering the sale of unregistered interest-bearing investments).
strategies by Celsius.\textsuperscript{184} Without regulations, investors were blindly investing due to the lack of sufficient information available.\textsuperscript{185}

By registering interest-bearing crypto accounts, which include stablecoins, investors are better protected and can make fully informed decisions.\textsuperscript{186} Although security laws differ among states, each state requires a disclosure document, allowing for investors to be educated and understand the risks before they invest.\textsuperscript{187} For example, under New Jersey state security laws, companies offering securities are required to provide prospective investors with information, such as evidence that the issuer is authorized to do business within the State; the terms and conditions of the securities being offered and any outstanding securities of the company, the minimum and maximum amount of securities; a discussion of significant factors that make the offering speculative or risky; and financial statements, including a balance sheet, income statement, cash flow statement, and capitalization of issuer.\textsuperscript{188} These disclosures, which are common among other states, would help inform investors of the risks they face when investing in stablecoins, such as which coins are banked, which coins are adequately backed and which coins are more volatile than

\textsuperscript{184} See \textit{id.} (explaining the risks unregistered securities pose to investors). “Unregistered securities offerings pose particular risks to investors because the issuers do not make the same types of disclosures, including, for example, providing detailed financial statements that typically accompany registered offerings.” \textit{Id.}

\textsuperscript{185} See \textit{id.} (explaining the role of security laws in New Jersey). “Celsius and similar companies are not regulated by New Jersey or the federal government like traditional banks and brokerage firms, and investors losses are not insured against or protected by the Securities Investor Protection Corporation or the Federal Deposit Insurance Corporation.” \textit{Id.} In addition, due to the volatility of the cryptocurrency market and the lack of regulatory oversight, there platforms present a heightened risk of loss to investors. \textit{Id.}

\textsuperscript{186} See \textit{Role of Disclosure, supra note 56} (analyzing the benefits and reasons for required disclosures in the sale of securities). All information which is material to help a reasonable person make an informed investment decision must be disclosed. \textit{Id.} Certain key areas of disclosure include risks of the investment; the company and its organization; use of the proceeds from the sale of securities; terms of the offering; financial information; and any legal proceedings. \textit{Id.}

\textsuperscript{187} See \textit{id.} (explaining federal and state security laws). “[F]ederal and state laws require companies conducting a securities offering to tell each potential investor all material information about the company, its principals, and the investment opportunity (including the risks of the investment) that a reasonable person would want to know in order to make an informed investment decision.” \textit{Id.}

\textsuperscript{188} See \textit{N.J. STAT ANN.} \textsection 49:3–77 (explaining the information that must be provided to prospective investors).
By making this information public, investors can be more confident and help prevent investors from losing money due to unknown, risky investments.189

Although securities laws would help protect investors, classifying all types of stablecoins as securities poses issues.190 Under the Howey test, there is an investment contract if: (1) a person invests his money (2) in a common enterprise and (3) is led to expect profits (4) solely from the efforts of the promoter or a third party.191 Stablecoins meet the requirements of the first, second and fourth prongs of this test, but the third prong is up for debate.192 Stablecoins that are backed by fiat currency maintain a stable value, so there would not be an expectation of profits unless the stablecoin is offered on a platform like Celsius.193 However, if a stablecoin is backed by an asset, such as gold, and the value of the underlying asset increases,

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189 See Mortazavi, supra note 123 (highlighting the differences among cryptocurrencies when investors want to leave the market). Tether relied on investor’s ability to exchange Tether coins for real cash or other traditional cryptocurrencies that can be sold for cash on banked exchanges, such as Coinbase or Gemini. Id. Other coins, which are unbanked, do not allow investors to cash out because there was no cash backing to begin with. Id.

190 See Role of Disclosure, supra note 56 (explaining the need for disclosures). Investors generally do not have the ability to examine all of a company’s plants, equipment, contracts, books, records or interview key personnel. Id. For investors to be informed about the risks of the investment, securities laws require the company tell each prospective purchaser all material information about the company. Id.

191 See ARE STABLECOINS SECURITIES, supra note 132, at 2 (analyzing the challenges of classifying stablecoins as a security).

192 See id. at 1–2 (examining if stablecoins fall within the Howey test). See generally Sec. & Exch. Comm’n v. W.J. Howey Co., 329 U.S. 293, 301 (1946) (creating the Howey test for investment products).

193 See ARE STABLECOINS SECURITIES, supra note 132, at 2 (analyzing if stablecoins fall under the category of securities). The increased prominence of stablecoins has led to the question of whether stablecoins satisfy the U.S. Supreme Court’s test in SEC v. W.J. Howey Co. Id.

194 See id. at 1–2 (analyzing the four prongs of the Howey test and if stablecoins fall under these). “[S]tablecoins pegged to assets other than fiat . . . may be analyzed to assess whether potential growth in the value of the underlying asset is sufficient evidence of an expectation of profit . . . ” Id. See Mashinsky, supra note 134 (explaining how Celsius users earn a profit on cryptocurrencies). “Celsius’s earning network allows users to stake their cryptocurrency for borrowing and earn interest in return.” Id. The platform accepts more than 35 tokens, including stablecoins like USDT. Id.
there could potentially be a profit for the stablecoin holder. It has not determined if this would be an expectation of profits under the Howey test, so asset backed stablecoins are currently not considered investment contracts. Therefore, since stablecoins do not always meet the definition of a security, they should fall under money transmitter regulation.

With uniform money transmitter laws, states and federal agencies could have concurrent jurisdiction over stablecoins. States that currently regulate stablecoins must also adhere to concurrent fraud jurisdiction exercised at the federal level by the CFTC. CFTC jurisdiction is implicated when there is fraud or deceit involved in the issuing of stablecoin, so states and the CFTC already share regulation of stablecoins. With certain states requiring insurance on deposits, cyber security requirements, and disclosure of material information, states could effectively regulate stablecoins with the CFTC becoming implicated where stablecoin issuers have violated antifraud laws.

195 See ARE STABLECOINS SECURITIES, supra note 132, at 1 (analyzing if asset backed stablecoins meet the definition of an investment contract). Stablecoins pegged to assets other than fiat currency can be analyzed to determine whether potential growth in the underlying asset is sufficient to show an expectation of profit. Id at 2.

196 See id. (highlighting the regulatory issues stablecoins create). Stablecoin issues must take notice of the regulatory trends for digital assets and adapt to the shifting rationales that separate securities and non-securities. Id.

197 See Lisa, supra note 117 (defining money transmission services and the applicability to stablecoins). Kenneth A. Blanco, director of the U.S. Financial Crimes Enforcement Network said that stablecoins are covered under the definition of money transmission services. Id.

198 See De, supra note 131 (highlighting the federal government’s interest in regulating stablecoin). This hearing brings legislation another step closer to regulating virtual currency, specifically stablecoins. Id.

199 See U.S. COMMODITY FUTURES TRADING COMM’N, supra note 90 (explaining the CFTC’s role in regulating cryptocurrency). The CFTC has jurisdiction over a virtual currency when it is used in a derivatives contract or there is fraud or manipulation involving virtual currency in interstate commerce. Id.

200 See id. (explaining when the CFTC’s jurisdiction is implicated by virtual currencies). Beyond instances of fraud or manipulations, the CFTC does not usually oversee cash market exchanges and transactions involving virtual currencies. Id.

201 See Ryan & Robins, supra note 123 (explaining state licensing regimes). Once a company determines that it requires a license, it must navigate the application process and requirements, such as net worth requirements, surety bond premiums and developing internal controls such as anti-money laundering controls and cybersecurity programs. Id.
V. Conclusion

As stablecoins become more widely accepted and used, it is evident that regulation is needed. Without regulation, it is not clear that stablecoins, such as Tether, are adequately backed or insured. This not only increases the risks investors in stablecoins face, but also increases systemic risk across crypto markets and financial institutions. States have begun to protect investors by establishing regulations through state securities laws or money transmitter laws, but these laws are not uniform. Therefore, not all investors are protected by state laws and stablecoin issuers must comply with an array of regulations across states. States have found success indirectly regulating stablecoins in interest-bearing crypto accounts under Blue Sky laws, but this approach is limited as fiat-backed stablecoins do not fit the definition of a security. Instead, states who have defined stablecoins as money transmitters have had the most success regulating stablecoins directly. Therefore, all states should classify stablecoins as money transmitters so states can regulate stablecoins directly, while still regulating interest-bearing crypto accounts under Blue Sky laws. With state regulation, investors can have confidence in the value of stablecoins and the cryptocurrency market as a whole.