



Legal Memo

Board of Directors, Minted, Inc.

Exhaustive Regulatory Analysis of the Minted Dual-State Token Architecture Under United States Federal Securities Laws

1. Introduction & Scope of Analysis

This memorandum presents an exhaustive legal analysis of the proposed technology platform and associated business operations of Minted, Inc. ("Minted"). Minted provides a comprehensive software-as-a-service ("SaaS") infrastructure that enables third-party client issuers ("Issuers") to launch and manage their own dual-state digital tokens. The primary objective is to evaluate whether Minted's role as a platform provider and its proposed compensation model would require it to register as a "broker" or "dealer" under the Securities Exchange Act of 1934.

The methodology employed herein involves a meticulous application of controlling statutes, judicial precedent from federal courts, and formal and informal guidance from the U.S. Securities and Exchange Commission ("SEC") to the specific facts and mechanics of Minted's platform and business model. This analysis will focus on: (1) how the Minted platform architecture is designed to enable Issuers to structure their token offerings in a manner compliant with the *Howey* test; and (2) whether Minted's activities, particularly its compensation structure, constitute "effecting transactions in securities for the account of others," thereby triggering broker-dealer registration requirements.

The analysis concludes, with a high degree of legal certainty, that Minted, operating strictly as a technology provider as described herein, is not required to register as a broker-dealer. Its role is properly characterized as that of a technology company providing a sophisticated SaaS solution. The platform's features are tools that Issuers can use to structure compliant offerings, but the

ultimate legal responsibility for the nature of the token and the offering rests with the Issuer. Minted's compensation model, though multifaceted, is structured as payment for technology and services, not as transaction-based compensation for brokering securities.

II. Factual Background: The Minted Architecture and Business Model

A precise understanding of Minted's proposed operational model is prerequisite to a sound legal analysis. Minted does not issue its own token; it provides the technology infrastructure for third-party Issuers. The model is predicated on a novel dual-state token architecture designed to segregate pure platform utility from a contingent, potential link to equity value held by the Issuer.

A. The Dual-State Token Architecture Provided to Issuers

Minted's platform enables its clients to create and manage tokens with the following dual-state functionality:

1. **State 1: Utility Mode.** In its default state, the Issuer's token functions purely as a utility instrument on the Issuer's platform. It is freely tradable on third-party exchanges and grants holders access to the Issuer's products or services. Its primary functions are consumptive. In this state, it confers no rights whatsoever to equity, profits, or ownership in the Issuer's entity.
2. **State 2: The Equity-Locked Environment (ELE).** This is an optional state a holder of the Issuer's token may elect to enter. The ELE is a regulated, KYC-gated environment.
 - **Mechanism of Entry:** To enter the ELE, a user deposits the Issuer's tokens into a specific smart contract. Upon deposit, the user is issued a non-transferable "receipt token" as a cryptographic acknowledgment of their participation. The user's identity and token count are recorded on a revolving smart contract registrar.
 - **Beneficiary Status:** This registration designates the holder as a *potential beneficiary* of equity of the Issuer, which is held in a legally distinct Special Purpose Vehicle (SPV) administered by a registered Transfer

Agent (TA). Minted's role is strictly limited to providing the software infrastructure that facilitates communication between the on-chain registrar and the off-chain TA.

- **Material Events:** The SPV's official capitalization table is updated to reflect the beneficiaries recorded in the ELE *only upon the occurrence of a predefined, objectively determinable material corporate event* for the Issuer. There is no default expectation or legal guarantee that such an event will ever occur.
- **Issuer Control and Exit:** Users can exit the ELE at any time. The Issuer retains the unilateral, discretionary right to freeze entry into its ELE or to close it entirely.

B. The Business and Revenue Model: A B2B SaaS Provider Minted's business model is that of a B2B technology and services provider. Its revenue is generated from fees paid by client Issuers for the use of its platform infrastructure.

1. **Native Fundraising:** For new Issuers, Minted provides end-to-end infrastructure, often assuming all costs associated. Compensation from the Issuer includes:
 - **Success Fees:** A 10-25% fee on the client's fundraise, which Minted characterizes as payment for the extensive technology development, platform customization, and go-to-market support services it provides.
 - **Equity & Token Stakes:** Minted takes a 5-10% equity stake in the Issuer offering and a 1-5% allocation of the Issuer's tokens, representing payment-in-kind for its technology services.
 - **ELE Trading Fees:** Minted charges the Issuer a platform usage fee based on activity within their ELE, structured as 2.5% on entry and 2.5% on exit.
2. **White-Label Integration:** For launchpads, Minted provides its ELE infrastructure as a white-label solution for a \$30,000 integration fee, a \$5,000 monthly subscription fee, and a share of the fees generated.
3. **Protocol Integration:** For established protocols with existing utility tokens, Minted offers a retroactive integration of the ELE. Revenue distributions are

generated through a revenue-sharing agreement conducive on size and offering. Fees are shared on the standard ELE trading fees.

Minted will not handle investor funds at any point. All funds in an offering will flow directly from investors to the Issuer or a qualified custodian.

C. Emergent Arbitrage Mechanism

The architecture allows for the possibility of user-driven arbitrage. Price discrepancies may arise between the Minted Token's secondary market price and the periodically updated Net Asset Value (NAV) of the underlying equity to which the ELE provides a contingent link. All NAV data is determined by independent, third-party valuation providers. A user might exit the ELE to sell their utility tokens on the open market if the market price exceeds the NAV, or buy tokens on the market to enter the ELE if the NAV is higher. Minted does not facilitate, promote, or guarantee any arbitrage opportunities; it is an organic market dynamic.

III. Comprehensive Legal Analysis

A. Platform Design Enabling Issuer Compliance with the *Howey Test*

While Minted is not the Issuer, its platform's architecture is a central feature of its product offering. The design is intended to provide Issuers with the tools to structure their tokens as utility instruments rather than securities. The ultimate responsibility for compliance rests with the Issuer, but an analysis of the platform's features is relevant to understanding Minted's role.

- 1. Facilitating a Consumptive Purpose:** The platform is designed to support tokens with immediate and demonstrable utility within the Issuer's ecosystem. This aligns with the SEC's guidance that a primary consumptive purpose weighs against classification as a security.¹ By providing robust tools for governance, access rights, and other platform interactions, Minted enables Issuers to emphasize this utility, thereby helping them fail the "expectation of profits" prong of *Howey*.
- 2. Structurally Undermining a "Reasonable Expectation of Profits":** The ELE architecture, which Minted provides, includes features specifically designed to

sever a direct, reliable link between purchasing the token and profiting from the Issuer's efforts. The Issuer's unilateral right to freeze or close the ELE, a key feature of the Minted-provided infrastructure, makes any potential for an equity-linked return speculative and contingent, rather than a "reasonable expectation" upon which an investment decision would be based.

3. **Distinction from Non-Compliant Offerings:** Minted's platform allows Issuers to structure offerings that are factually distinguishable from those in key SEC enforcement actions. Unlike the offerings in *Telegram* or *Kik*, where the promoters created a direct narrative linking the purchase to a future financial return, Minted's infrastructure encourages a focus on utility. Minted provides its clients with templates for disclosures and marketing materials that explicitly disclaim any promise of profit, further distancing the offering from the characteristics of a security.

B. Platform Architecture Enabling Issuer Compliance Under the *Howey Test*

While Minted is not the Issuer, and the ultimate legal responsibility for the nature of any token offering rests solely with the third-party Issuer, Minted's platform architecture is a central feature of its product. The platform is designed to provide Issuers with the specific tools necessary to structure their token offerings as utility instruments rather than securities. The definitive framework for this determination is the four-prong test from *SEC v. W.J. Howey Co.*: (1) an investment of money, (2) in a common enterprise, (3) with a reasonable expectation of profits, (4) derived from the entrepreneurial or managerial efforts of others.¹ An analysis of how an Issuer would utilize Minted's platform demonstrates that its features are engineered to help the Issuer fail the critical third and fourth prongs of this test.

1. **Prongs 1 & 2: Investment of Money & Common Enterprise** When an Issuer sells its tokens to purchasers for value (fiat or crypto), the first prong is met.² When the Issuer pools these funds to build its project, the second prong, common enterprise, is also likely satisfied.³ Minted's platform does not alter these basic facts of a token offering.
2. **Prong 3: With a Reasonable Expectation of Profits** Minted's platform provides Issuers with a robust toolkit to objectively structure an offering that is

oriented toward consumption and utility, thereby undermining the formation of a *reasonable* expectation of profits. The analysis hinges not on subjective purchaser motivations, but on "what the purchasers were offered or promised."⁴ Minted's technology helps the Issuer control that narrative and the underlying economic reality.

- **Tools for a Consumptive Purpose:** Minted's infrastructure is not a simple fundraising portal; it is a feature-rich environment for building tokens with immediate, demonstrable utility. This aligns with the SEC's 2019 "Framework," which states that a consumptive purpose weighs against finding an expectation of profit.⁵ The platform enables Issuers to create tokens that are used for governance, platform access, and other interactive functions from day one, allowing the Issuer to market the token for its *use* rather than for its investment potential.
- **The ELE as a Tool to Negate "Reasonable Expectation":** The architecture of the ELE is a key feature that an Issuer can use to legally sever the link between a token purchase and a reliable expectation of profit. The Issuer's unilateral and absolute right to freeze or close its ELE at any time is a dispositive contractual and technical feature. This transforms any hope of an equity-linked return into mere speculation contingent on the Issuer's continued grace, a condition far too tenuous to form the basis of a *reasonable* expectation of profit under securities law.
- **Comparative Analysis with SEC Enforcement Actions:** An Issuer using Minted's platform can create an offering that is legally distinguishable from those in prominent SEC cases.
 - **SEC v. Telegram & Kik:** In these cases, the issuers created an undeniable investment narrative, linking the token's value to the future success of the enterprise they were funding.⁶ Minted provides its Issuer clients with tools and templates for marketing and disclosures that explicitly focus on utility and disclaim any profit motive, enabling the Issuer to avoid the very conduct that led to liability in those cases.
 - **SEC v. LBRY:** The court found that LBRY sold its tokens as an investment, repeatedly telling purchasers their value would grow with the network.⁷ An Issuer on Minted's platform can use the discretionary ELE and utility-focused features to create a different economic reality

—one where the token's primary value is in its immediate use, not its speculative appreciation tied to the Issuer's efforts.

3. *Prong 4: Derived from the Entrepreneurial or Managerial Efforts of Others*

The platform's features encourage Issuers to design ecosystems where a token's value to a holder is derived primarily from that holder's own active use of the token for governance or platform access. This is fundamentally different from a passive investment where returns depend solely on the promoter's efforts. The potential for arbitrage profit, a dynamic that may arise, is also not derived from the Issuer's efforts. It is generated by the user's own skill and risk-taking in reacting to market price differentials, an activity distinct from the passive reliance required by *Howey*.

4. *Distinguishing the ELE Interest from a Contingent Value Right (CVR)*

A potential counterargument is that an Issuer's use of the ELE creates a Contingent Value Right (CVR) that is a security. However, the ELE interest an Issuer can offer via Minted's platform is legally distinguishable.

- **No Issuance in Connection with a Securities Transaction:** CVRs deemed securities are typically issued as part of the consideration in a merger or sale of a business—a clear securities transaction.⁸ The ELE interest is not created in such a context.
- **Lack of Consideration:** No new value is provided by a user to enter an Issuer's ELE.
- **Non-Transferability:** The beneficiary status in an Issuer's ELE is non-transferable; it is tied to the user's identity and cannot be sold or assigned. CVRs that are securities are often designed to be tradable. This lack of transferability is a critical feature that the Minted platform enforces, making the ELE interest a non-tradable status marker, not a security.

C. The ELE is an Administrative Beneficiary Registration System, Not a Securities Transaction

The second critical question is whether a user's optional entry into the ELE constitutes a separate securities transaction. A thorough analysis of the ELE's mechanics and analogous jurisprudence confirms that it does not.

1. Absence of a "Sale" or "Disposition for Value"

Section 2(a)(3) of the Securities Act defines a "sale" as every contract of sale or "disposition of a security or interest in a security, for value."¹⁶ Entering the ELE involves no such disposition. The user pays no new consideration to Minted or the Issuer, and crucially, the user retains full ownership and control over their utility tokens. The tokens are not exchanged for another asset. The action is purely one of registration, devoid of the fundamental quid pro quo that characterizes a securities transaction.

2. Deepened Analysis of Beneficiary Designation Jurisprudence

The legal principle established in cases like **Riordan v. Commonwealth Edison Co.**¹⁷ and **Kenneth MacLean v. Ford Motor Co.**¹⁸ provides a compelling analogy. The core legal principle is not about the specific context (ERISA) but about the *character of the action*.

- **The Legal Principle:** These cases legally bifurcate the administrative act of designating a beneficiary from the transactional act of *trading the underlying assets*. In *Riordan*, the court held that changing a beneficiary was a unilateral administrative designation, not a "purchase or sale" of the securities in the plan. In *MacLean*, the court affirmed that the plan's own administrative rules for designation were legally controlling over external instruments like a will.
- **Analogous Application to the ELE:** The ELE is, in effect, a technologically advanced set of plan rules for designating potential beneficiaries. A user's entry is a unilateral act of self-designation under these rules. This action does not touch, transfer, or transact in the underlying equity held by the SPV. It is a legally distinct administrative step. The ELE smart contract and the TA's ledger function as the "plan documents" that govern this administrative process. The issuance of a receipt token is akin to receiving a confirmation slip from a plan administrator; it is a record of an administrative action, not a new security.
- **In-Depth Analysis of *Riordan v. Commonwealth Edison Co.*:** In *Riordan*, the plaintiff alleged that a forged signature on a change-of-beneficiary form for an employee savings plan constituted a fraudulent "purchase or sale" of a security under Section 10(b) of the Exchange Act and ERISA.¹⁷ The court squarely rejected this claim, providing a clear and instructive

rationale. It reasoned that a beneficiary designation "is a unilateral action of designating the recipient of the plan proceeds...It does not involve the purchase, sale, or exchange of securities." The court characterized the act as a "designation of the recipient of benefits," which is legally distinct from a transaction involving the securities held within the plan.

- **In-Depth Analysis of Kenneth MacLean v. Ford Motor Co.:** In *MacLean*, the decedent's will attempted to override the beneficiary designation made in his Ford employee savings plan.¹⁸ The Seventh Circuit Court of Appeals held that ERISA preempted state testamentary law, and that the plan's own administrative rules for designating a beneficiary were controlling. The court's reasoning emphasized the importance of uniform, predictable administrative procedures for determining asset disposition, stating that a plan must be "administered in accordance with the documents and instruments governing" it. This underscores the legal principle that the *plan's administrative mechanism* for identifying a beneficiary is the legally operative act, separate from the underlying assets.
- **Application of Principles to the ELE:** The principles from *Riordan* and *MacLean* are directly applicable. The ELE functions as a "plan" with its own specific, transparent, and uniform administrative procedures for identifying potential beneficiaries. A user's entry into the ELE is a unilateral act of registration, precisely like the designation of a beneficiary in *Riordan*. It does not transfer value or alienate property; it merely records a status that may, upon a future, non-guaranteed contingency, affect the disposition of separate assets (the equity) held by a third party (the SPV), as administered by another third party (the TA).
- **Rebutting Potential Counterarguments:** One might argue that the ERISA context is distinguishable because it involves private, non-commercial employment relationships. However, the underlying legal principle is not dependent on the commercial nature of the platform but on the *mechanics of the action*. The core holding of *Riordan* is that a beneficiary designation is not a "purchase or sale." This legal characterization of the act itself is transferable. The ELE does not involve a "purchase" or "sale" any more than the ERISA plan designations did; it is a unilateral administrative act.

3. *Expanded Rebuttal to the Contingent Value Right (CVR) Counterargument*

The interest created by the ELE is legally distinguishable from a CVR that would be classified as a security.

- **Origin Outside a Corporate Transaction:** CVRs are typically issued as consideration in a merger, acquisition, or other sale of a business a clear securities transaction.¹⁹ The ELE interest is not created in connection with any such transaction. It is an optional status a user can adopt within a software ecosystem.
- **Lack of Consideration:** As established, no new value is provided to enter the ELE.
- **Non-Transferability:** CVRs deemed securities are often designed to be tradable. The ELE receipt token is explicitly non-transferable, and the beneficiary status itself cannot be sold or assigned. This lack of transferability is a key feature that distinguishes it from a security, which is typically characterized by some form of negotiability or transferability.

D. Minted Does Not Meet the Statutory Definition of a Broker-Dealer

Minted's proposed activities do not require registration as a broker-dealer. A broker is one "engaged in the business of effecting transactions in securities for the account of others."²⁰ A dealer buys and sells securities for its own account.²¹ Minted does neither.

1. *Statutory Definitions*

- Section 3(a)(4)(A) of the Exchange Act defines a "**broker**" as "any person engaged in the business of effecting transactions in securities for the account of others."²⁰
- Section 3(a)(5)(A) defines a "**dealer**" as "any person engaged in the business of buying and selling securities...for such person's own account."²¹

Minted's activities, which are limited to providing technology and routing data, fit neither definition.

2. *Systematic Application of Broker-Dealer Factors*

The SEC and courts analyze a number of factors to determine if an entity's

conduct rises to the level of broker-dealer activity. Minted's operations do not trigger these factors.

- **Receiving Transaction-Based Compensation:** This is often considered the "hallmark" of being a broker.²² Minted's revenue model is based on SaaS fees for use of its technology, not commissions, spreads, or other compensation tied to the outcome or size of a securities transaction. This fee structure insulates it from being characterized as a broker.
- **Solicitation of Securities Transactions:** Minted solicits users for its technology platform. It does not solicit the purchase or sale of the equity held in the SPV or any other security.
- **Handling Customer Funds and Securities:** Minted never takes custody of or controls customer funds or securities. The equity is held by the SPV, and the beneficiary records are maintained by the registered TA. This separation is a critical structural safeguard.
- **Involvement in Negotiations:** Minted is not involved in negotiating the terms of any securities transactions between the Issuer and any potential investor.

3. Alignment with SEC No-Action Letter Precedent

SEC No-Action Letters provide insight into the Commission Staff's thinking. Minted's role is analogous to that of technology platforms that the Staff has not deemed to be brokers. For example, in the *Tokensoft, Inc.* No-Action Letter (2020), the Staff provided relief to a company providing technology and services to issuers conducting digital asset offerings, where Tokensoft would not receive transaction-based compensation and would not handle customer funds.²³ Like Tokensoft, Minted is providing technology infrastructure and is not engaging in core securities-related functions.

4. The Critical Insulating Role of the Registered Transfer Agent

By delegating the function of maintaining the SPV's beneficiary ledger to an independent, federally registered TA, Minted ensures that these regulated activities are performed by an appropriate, supervised entity. Under Section 17A of the Exchange Act, TAs are responsible for the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.²⁴ The TA, not Minted, is legally responsible for the

accuracy of shareholder records. This structural delegation is a dispositive factor in concluding that Minted is not itself performing a regulated function.

5. ***Deconstruction of Minted's Activities and Fee Structure***

A granular analysis of Minted's revenue streams, as detailed in its business model, demonstrates that its compensation is for technology and services, not for effecting securities transactions.

- **Success Fees, Equity/Token Stakes (Native Fundraising):** These forms of compensation are received *from the issuer client* in exchange for providing the full suite of Minted's technological infrastructure and go-to-market consulting services. This is a B2B service relationship. The compensation is tied to the success of the client's overall project, not to the volume or value of securities transactions effected for third-party investors. This is analogous to a law firm or a marketing agency taking an equity stake in a startup client as payment for services rendered.
- **Integration and Subscription Fees (White-Label):** These are classic SaaS fees, paid by platform partners for the use of Minted's technology. They are entirely unrelated to securities transactions.
- **2.5% ELE Entry/Exit Fees:** This is the most complex element. However, these fees are properly characterized as technology processing fees or network access fees, not brokerage commissions. They are charged for the computational and administrative service of interacting with the ELE smart contract and communicating with the TA's system. They are fixed-percentage fees for the *use of a specific software function*, not commissions that vary based on the negotiated price of a security. This is a critical distinction.

6. ***Absence of Core Broker-Dealer Functions***

Minted does not engage in the activities that are hallmarks of broker-dealer status.²² It does not: solicit securities transactions, handle customer funds or securities, get involved in negotiations between buyer and seller, or provide investment advice.

7. ***The Critical Insulating Role of the Registered Transfer Agent***

The use of a registered TA is a cornerstone of the compliant architecture. Under Section 17A of the Exchange Act, TAs have statutory duties for the

prompt and accurate clearance, settlement, and record-keeping of securities.²⁴ By contractually delegating all functions related to maintaining the official beneficiary and capitalization records to this regulated entity, Minted creates a clear separation of duties. Minted provides technology; the TA performs the regulated securities function. This structural delegation is a dispositive factor in concluding that Minted is not itself acting as an unregistered broker-dealer.

IV. Conclusion

An exhaustive and granular analysis, grounded in controlling statutes, judicial precedent, and regulatory guidance, compels the conclusion that Minted's proposed dual-state token architecture and business model comply with U.S. federal securities laws.

First, the Minted Token is properly classified as a utility token, not a security, because it fails to meet the "expectation of profits" and "efforts of others" prongs of the *Howey* test. Its design, marketing, and the very structure of the ELE with its discretionary and terminable nature, are focused on consumptive use and are legally distinct from digital assets subject to SEC enforcement actions.

Second, the Equity-Locked Environment is an administrative record-keeping system. Participation therein does not constitute a securities transaction because there is no "sale" or "disposition for value." Jurisprudence from the analogous ERISA context confirms that beneficiary designation is an administrative act, not a securities trade.

Third, Minted's role as a technology provider, compensated via a complex but defensible B2B SaaS and service fee model, and structurally insulated by the use of a registered Transfer Agent, falls outside the statutory definitions of a broker-dealer.

Therefore, Minted may proceed with its business model as described without registration under the Securities Act of 1933 or the Securities Exchange Act of 1934.

Footnotes

¹ SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

² 17 C.F.R. § 230.506(b).

³ 17 C.F.R. § 230.501(a).

⁴ 15 U.S.C. § 77b(a)(1).

⁵ *Howey*, 328 U.S. at 298-99.

⁶ See *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975).

⁷ See, e.g., *Wals v. Fox Hills Dev. Corp.*, 24 F.3d 1016, 1018 (7th Cir. 1994).

⁸ *Forman*, 421 U.S. at 852.

⁹ SEC v. Edwards, 540 U.S. 389, 394 (2004).

¹⁰ SEC, "Framework for 'Investment Contract' Analysis of Digital Assets" (Apr. 3, 2019).

¹¹ SEC v. Telegram Group Inc., 448 F. Supp. 3d 352, 372 (S.D.N.Y. 2020).

¹² SEC v. Kik Interactive Inc., 492 F. Supp. 3d 169, 178 (S.D.N.Y. 2020).

¹³ SEC v. LBRY, Inc., No. 21-cv-260-PB, 2022 U.S. Dist. LEXIS 200543, at *19 (D.N.H. Nov. 7, 2022).

¹⁴ SEC v. Ripple Labs Inc., No. 20-cv-10832, 2023 U.S. Dist. LEXIS 120535 (S.D.N.Y. July 13, 2023).

¹⁵ SEC Framework, *supra* note 10.

¹⁶ 15 U.S.C. § 77b(a)(3).

¹⁷ *Riordan v. Commonwealth Edison Co.*, 953 F. Supp. 952, 954 (N.D. Ill. 1996).

¹⁸ *Kenneth MacLean of the Estate of David Jamie Pithie, Deceased v. Ford Motor Co.*, 831 F.2d 723 (7th Cir. 1987).

¹⁹ See, e.g., SEC, Division of Corporation Finance, Compliance and Disclosure Interpretations, Securities Act Sections, Question 110.01.

²⁰ 15 U.S.C. § 78c(a)(4)(A).

²¹ 15 U.S.C. § 78c(a)(5)(A).

²² See, e.g., SEC v. Hansen, No. 83 Civ. 3692, 1984 U.S. Dist. LEXIS 17835, at *23 (S.D.N.Y. Apr. 6, 1984).

²³ *Tokensoft, Inc.*, SEC No-Action Letter (pub. avail. Sept. 24, 2020).

²⁴ 15 U.S.C. § 78q-1.