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Comment On: OCC-2025-0372-0001
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Institute of International Bankers

Submitter Information

Address: United States,
Email: mmeertens@iib.org
Submitter's Representative: Beth Zorc
Organization: Institute of International Bankers

General Comment

Please see the attached comment letter submitted on behalf of the Institute of International Bankers.

Attachments

Institute of International Bankers

INSTITUTE OF INTERNATIONAL BANKERS

299 Park Avenue, 17th Floor
New York, N.Y. 10171
Telephone: (212) 421-1611
www.iib.org

May 1, 2026

VIA ELECTRONIC SUBMISSION

Office of the Comptroller of the Currency
Attn: Chief Counsel's Office
400 7th Street, SW, Suite 1E-216
Washington, DC 20219

Re: Comments on Proposed Rulemaking on Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency (Docket: OCC-2025-0372; RIN: 1557-AF41)

To Whom It May Concern:

The Institute of International Bankers ("IIB") welcomes the opportunity to submit this letter in response to the notice of proposed rulemaking (the "NPR")[1] published by the OCC with respect to the implementation of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act" or the "Act").[2]

The IIB represents the U.S. operations of internationally headquartered financial institutions ("IHFIs") from more than 35 countries around the world. The membership consists principally of international financial institutions that operate branches, agencies, bank subsidiaries and broker-dealer subsidiaries in the United States.[3] The IIB works to

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1 Office of the Comptroller of the Currency (the "OCC"), Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, 91 Fed. Reg. 10202 (Mar. 2, 2026), *available here*.

2 Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (2025) (codified at 12 U.S.C. §§ 5901 et seq.).

3 Most of our members qualify as foreign banking organizations ("FBOs") that are subject to the Bank Holding Company Act of 1956, as amended (the "BHCA"), pursuant to the International Banking Act of 1978 (the "IBA") and the Federal Reserve Board's (the "FRB's") Regulation K. *See* 12 U.S.C. § 3108; 12 C.F.R. § 211.21(o). Some of our members, however, operate in the United States only through nonbank and non-branch offices and subsidiaries and are not deemed subject to the BHCA. We use the term IHFI in this letter to refer broadly to both categories and refer to foreign banks or FBOs where appropriate for the specific issue being discussed.

ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers. IHFIs comprise the majority of U.S. primary dealers, enhancing the depth and liquidity of U.S. financial markets. They also contribute significantly to the U.S. economy through the direct employment of U.S. citizens, as well as through other operating and capital expenditures.

Between 2020 and 2024, the U.S. operations of IHFIs underwrote more than $11 trillion in U.S. financing.[4] This represented more than 40% of the $28 trillion in U.S. financing raised in the same period, including 36% of issuance done by U.S.-headquartered companies.[5] In 2023 alone, the U.S. operations of IHFIs lent more than $1.3 trillion to U.S. companies, including over $100 billion each to the technology and manufacturing sectors, supported more than $2.3 trillion in trade finance volumes and managed over $115 trillion in payments for U.S.-based companies or subsidiaries.[6] As such, IHFIs have been, and will continue to be, vital contributors to the U.S. economy and financial system, serving as an important conduit directing international funding to the United States and facilitating cross-border payment and settlement activity.

Our members are active in every major financial center worldwide and include institutions that are at the forefront of banking system innovation involving payments, digital assets and stablecoins. Incorporating them into the U.S. stablecoin market is critical to facilitating the seamless integration of the U.S. and global stablecoin markets with the traditional global financial system. If done correctly, their integration will help promote the United States as a global leader in stablecoins and digital assets and deepen the markets for U.S. dollars and U.S. Treasuries that serve as reserve assets for U.S. dollar-denominated payment stablecoins.

The IIB appreciates this opportunity to provide its input on the NPR. We recognize that the OCC shares responsibility for implementing the GENIUS Act with the Department of the Treasury ("Treasury") and other federal regulators, including the FRB, the Federal Deposit Insurance Corporation (the "FDIC"), and the National Credit Union Administration (together with the FRB, FDIC and OCC, the "Primary Federal Payment Stablecoin Regulators"), and that not every issue relevant for IHFIs is within the OCC's rulemaking authority. Our comments in this letter build upon the comments we provided to Treasury in response to Treasury's advance notice of proposed rulemaking with

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4 *See* Press Release, *New IIB Study Shows Vital Role of International Banks in U.S. Economy* (Nov. 21, 2024), *available here*. The study referenced in the Press Release is *available here*.

5 *See id*.

6 *See id*.

respect to the implementation of the GENIUS Act[7] and are focused on issues of particular relevance to IHFIs that are raised by the OCC's NPR.

I. SUMMARY OF KEY RECOMMENDATIONS

Our key recommendations on the NPR are summarized below.

Ensuring Equal Treatment for the U.S. Operations of Foreign Banks and IHFIs

- Permitted payment stablecoin issuers ("PPSIs") should be permitted to hold reserves as demand deposits at the (insured and uninsured) U.S. branches of foreign banks and to use uninsured deposits, including those held at uninsured U.S. branches of foreign banks, to meet operational backstop requirements. (*See* Sections III.A.1-2)

- When acting as a custodian for payment stablecoins and payment stablecoin reserves, the U.S. branches of foreign banks should be treated equally to other U.S. insured depository institutions, including with respect to commingling reserves in an omnibus account and holding cash reserves and related cash custody assets in the form of a deposit liability. (*See* Section III.A.3)

- The U.S. operations of IHFIs should qualify as U.S. financial institutions for purposes of any reserve localization requirements, including under Section 18(a)(3) of the Act. (*See* Section III.A.4)

- The U.S. branches of foreign banks should benefit from the preservation of authority in Section 16 of the Act to the same extent as other banking institutions. (*See* Section III.A.5)

- Foreign banks should be allowed the same flexibility as U.S. bank holding companies ("BHCs") to establish U.S. subsidiaries licensed as federal qualified payment stablecoin issuers under the "nonbank entity" prong of that definition and as permitted payment stablecoin issuers under the "subsidiary of an insured depository institution" prong of that definition. (*See* Section III.A.6)

- When reviewing applications to establish PPSI subsidiaries of FBOs and other IHFIs, the OCC should give due regard to the U.S. federal regulatory framework that already applies to the IHFI's U.S. operations. (*See* Section III.A.7.a)

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[7] Treasury, GENIUS Act Implementation, 90 Fed. Reg. 45159 (Sept. 19, 2025) (the "Treasury ANPR"), *available here*; IIB, Comment Letter on the Treasury ANPR (Nov. 4, 2025) (the "IIB ANPR Letter"), *available here*.

- Risk management standards and capital requirements for PPSIs controlled by IHFIs should be flexible enough to accommodate a range of legal and governance structures of foreign-owned PPSIs, including variations that reflect differences in home-country regulations and practices. (*See* Sections III.A.7.b-c)

Registration and Regulation of Foreign Payment Stablecoin Issuers ("FPSIs")

- Subpart D of the NPR should be revised to more closely reflect the statutorily specified role the OCC has with respect to the substantive regulation of FPSIs, while continuing to preserve the OCC's supervisory oversight of FPSIs. (*See* Section III.B.1)

- The OCC should tailor its supervisory, examination and reporting requirements regarding the non-U.S. activity of FPSIs to what is reasonably necessary to monitor the FPSI's U.S. payment stablecoin activity and its compliance with the GENIUS Act, including U.S. reserve sufficiency, and any U.S. financial stability or illicit finance risks. (*See* Section III.B.2)

- The OCC should adopt a flexible, principles-based approach to estimating U.S. customer liquidity demands for FPSIs. (*See* Section III.B.3)

- FPSI assessments should be appropriately calibrated to reflect the scope of their U.S. operations and the OCC's narrower scope of supervisory responsibilities for FPSIs as compared to PPSIs. (*See* Section III.B.4)

- The OCC should coordinate a statement with Treasury recognizing that FPSIs permitted to issue in the United States through a comparability determination and satisfaction of Section 18 should be entitled via field preemption under the GENIUS Act to the same scope of preemption over state licensing, chartering and authorization to do business requirements that federally qualified PPSIs receive under Section 5(h). (*See* Section III.B.5)

Ensuring a Vibrant U.S. Market for Non-U.S. Dollar Payment Stablecoins

- If Treasury does not use its interpretive and rulemaking authority under the GENIUS Act to address reserve asset requirements for non-U.S. dollar payment stablecoins, the OCC should use its authority to tailor such requirements to accommodate PPSIs that issue non-U.S. dollar payment stablecoins. PPSIs that issue non-U.S. dollar payment stablecoins should also be expressly permitted to use traditional foreign exchange ("FX") risk-mitigation strategies. (*See* Sections III.C.1-2)

Application and Reporting Forms

- In order to give markets a meaningful opportunity to comment on the full scope and requirements of Part 15, the OCC should publish proposed application and reporting forms for public review and comment. (*See* Section III.D.1)

II. OVERARCHING PRINCIPLES

A. Ensuring Equal Treatment for the U.S. Operations of Foreign Banks and IHFIs

The principles of national treatment and equality of competitive opportunity for the U.S. operations of foreign banks have been enshrined in U.S. banking law and policy for decades.[8] Under these principles, U.S. banking policy "generally gives foreign banks operating in the United States the same powers as U.S. banking organizations and subjects them to the same restrictions and obligations."[9] For the federal branches and agencies of foreign banks, the IBA generally requires that the "operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and subject to all the same duties,"[10] and to the extent possible the OCC seeks to apply the same standards, policies and procedures to federal branches and agencies as it does to national banks.[11] The rights and privileges of state-licensed branches of foreign banks, which also benefit from the principle of national treatment under federal law, are generally co-extensive with federal branches, except

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8 *See, e.g.*, IBA, Pub. L. No. 95-369, 92 Stat. 607 (1978) (codified at 12 U.S.C. § 3101 et seq.); S. Rep. No. 1073, 95th Cong. 2d Sess. 2 (1978), reprinted in 1978 U.S.C.C.A.N. 1421 (explaining that the guiding principle of the IBA is "the principle of parity of treatment between foreign and domestic banks in like circumstances"—i.e., "national treatment"); FRB, SR Letter 08-9 (Oct. 16, 2008) [hereinafter SR Letter 08-9] (explaining that the IBA "introduced a policy of national treatment promoting competitive equality between FBOs operating in the United States and domestic banking organizations."). *See also, e.g.*, Section 165(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, § 5365(b)(2)(A) (requiring the FRB to "give due regard to the principle of national treatment and equality of competitive opportunity" when applying enhanced prudential standards to foreign banking organizations); Section 103 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. § 1843(l)(3) (directing the FRB to "apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.").

9 SR Letter 08-9 at n. 3.

10 Section 4(b) of the IBA, 12 U.S.C. § 3102(b).

11 *See* Comptroller's Handbook, Federal Branches and Agencies Supervision, at 4 (version 1.5, Sept. 30, 2019) [hereinafter, the Comptroller's Handbook]. *See also* 68 Fed. Reg. 70691 (Dec. 19, 2003) (discussing the principles of national treatment under the IBA); *CSBS* v. *Conover,* 715 F.2d 604, 616 (D.C. Cir. 1983) ("the IBA seeks to treat federally chartered foreign and domestic banks as similarly as possible under the Act"), *cert denied*, 466 U.S. 927 (1984).

where state law is more restrictive.[12] These principles are "designed to foster competitive equality between foreign and domestic banks" by ensuring that the U.S. operations of foreign banks are regulated and supervised on terms comparable to those applied to domestic institutions.[13] Congress intended these principles of equal treatment to apply in the context of the GENIUS Act.[14]

The IIB urges the OCC to adhere to the longstanding commitment of the United States to these principles in its rulemaking and interpretation of the GENIUS Act, as well as in exercising its supervisory authority under the GENIUS Act. Observing national treatment supports robust competition, market liquidity and diversified sources of credit for U.S. households and businesses. It enhances financial stability by encouraging internationally active firms to maintain efficient, well-capitalized and well-supervised U.S. platforms rather than fragmenting operations or retrenching from U.S. markets in response to duplicative or discriminatory rules. It also reinforces U.S. leadership in global financial markets and the strength of the U.S. dollar by linking U.S. financial and banking markets to the global networks of IHFIs. Establishing a level playing field in the United States for IHFIs to participate in the U.S. payment stablecoin market—both as bankers and custodians to issuers, and as issuers themselves—will further the Administration's goals of "reassert[ing] global leadership in digital assets" and encouraging stablecoin firms to "onshore their activities in the United States."[15]

Consistent with these principles, the OCC should ensure that its regulations allow the U.S. operations of IHFIs to participate in the U.S. payment stablecoin market to the same extent, and subject to the same or equivalent rules, as domestic banks and financial institutions. In particular, and as set forth in more detail below, the OCC's regulations

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12 *See, e.g.*, 12 U.S.C. § 3105(h)(1) (limiting the powers of a state branch to those of a federal branch); 12 C.F.R. § 211.29 (procedures for a state branch to apply for broader powers than a federal branch). *See also, e.g.,* 66 Fed. Reg. 54346, 54370-54372 (FRB sought to advance the principle of national treatment when it liberalized rules around foreign banks maintaining branches in more than one state to reflect expanded domestic bank interstate branching powers under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994); SR Letter 08-9.

13 Comptroller's Handbook at 4.

14 *See* Cong. Rec. Vol. 171 No. 123 (July 17, 2025), H3405-27, 3423 (statement of Rep. Andy Barr) ("Barr Speech"), *available* here ("The GENIUS Act provides that all appropriately regulated banks, including the U.S. operations of foreign banking organizations, which are supervised by the Federal Reserve, are treated equally to their U.S. peers. This is particularly important with respect to the issuance, reserve and custody services, and bank capital requirements irrespective of whether they are deposit insured since the act prohibits stablecoins from being covered by FDI insurance.").

15 President's Working Group on Digital Asset Markets, Strengthening American Leadership in Digital Financial Technology, at 59 (July 30, 2025) ("PWG Report"), *available here*.

should address the following points, which follow from the text of the GENIUS Act and congressional intent to ensure equal treatment for the U.S. operations of IHFIs.[16]

- The permitted activities of uninsured U.S. branches of foreign banks should be equal to those of domestic insured depository institutions, including with respect to holding payment stablecoin reserves, accepting deposits from PPSIs as part of reserve assets or for operational backstop or other purposes, and providing custody and safekeeping services (on either a segregated or commingled basis).

- Consistent with how the OCC is proposing to define depository institution in the NPR, the OCC should acknowledge that foreign banks and other IHFIs are permitted to establish U.S.-domiciled subsidiaries as nonbank entities eligible for approval as federal qualified payment stablecoin issuers under Section 5 of the Act.

- U.S. branches of foreign banks should be permitted to establish U.S. subsidiaries eligible to be licensed as a PPSI to the same extent, and under the same conditions, as domestic insured depository institutions.

B. The Importance of Ensuring Foreign Issuer Access to U.S. Market Through Comparability Determinations and Tailored Supervision of FPSIs' U.S. Activities

Section 18 of the GENIUS Act authorizes FPSIs to issue payment stablecoins in the United States if Treasury determines the FPSI is subject to regulation and supervision under a foreign regime that is "comparable to the requirements established" under the GENIUS Act, "including [ ] the requirements under section 4(a)" of the Act.[17] As a further condition for such access, Section 18 also requires an FPSI to register with the OCC and hold reserves in a U.S. financial institution sufficient to meet liquidity demands of U.S. customers unless otherwise permitted under a reciprocal arrangement established

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16 *See also* IIB ANPR Letter at 12-14.

17 GENIUS Act, Section 18(a). Section 4(a) sets out principles for the regulation of PPSIs in the United States, covering, among other things, reserve composition, disclosure and audit requirements, capital, liquidity, asset diversification and risk management requirements, Bank Secrecy Act, anti-money laundering and sanctions compliance, activity and marketing limits, and the prohibition on interest payments. Section 3 of the GENIUS Act also permits digital asset service providers ("DASPs") to offer and sell such FPSI payment stablecoins to U.S. persons. GENIUS Act, Section 3(b).

pursuant to Section 18(d).[18] The Act vests responsibility for registration and ongoing monitoring of FPSIs with the OCC.[19]

This division and ordering of statutory responsibilities is important and contrasts with the licensing and regulation of PPSIs. Treasury first determines whether the foreign regulatory and supervisory regime is comparable, and the OCC then acts within the specific registration and ongoing monitoring roles that Congress assigned to it. This includes the authority to rescind a registration for noncompliance with applicable provisions of the GENIUS Act in consultation with Treasury. The OCC's rulemaking authority with respect to FPSIs specifically applies to "issu[ing] rules relating to the standards for approval of registration requests and the process for appealing denials of such registration requests."[20] Treasury is charged more broadly with rulemaking "to carry out [Section 18]."[21]

Section 18(c) of the Act is important not only for what it authorizes, but also for what it does not. The OCC's role does not extend to evaluating the quality of an FPSI's home-country regulation, and it should not be necessary for the OCC to create any new requirements in the FPSI registration process beyond what is required by the Act.[22] Once Treasury has been satisfied and made a comparability determination, the Act has already established the basis for federal treatment of the FPSI, and the OCC should defer to Treasury and make registration determinations on the basis of the enumerated statutory factors.[23] Similarly, it should not be necessary for the OCC to supervise an FPSI outside of the specific statutory factors that the OCC is required to evaluate,[24] and the OCC should not seek to establish new substantive requirements for FPSIs or assert greater supervisory authority than what is needed to carry out its statutory duties.

U.S. dollar-denominated payment stablecoins issued overseas serve to extend the global market for U.S. dollars and U.S. Treasuries. We urge the OCC to exercise its supervisory authority over FPSIs in a tailored way that encourages access to U.S. markets for appropriately regulated FPSIs, while also allowing it to satisfy its statutory mandate to

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18 In addition, the issuer cannot be domiciled or regulated by a country subject to comprehensive economic sanctions by the United States or in a jurisdiction that the Secretary of the Treasury has determined to be a jurisdiction of primary money laundering concern.

19 *See* GENIUS Act, Section 18(c)(1)-(3).

20 GENIUS Act, Section 18(c)(1)(E).

21 GENIUS Act, Section 18(b)(6).

22 *See* GENIUS Act, Section 18(c)(1)(C).

23 *See id*.

24 The statutory factors are limited to monitoring for compliance with the GENIUS Act, including with respect to "maintaining insufficient reserves or posing an illicit finance risk or financial stability risk." *See* GENIUS Act, Section 18(c)(3)(A).

monitor the U.S. activities of FPSIs for compliance with law, reserve adequacy, illicit finance and financial stability risks. To this end, the OCC should adopt guiding principles in its final rule clarifying that supervisory requests relating to non-U.S. operations will be confined to what is reasonably necessary to assess compliance with the GENIUS Act provisions applicable to FPSIs and that its supervisory authority will be exercised in a manner that is proportionate and tailored to the activities of FPSIs in the United States.

C. Establishing a Vibrant U.S. Market for Non-U.S. Dollar Payment Stablecoins

Non-U.S. dollar payment stablecoins are expected to have significant utility for U.S. persons. Potential use cases include FX trading, settlement of transactions in non-U.S. dollar-denominated tokenized securities, accepting payment on non-U.S. dollar-denominated tokenized trade receivables, cross-border payments and other international transactions.

The definition of payment stablecoin in the GENIUS Act, however, raises serious questions for U.S. persons that wish to access stablecoins denominated in currencies other than U.S. dollars. This is because, if given a broad construction, the definition would include stablecoins pegged to non-U.S. currencies, while the reserve requirements in Section 4(a)(1) of the Act appear to permit only U.S. dollar assets to serve as reserves for payment stablecoins, with the potential exceptions of foreign currency deposit accounts and money received in cross-currency repos.[25]

This asset-liability mismatch creates a fundamental conflict for PPSIs that will increase the risk and cost of issuing non-U.S. dollar payment stablecoins in the United States. Unless addressed, it could make it impractical for a PPSI to issue such payment stablecoins in the United States. At a minimum, it would introduce significant operational risks on PPSIs required to use potentially complicated derivatives strategies to hedge the risk of the mismatch between the currency in which the token is denominated and its U.S. dollar-denominated reserves, and it would impose significant costs on issuers and users.

If the U.S. framework leaves this issue unresolved, non-U.S. dollar stablecoin activity is likely to remain exclusively offshore, where there can be more workable reserve treatment for non-U.S. dollar products. This could lead to fragmentation of stablecoin

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[25] *See* GENIUS Act, Sections 2(17)-(19), 2(22) & 4(a)(1)(A). With the exception of demands deposits at insured depository institutions, which could include foreign currency deposit accounts, and "money" received on overnight repos backed by short-term Treasuries, permitted reserve assets under Section 4(a)(1)(A) and NPR § 15.11(b) include only U.S. dollar-denominated assets—United States coins and currency, Federal Reserve Bank account balances, funds held as demand deposits at insured depository institutions, short-term Treasury bills, notes and bonds (owned or borrowed under reverse repurchase agreements), money market fund shares invested in U.S. government obligations, "similarly liquid" federal government-issued assets approved by the issuer's Primary Federal Payment Stablecoin Regulator and tokenized versions of permitted reserve assets.

markets as more non-U.S. and (potentially) U.S. dollar payment stablecoin activity develops outside the United States.

In the IIB ANPR Letter, we urged Treasury to use its broad rulemaking and interpretive authority under the GENIUS Act to resolve this issue, including by highlighting the importance of allowing non-U.S. dollar-denominated stablecoins issued by FPSIs to have access to the U.S. market. If Treasury determines it is unable or unwilling to do so, the OCC and the other Primary Federal Payment Stablecoin Regulators should address the currency mismatch issue through their authority to tailor and differentiate prudential requirements among issuers under Section 4(a)(4)(B) or other relevant rulemaking authorities under the GENIUS Act.

III. KEY RECOMMENDATIONS

A. Ensuring Equal Treatment for the U.S. Operations of Foreign Banks and IHFIs

1. *PPSIs should be permitted to hold reserves as demand deposits at the (insured and uninsured) U.S. branches of foreign banks*

To give effect to congressional intent and the principles of national treatment and equality of competitive opportunity, and to diversify the number of eligible U.S.-regulated providers of demand deposits for payment stablecoin reserves, the OCC should clarify in its final rule that PPSIs may place reserves as demand deposits with the uninsured U.S. branches of foreign banks.[26] This issue, and several other issues of equal treatment raised in this Section III.A, should be addressed by interpreting the GENIUS Act's ambiguous definition of insured depository institution to include the uninsured U.S. branches of foreign banks.

Section 4(a)(1) of the Act permits PPSIs to hold reserves as demand deposits at insured depository institutions[27] and defines insured depository institutions, in relevant part, by reference to Section 3 of the Federal Deposit Insurance Act ("FDI Act").[28] Section 3 of the FDI Act defines the scope of insured depository institutions in two ways, depending on the context, and expressly includes the uninsured U.S. branches of foreign banks as

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[26] For the avoidance of doubt, we would expect similar treatment for FPSI reserves required to be held in the United States.

[27] GENIUS Act, Section 4(a)(1)(A).

[28] GENIUS Act, Section 2(15) ("The term 'insured depository institution' means— (A) an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and (B) an insured credit union").

"insured depository institutions" for purposes of the FDI Act's enforcement provisions.[29] The GENIUS Act does not specify which of the two definitions should be used.[30]

The NPR does not acknowledge this ambiguity. Instead, the proposed definition of insured depository institution in NPR § 15.2 appears to adopt the narrower reading by adding a specific reference to 12 U.S.C. § 1813(c)(2), a reference that does not appear in the GENIUS Act itself.[31] The OCC appears to have proposed this narrower definition without detailing the analytical steps it may have employed to get there. In particular, the NPR does not include any discussion of how the structure and purpose of the GENIUS Act, or its legislative history, would resolve this ambiguity.

The impact is material, as the narrow reading would exclude the uninsured branches of foreign banks from the definition of "insured depository institution" and, therefore, from the ability to serve as a deposit provider to PPSIs, which would be in sharp departure from the principles of national treatment and equality of competitive opportunity, and contrary to the available legislative history. Representative Barr addressed this specific issue in his floor speech upon passage of the GENIUS Act, stating that equal treatment of FBOs and U.S. banks "is particularly important with respect to . . . reserve and custody services . . . *irrespective of whether they are deposit insured* . . . ."[32]

We believe that a narrow reading of the insured depository institution definition also misconstrues the purpose of this requirement in the GENIUS Act. In our view, the requirement is intended to identify banking institutions subject to robust federal supervision where demand deposits can be placed. It does not aim for those institutions to necessarily carry deposit insurance (the narrower definition of Section 3(c)(2) of the FDI Act), because, in light of deposit insurance limits, requiring deposit insurance would not achieve a noticeably greater level of protection for holders of payment stablecoins but would interfere with the principle of equality of competitive opportunity.

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29 *Compare* 12 U.S.C. §§ 1813(c)(2) and (3). *See also* 12 U.S.C. § 1818. Insured U.S. branches of foreign banks are included in both definitions.

30 *See* GENIUS Act, Section 2(15) (referring to "an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)," without reference to the specific subparagraph).

31 *Compare* NPR § 15.2 ("An insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813(c)(2))") *with* GENIUS Act, Section 2(15) ("an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)").

32 Barr Speech at 3423 (*emphasis added*). *See also* Section 4(b) of the IBA; 12 U.S.C. § 3102(b) ("[O]perations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location"); notes 8-14 and accompanying text.

Except for a limit on retail deposit taking and the related availability of deposit insurance of up to $250,000 per depositor, the uninsured U.S. branches of foreign banks are eligible to accept deposits to the same extent as insured U.S. banks. This includes accepting institutional deposits, including those from payment stablecoin issuers. U.S. branches of foreign banks are subject to the same type of federal safety and soundness examination and oversight, and the same enforcement powers under Section 8 of the FDI Act, as U.S. banks, and, like U.S. banks, they are eligible to borrow from the FRB's discount window under applicable law and FRB regulations.[33] If Congress had intended to override longstanding practices that allow foreign banks operating through uninsured state or federal branches to compete fairly in the areas of banking and custody, we believe it would have done so expressly.

The NPR includes a series of questions that request comment on potential requirements to spread deposits among a broad range of institutions to maximize deposit insurance coverage.[34] We do not believe that such an approach is supported by the GENIUS Act. The GENIUS Act requires the OCC to issue reserve asset diversification standards, including deposit concentration at "banking institutions" (without reference to deposit insurance), and interest rate risk management standards applicable to PPSIs.[35] Notably, however, these requirements must "not exceed standards that are sufficient to ensure the ongoing operations of permitted payment stablecoin issuers" and must be tailored to their business model and risk profile.[36] This is appropriately implemented in NPR § 15.13(a)(8), which provides that a PPSI must "manage liquidity and concentration risk in a manner that is appropriate to [its] business model and risk profile."[37]

PPSIs are best positioned to ensure their ongoing operations through careful counterparty credit risk management, which should include assessment of a bank's capital, liquidity management and the sufficient size of a bank's balance sheet. Among the foreign banks operating in the United States through uninsured branches are firms with some of the highest levels of capitalization, subject to some of the strictest liquidity requirements, and

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33 *See* 12 C.F.R. § 201.1 (extending rules relating to eligibility for Federal Reserve Bank lending to "United States branches and agencies of foreign banks").

34 *See, e.g.,* Question 63 on other measures to encourage PPSIs to hold reserve assets as insured deposits; Question 64 on how to calibrate the insured deposit requirement for PPSIs; Question 65 on potential other measures to spread insured deposits throughout the banking system; Question 67 on whether large PPSIs should be required to hold all of their required deposits reserves as insured deposits; Question 68 on whether PPSIs should be required to hold at least 20% of their required reserve assets as insured deposits at smaller insured depository institutions (<$30 billion); and Question 70 on whether to create a quantitative limit on the maximum amount of uninsured demand deposits that PPSIs can maintain at any single insured depository institution.

35 GENIUS Act, Section 4(a)(4)(A)(iii).

36 *Id*.

37 NPR § 15.13(a)(8).

offering among the largest balance sheets in the world. This makes them eminently suitable candidates for consideration as bank counterparties under the Act's reserve asset diversification criteria. If the OCC were to include additional conditions requiring the use of insured deposits in its final rule, it would both deprive PPSIs of the ability to place demand deposits with the uninsured U.S. branches of those foreign banks and exceed the Act's standard of diversification "sufficient to ensure" a PPSI's ongoing operations.[38] In addition, requiring some portion, or even all, of a PPSI's reserve assets to be held as insured deposits would elevate deposit insurance as a relevant marker of reserve eligibility even though the Act makes it clear that payment stablecoins themselves must not be presented as insured products.[39]

There is relevant recent precedent for the broader reading of insured depository institution in other statutory contexts where the principles of national treatment and equality of competitive opportunity and congressional intent both favor the broader reading. For example, in the context of the "swap push out" provision in Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"),[40] the FRB concluded that the statutory exemption available to "insured depository institutions" was ambiguous and should be read to include (and provide the same exceptions and transition period relief for) the uninsured U.S. branches and agencies of foreign banks.[41]

Consistent with the Act's text and structure, congressional intent and public policy, and the principles of national treatment and equality of competitive opportunity, we urge the OCC to adopt the broader definition of insured depository institution, which includes

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38 As a matter of public policy, the U.S. branches of foreign banks can provide an important additional source of diversification. The U.S. branches of foreign banks also contribute significantly to U.S. lending (see most recent FRB-published data here). As the U.S. payment stablecoin market grows, demand for U.S. dollar deposit capacity to hold reserves will grow, and PPSIs and FPSIs will have to avoid overconcentration of deposits in a few institutions to meet their risk management-driven diversification goals. The uninsured U.S. branches of foreign banks, which are subject to robust supervision and regulation both in the United States and their home countries—with access to emergency U.S. dollar liquidity through the FRB's discount window—are well placed to contribute to the needed diversification.

39 *See* GENIUS Act, Section 4(e).

40 12 U.S.C. § 8305.

41 *See* 79 Fed. Reg. 340 (Jan. 3, 2014). In part, the FRB based its interpretation on the fact that, while the definition of insured depository institution in Section 3(c)(2) of the FDI Act does not include uninsured branches, Section 3(c)(3) of the FDI Act provides that branches and agencies *are* included for purposes of Section 8 of the FDI Act, which includes the FDI Act's enforcement provisions. *Id.* Section 716 of Dodd-Frank was subsequently amended by Congress to give uninsured branches and agencies of foreign banks equal treatment to insured depository institutions. *See* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 630, 128 Stat. 2130 (2014) § 630.

Section 3(c)(3) of the FDI Act.[42] This should be achieved by amending § 15.2 of the NPR to provide as follows:

> "Insured depository institution means: (1) An insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)~~**(2)**~~) **including any uninsured U.S. branch of a foreign bank**; and . . . ."

Defining insured depository institution in this way for purposes of the GENIUS Act would elegantly address holding reserves as demand deposits, as well as the eligibility of uninsured U.S. branches of foreign banks to provide custodial services and license subsidiaries as PPSIs on equal terms to U.S. banks, as discussed below.

2. *PPSIs should be allowed to use uninsured deposits, including those held at uninsured U.S. branches of foreign banks, to meet the NPR's proposed operational backstop requirement*

NPR § 15.41(b) proposes to require a PPSI to hold a designated pool of highly liquid assets equal to 12 months of expenses to maintain the ongoing operations of the PPSI during a business disruption. Only a limited set of assets would be allowed to comprise the operational backstop, including "[d]emand deposits . . . at a U.S. insured depository institution, the balances of which are fully insured by the FDIC . . . ."[43]

The operational backstop requirement is an OCC creation of rulemaking, not based on a detailed statutory mandate. The OCC should expand the scope of permitted operational backstop assets to include uninsured deposits, including those held at uninsured U.S. branches of foreign banks. The purpose of the backstop is to ensure that funds are held securely and are available quickly to support operations in a disruption, not to require that all such balances be structured to maximize deposit insurance coverage. A rule that excludes uninsured deposits altogether would be unnecessarily restrictive and could push PPSIs into more complex cash-management arrangements such as reciprocal or other types of deposit networks, which could pose additional operational risk. And as discussed in Section III.A.1 above, the uninsured U.S. branches of foreign banks are subject to robust federal prudential regulation and supervision equivalent to U.S. banks and should be treated equally to other U.S. insured depository institutions. This can be achieved through the use of the broader definition of insured depository institution as discussed in Section III.A.1 above.

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[42] It should be noted that the inclusion of entities listed in Section 3(c)(3) would only lead to the inclusion—as is appropriate—of uninsured U.S. branches of foreign banks. Agencies and commercial lending companies of foreign banks could not participate in deposit taking or custody in the United States due to their highly restricted authorities to do business in the United States.

[43] NPR § 15.41(b)(2)(ii).

3. *When acting as a custodian for payment stablecoins and payment stablecoin reserves, the U.S. branches of foreign banks should be treated equally to other U.S. insured depository institutions*

Section 10 of the GENIUS Act sets forth requirements for the provision of custodial services or safekeeping services for payment stablecoin reserves, payment stablecoins as collateral and the private keys used to issue permitted payment stablecoins. It authorizes the U.S. operations of FBOs, including their U.S. branches, to provide such custodial and safekeeping services.[44] The NPR would define all those custodians that are under the OCC's supervisory jurisdiction, including national banks, federal savings associations, federal branches of foreign banks and OCC-regulated PPSIs, as "covered custodians" and set standards for their custodial and safekeeping services.

We support the OCC's decision to treat all covered custodians under the jurisdiction of the OCC equally when it comes to the requirements for commingling reserves in an omnibus account.[45] We urge the OCC to go further, however, and clarify in NPR § 15.21(d) that uninsured and insured federal branches are permitted to hold "covered assets" that are in the form of cash "in the form of a deposit liability," to the same extent as insured national banks and federal savings associations.[46]

GENIUS Act Section 10(c)(2)(D), which is the source of NPR § 15.21(d), provides that any "insured depository institution" providing custodial or safekeeping services is permitted "to hold payment stablecoin reserves in the form of cash on deposit provided such treatment is consistent with Federal law."[47] As explained above, the definition of insured depository institution in the GENIUS Act has two possible readings, and we believe that congressional intent, principles of national treatment and equality of competitive opportunity, and public policy all support the broader reading that includes uninsured branches.[48] Here again, deposit insurance is unlikely to be material to the

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44 GENIUS Act, Section 10. Under Section 10(a), the U.S. operations of FBOs, including their U.S. branches, are authorized to provide such custodial and safekeeping services by virtue of their regulation by either the FRB (for state-licensed branches, state member bank subsidiaries and the overall U.S. operations of a foreign banking organization), the OCC (for federal branches and national bank subsidiaries) or other federal financial regulator (for other functionally regulated subsidiaries, like broker-dealers regulated by the SEC).

45 NPR § 15.22(b).

46 *See* NPR § 15.21(d) ("[A]n insured national bank or Federal savings association that provides custodial or safekeeping services, including as a sub-custodian, for covered assets that are in the form of cash may hold such cash in the form of a deposit liability, provided such treatment is consistent with Federal law.")

47 GENIUS Act, Section 10(c)(2)(D).

48 Even within the scope of Section 10(c), the GENIUS Act uses both "depository institution" and "insured depository institution" when discussing reserves held as deposit liabilities. *See* GENIUS Act,

safety of cash reserves custodied at either U.S. banks or the U.S. branches of foreign banks, which are both subject to robust supervision and regulation and have access to emergency U.S. dollar liquidity through the FRB's discount window. The OCC should adopt the broader definition discussed above, and, in applying it here, should clarify that the federal branches of foreign banks (i.e., those branches under the OCC's jurisdiction) also benefit from this provision.[49]

In order to reflect this change in the OCC's regulations governing covered custodians, the OCC should amend the NPR definition of insured depository institution as described in Section III.A.1 above and should amend NPR § 15.21(d) as follows:

> "(d) *Holdings of cash.* Notwithstanding any other provision of this section, an insured national bank**, Federal branch** or Federal savings association that provides custodial or safekeeping services, including as a sub-custodian, for covered assets that are in the form of cash may hold such cash in the form of a deposit liability, provided such treatment is consistent with Federal law."

4. *The U.S. operations of IHFIs should qualify as U.S. financial institutions for purposes of any reserve localization requirements, including under Section 18(a)(3) of the Act*

Section 18(a)(3) of the Act provides that an FPSI relying on a comparability determination under Section 18 must hold "reserves in a United States financial institution sufficient to meet liquidity demands of United States customers,"[50] and Question 173 of the NPR asks whether the OCC should define U.S. financial institution for these purposes.

The OCC should confirm that any institution located or organized in the United States that is authorized under relevant state or federal law to provide custodial or safekeeping services for payment stablecoin reserves should qualify as U.S. financial institutions for purposes of Section 18 and any other localized reserve requirement introduced by the OCC or other regulator.[51] This would include the U.S. branches and other U.S. operations of FBOs, as well as U.S. broker-dealers and other functionally regulated U.S.

Section 10(c)(2)(A) ("[A]ny payment stablecoin reserves in the form of cash held in the form of a deposit liability at a depository institution shall not be subject to any requirement relating to the separation of such cash from the property of the applicable depository institution").

49 Although state-licensed U.S. branches of foreign banks are not within the OCC's jurisdiction, we note that we believe the same interpretation should apply to them.

50 GENIUS Act, Section 18(a)(3).

51 *See, e.g.*, NPR at Question 54 ("[S]hould the proposed rule require that stablecoins denominated in United States dollars only be backed by demand deposits at U.S.-based depository institutions (*i.e.,* reserve assets could not include Eurodollar deposits)?").

subsidiaries of IHFIs that are not FBOs but are authorized to provide such services under state or federal law.[52]

In many cases, this would involve separately incorporated or organized U.S. subsidiaries of FBOs and of other IHFIs that are directly subject to regulation by a Primary Federal Payment Stablecoin Regulator or a primary financial regulatory agency and U.S. insolvency laws. There is no policy reason to treat such subsidiaries as different than similarly regulated subsidiaries of U.S. BHCs or other financial firms. U.S. branches of foreign banks are U.S. financial institutions, given their physical location in the United States, their U.S. licensing and regulation and the broad U.S. state and federal laws ring-fencing branch assets for the benefit of creditors located in a state or (for federal branches) in the United States.[53]

To address this point, we recommend the OCC add the following definition in NPR § 15.2:

> "*U.S. financial institution* means any institution located or organized in the United States that is authorized under relevant state or federal law to provide custodial or safekeeping services for payment stablecoin reserves."

5. *The U.S. branches of foreign banks should benefit from the preservation of authority in Section 16 of the Act to the same extent as other banking institutions*

Section 16 of the Act includes a rule of construction that "[n]othing in this Act may be construed to limit the authority of a depository institution, Federal credit union, State credit union, national bank, or trust company to engage in activities permissible pursuant to applicable State and Federal law . . . ."[54] By adopting the FDI Act definition of

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[52] We note that the U.S. operations of FBOs, including state-licensed branches, federal branches and U.S. bank subsidiaries, are located in the United States and regulated under applicable federal or state law. Similarly, although the U.S. operations of IHFIs that are not FBOs are not subject to FRB umbrella supervision, their U.S. broker-dealers and other functionally regulated U.S. subsidiaries are organized under U.S. law or located in the United States and regulated under applicable federal or state law. Those U.S.-based entities therefore should qualify where they are authorized to provide the relevant custodial or safekeeping services. All of these entities would also qualify as permitted custodians for PPSIs under Section 10 of the Act.

[53] *See, e.g.*, 12 U.S.C. § 3102(j)(1) (noting, in the receivership context, that "whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may . . . appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States . . . ."); N.Y. Banking Law § 606(4)(a) (noting that "[t]he superintendent may . . . take possession of the business and property of the business and property in this state of any foreign banking corporation that has been licensed by the superintendent" upon, *inter alia*, surrender or revocation of the corporation's license or liquidation).

[54] GENIUS Act, Section 16(a).

depository institution, the NPR would helpfully clarify that this rule of construction also applies to federal branches and insured branches.[55]

6. *Foreign banks should be allowed the same flexibility as U.S. BHCs to establish U.S. subsidiaries licensed as federal qualified payment stablecoin issuers under the "nonbank entity" prong and as permitted payment stablecoin issuers under the "subsidiary of an insured depository institution" prong*

The GENIUS Act provides multiple paths for an IHFI to establish a licensed PPSI. One of those paths is the establishment of a nonbank entity, which is defined as "a person that is not a depository institution or subsidiary of a depository institution," but this use of "depository institution" is not further defined under the Act.[56] The NPR would resolve this ambiguity by adopting the FDI Act's definition of depository institution as "any bank or savings association,"[57] and the preamble to the NPR helpfully clarifies that a nonbank entity could include "a non-subsidiary affiliate of a depository institution."[58]

This is relevant for U.S. BHCs, which can use this authority to set up licensed nonbank issuers outside their bank chain. It is also relevant for foreign banks, which, consistent with the definition of "depository institution" in the FDI Act, may establish U.S. subsidiaries as licensed nonbank issuers so long as that entity is not a subsidiary of the U.S. branch or of another U.S. bank entity of such foreign bank.[59] Such an entity would obtain its issuer license from the OCC.

Furthermore, consistent with the insured depository institution definition discussed above, and on par with their U.S. bank peers, an uninsured U.S. branch of a foreign bank should be considered an insured depository institution under the GENIUS Act, and thus eligible to establish a PPSI subsidiary licensed by the branch's primary federal regulator, providing another path for a foreign bank to establish a PPSI.

We appreciate that the NPR's definition of permitted payment stablecoin issuer lists only those entities that are subject to OCC supervision. However, we believe there is an

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55 *See* Section III.A.6, below.

56 GENIUS Act, Section 2(20); NPR, 91 Fed. Reg. at 10205. Later in Section 11(g) of the Act, as the NPR notes, a depository institution is defined in reference to the FDI Act. GENIUS Act, Section 11(g).

57 12 U.S.C. § 1813(c)(1).

58 NPR § 15.2; NPR, 91 Fed. Reg. at 10208.

59 The FDI Act's definition of depository institution includes "any bank or savings association." 12 U.S.C. § 1813(c)(1). The FDI Act, in turn, defines "bank" as "any national bank and State bank, and any Federal branch and insured branch." 12 U.S.C. § 1813(a)(1). Foreign banks are not depository institutions under this definition.

omission. To implement this second recommendation, the OCC should amend the proposed definition of permitted payment stablecoin issuer in NPR §15.2 to include federal branches as follows:[60]

> "*Permitted payment stablecoin issuer* means a person formed in the United States that is a—(1) Subsidiary of an insured national bank**, Federal branch** or Federal savings association that has been approved to issue payment stablecoins . . ."

7. *Application, risk management and capital standards for PPSIs controlled by IHFIs should give due regard to existing U.S. regulation of the IHFI and accommodate a range of legal and governance structures*

(a) Standards for Reviewing PPSI Applications from IHFIs

When reviewing applications to establish PPSIs from FBOs and other IHFIs under NPR §15.30, the OCC should give due regard to the U.S. federal regulatory framework that already applies to the IHFI's U.S. operations (including, for FBOs, U.S. federal safety and soundness standards). An IHFI's operation of a U.S. financial institution, whether it be a bank or nonbank, that is subject to ongoing federal regulation and supervision in the United States, should be a strong indicator that the IHFI parent has the requisite financial and management resources, competence and integrity to operate a PPSI, and the OCC should seek to rely on and defer to other regulatory approvals and supervisory materials to the greatest extent possible. The U.S. operations of FBOs are subject to comprehensive umbrella supervision and regulation by the FRB that is equivalent to the supervision and regulation of domestic BHCs, except where structural differences or deference to comparable home-country standards merit departure, and should be presumed to be eligible to own a PPSI to the same extent as a domestic BHC.

(b) Risk Management Standards

We support the OCC's decision to propose flexible risk management standards for PPSIs in NPR § 15.13, consistent with the GENIUS Act's mandate that such standards be "principles-based" and "tailored to the business model and risk profile" of a PPSI. As the OCC moves forward to implement and enforce these flexible standards, it should take into account the variety of legal and governance structures a PPSI may have, including

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[60] Federal branches of foreign banks, whether insured or uninsured, should be separately listed in this definition because they are subject to OCC supervision and are insured depository institutions. By listing them here, their subsidiaries can become PPSIs. This is irrespective of the fact that federal branches are separately mentioned under the definition of "federal qualified payment stablecoin issuer" in their own capacity, offering an additional issuer path for those branches. Our suggestion makes explicit what is currently implicit in the NPR: issuance by a subsidiary of a federal branch is achieved under Section 2(23) of the GENIUS Act, while direct issuance by a federal branch is achieved under Section 2(11), which defines a federal qualified payment stablecoin issuer.

for foreign-owned or controlled PPSIs, that reflect differences in home country regulations and practices.

For example, in recognition of the variety of legal structures a PPSI could have, the NPR helpfully defines board of directors to include a board of directors or other "group of individuals that serve the nearest equivalent function of acting as the governing body" of the PPSI or applicant.[61] Because federal branches are not separately governed legal entities, a federal branch licensed as a PPSI should be permitted to substitute a U.S. management committee or other equivalent body where action by a board of directors is proposed to be required.[62]

As another example, where a PPSI is subject to a group risk management program of a prudentially supervised IHFI that covers the PPSI subsidiary, the OCC should not seek to impose additional risk management requirements on the PPSI if the group risk management program is consistent with the NPR's principles-based approach to risk management.

If, on the other hand, the OCC were to decide to adopt more prescriptive requirements in a final rule, for example, regarding insider or affiliate transactions, it should not do so in a way that would disrupt preexisting adjustments that have been made to address the structural differences of the U.S. operations of foreign banks.[63]

(c) Capital Standards for Federal Branches

Section 4(a)(4)(C)(iii) of the GENIUS Act provides that insured depository institutions and depository institution holding companies subject to consolidated leverage and risk-based capital requirements may not be required to hold regulatory capital with respect to a consolidated PPSI subsidiary that is greater than the capital the PPSI must maintain under the GENIUS Act and its implementing regulations.[64] Consistent with this requirement, the NPR would amend the OCC's capital rules to deconsolidate PPSI subsidiaries for regulatory capital purposes.[65]

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61 NPR § 15.2.

62 *See, e.g.*, NPR §§ 15.13(a)(2)(vii) (requiring board or audit committee review of internal audit effectiveness), 15.13(a)(3)(ii) (board reporting requirements), 15.14(k) (board certification requirement).

63 For example, the FRB's Regulation W, which restricts extensions of credit and other covered transactions between a bank and its affiliates, only applies to U.S. branches of foreign banks in limited circumstances. *See* 12 C.F.R. § 223.61.

64 GENIUS Act, Section 4(a)(4)(C)(iii).

65 NPR, 91 Fed. Reg. at 10244.

As discussed above, federal branches may be licensed as PPSIs directly, or may establish subsidiaries that are licensed as PPSIs, but federal branches are not subject to separate leverage and risk-based capital requirements in the United States. Instead, they are subject to their parent's consolidated leverage and risk-based capital requirements under their home-country law, and, as the NPR notes, are required to maintain a capital equivalency deposit in the United States calculated in part based on total liabilities of the federal branch.[66] For consistency and to ensure national treatment for federal branches, federal branches that are licensed as PPSIs or have PPSI subsidiaries should not be required to include payment stablecoin liabilities in their traditional calculation of capital equivalency deposits. Instead, consistent with Section 4(a)(4)(C)(iii), capital equivalency requirements for payment stablecoin liabilities should be calculated according to the rules in NPR § 15.41.

To implement this recommendation, the OCC should amend its capital equivalency deposits at 12 C.F.R. § 28.15 to add a new section 28.15(g):

> "(g) Adjustments for permitted payment stablecoin issuers. Notwithstanding any other provision in this section, a foreign bank that has a Federal branch that is, or is consolidated with, a permitted payment stablecoin issuer as defined in § 15.2 of this chapter must make the following adjustments when calculating its CED:
>
> > (1) If the Federal branch is a permitted payment stablecoin issuer, (i) deduct payment stablecoin redemption obligations from the Federal branch's liabilities, and (ii) add to the Federal branch's CED the amount of minimum capital required for the branch's permitted payment stablecoin issuer activities as calculated under § 15.41(a) of this chapter; and
> >
> > (2) If the Federal branch has a subsidiary that is a permitted payment stablecoin issuer, deconsolidate the permitted payment stablecoin issuer from the Federal branch's balance sheet for purposes of calculating the CED."

B. Registration and Regulation of FPSIs

1. *The NPR's FPSI provisions should be revised to more closely reflect the statutorily specified role the OCC has with respect to the substantive regulation of FPSIs, while continuing to preserve the OCC's supervisory oversight of FPSIs*

Section 18 of the GENIUS Act gives the OCC an important role with respect to the registration and ongoing monitoring of FPSIs. Although important, the OCC's role is

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66 *See* 12 U.S.C. § 3102(g); 12 C.F.R. § 28.15; NPR at Question 190.

specified with particularity in the statute, and it does not extend to imposing new substantive requirements on FPSIs.

Under Sections 18(a) and 18(b), Treasury is responsible for determining whether a foreign regulatory and supervisory regime is comparable to the GENIUS Act regulatory framework for PPSIs. The OCC is charged under Section 18(c) with evaluating registration based on the statutory factors Congress identified, issuing rules relating to registration approval standards and appeals, and establishing requirements for reporting, supervision, and examination of FPSIs in furtherance of the OCC's ongoing monitoring of registered FPSIs. Treasury is charged more broadly with rulemaking "to carry out [Section 18]."[67]

Subpart D of the NPR, which includes the proposed provisions regarding the regulation of FPSIs, does not consistently reflect the Act's allocation of responsibilities for FPSIs between the OCC and Treasury, and several elements of Subpart D would impose substantive requirements beyond the role Section 18 assigns to the OCC. These requirements should be withdrawn, and Subpart D should be revised so that it more closely reflects the OCC's role in accepting and approving registrations, monitoring FPSI activity for compliance with the Act, and, where appropriate and authorized under the statute, rescinding registrations. These changes would enhance legal clarity over the statutory requirements for FPSIs to make their payment stablecoins available in the United States, and distinguish clearly between the responsibilities of Treasury and the OCC.

For example, while we recognize that NPR § 15.31(a)—as currently drafted—essentially restates the statutory requirements under Section 18, doing so implies a broader scope of delegated authority than Section 18 appears to provide. Under the statutory framework, an FPSI that satisfies the four requirements of Section 18(a) is not subject to the prohibitions in Section 3 of the Act, and is relieved from all of Section 3's prohibitions, including, for example, Section 3(g)'s accounting, collateral, margin and settlement asset prohibitions.[68] We do not believe that an OCC rule is required to effectuate this statutory exemption.[69]

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67 GENIUS Act, Section 18(b)(6).

68 *See* GENIUS Act, Section 18(a) ("the prohibitions under section 3 shall not apply to" a qualifying FPSI).

69 We also note that NPR § 15.31(c) repeats and interprets the statutory prohibition on interest or yield payments by FPSIs in Section 4(a)(11) of the Act. We do not view the interpretation and presumption in NPR § 15.31(c)(2) as a new substantive requirement on FPSIs, but rather as an interpretive statement explaining how the OCC views and expects to apply the statutory limit in connection with the OCC's role monitoring FPSI compliance with the Act pursuant to Section 18(c)(2) of the Act. For this reason, we do not believe NPR § 15.31(c) raises the same level of concern as NPR § 15.31(a).

As another example, Section 18(c)(1)(C) identifies five factors the Comptroller "shall consider" in deciding whether to reject an FPSI registration, but NPR § 15.32(c)(4) diverges where it would add consideration of "risks relating to ensuring timely redemption for United States customers" to the statutory factor that requires only consideration of "whether the foreign payment stablecoin presents a risk to the financial stability of the United States; . . . ."[70] In its review of registration requests, the OCC may, of course, consider any facts that genuinely bear on U.S. financial stability, including facts about redemption practices where relevant, and our members recognize the importance of ensuring FPSIs can meet timely redemption requests. Under the statutory structure, however, judgments regarding the adequacy of redemption standards applicable to an FPSI more appropriately belong to Treasury in the first instance.

2. *The OCC should tailor its supervisory, examination and reporting requirements regarding the non-U.S. activity of FPSIs to what is reasonably necessary to monitor the FPSI's U.S. payment stablecoin activity and its compliance with the GENIUS Act*

The OCC should clarify in the final rule that its exercise of authority to examine an FPSI, request reports and other information from it, and obtain access to personnel and records will be directed only to the purposes Congress identified in Section 18, which is the ongoing monitoring of the FPSI's U.S. payment stablecoin activity for compliance with the GENIUS Act.

Section 18(c)(2) of the Act provides that an FPSI is subject to "reporting, supervision, and examination requirements as determined by the Comptroller; . . . ."[71] This is done in the context of the Act's ongoing monitoring framework for FPSIs where the OCC's role is to monitor an FPSI's compliance with the requirements of the Act, including the maintenance of adequate U.S. reserves and not posing a risk to U.S. financial stability or an illicit finance risk.[72] These are specific areas of concern and do not translate to general prudential supervision of the FPSI's worldwide business. To ensure that the NPR's reporting, supervision and examination provisions align with the scope of the OCC's authority, the OCC should adopt language providing that supervisory requests concerning non-U.S. activity will be limited to what is reasonably necessary to monitor the FPSI's U.S. payment stablecoin activity and its compliance with the GENIUS Act, including U.S. reserve sufficiency, and any U.S. financial stability or illicit finance risks.

This change will be important to cabin the otherwise broadly framed reporting requirements proposed in the NPR. NPR § 15.31(b)(1) would require a registered FPSI to "fully accede to any request by the OCC regarding reporting, supervision, or

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70 GENIUS Act, Section 18(c)(1)(C)(iv).

71 GENIUS Act, Section 18(c)(2)(C)(iv).

72 *See* GENIUS Act, Section 18(c)(2)-(3).

examination," while NPR § 15.32(d)(1) would require the FPSI, "[u]pon request by the OCC," to provide "prompt and complete access to all officers, directors, employees, and agents and all relevant books, records, or documents" in a form and location accessible to the OCC in the United States.[73] Without a limiting principle in the regulatory text, such language could extend the OCC's supervisory activity far beyond what is necessary to satisfy its statutory mandate.

When it is consistent with the purposes of the Act for the OCC to request information concerning non-U.S. operations, the OCC should tailor the scope of the request to matters bearing on the issuer's U.S. payment stablecoin activity, U.S.-located reserves and the statutory risks Congress directed the OCC to evaluate. In addition, the OCC should defer to home-country reports and avoid duplicating information requests to the greatest extent possible. The same principle should apply to the intensity and frequency of examinations, which should reflect the relative scale of the FPSI's U.S. business rather than automatically mirroring supervision of a PPSI with a materially different operating footprint.[74]

The NPR's reporting provisions should be tailored for the same reasons. NPR § 15.31(b)(2)(i) would require an FPSI to produce the reports required of a PPSI under NPR § 15.14, "plus any other reports the OCC may require," subject only to a discretionary exemption process.[75] But NPR § 15.14 is for PPSIs subject to the OCC's comprehensive supervisory framework, including full-scope examinations, English-language books and records, weekly confidential reporting, and—in some cases—annual GAAP financial statements audited by a registered public accounting firm.[76]

An FPSI is differently situated. It may be subject to different sets of accounting and regulatory reporting requirements in its home country (e.g., IFRS rather than GAAP) and Section 18 subjects it to OCC monitoring for a narrower set of statutory purposes given the primary role of home-country regulators in supervising FPSIs. The final rule should require only those reports reasonably necessary to assess the FPSI's U.S. payment stablecoin activity and compliance with the Act and should defer to home-country reports and accounting principles to the maximum extent possible.

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73 NPR § 15.32(d)(1).

74 The NPR provides that the OCC will "conduct full-scope examinations of a foreign payment stablecoin issuer registered with the OCC under [NPR] § 15.32 at the same frequency as the OCC would examine a permitted payment stablecoin issuer under [NPR] § 15.14 unless the OCC determines, in its sole discretion, to examine at a different frequency." NPR § 15.31(b)(3)(i). The NPR observes, however, that "less frequent examinations may be appropriate in circumstances where the volume of U.S. holdings and transactions is a small fraction of a foreign payment stablecoin issuer's business." NPR, 91 Fed Reg. at 10235.

75 *See* NPR §§ 15.31(b)(2)(i)-(ii).

76 *See* NPR § 15.14.

A tailored approach would better implement the statute and produce a more workable supervisory regime. It would preserve the OCC's ability to obtain the information it genuinely needs to monitor U.S. reserve sufficiency, financial stability, illicit finance risks and U.S. compliance matters, while reducing unnecessary friction for FPSIs operating under comparable home-country regimes. It would also enhance legal certainty for FPSIs considering whether to enter the U.S. market by making clear that the OCC's authority over FPSIs is broad enough to enforce the Act, but not so broad as to become the de facto worldwide prudential supervisor of an FPSI's activities, management and governance.

To accomplish these recommendations, the OCC should replace NPR § 15.31(b)(2)(i) with a new set of reporting requirements tailored to an FPSI's U.S. activities and should add new subparagraphs (4) and (5) to NPR § 15.31(b):

> "(4) *Reporting and information requests regarding non-U.S. activities*. To the maximum extent possible, reporting requirements, information requests, and other supervisory and examination activities regarding an FPSI's non-U.S. activities, management and operations will be limited to what is reasonably necessary to monitor the FPSI's U.S. payment stablecoin activity and its compliance with the GENIUS Act, including U.S. reserve sufficiency, and any U.S. financial stability or illicit finance risks.
>
> (5) *Avoidance of duplication.* The OCC will, to the fullest extent possible, defer to home-country reports and accounting principles and avoid duplication of examination activities, reporting requirements, and requests for information."

3. *The OCC should adopt a flexible, principles-based approach to estimating U.S. customer liquidity demands for FPSIs*

Section 18(a)(3) of the GENIUS Act requires an FPSI to maintain reserves in a United States financial institution "sufficient to meet the liquidity demands of United States customers."[77] The Act does not, however, define the class of persons who would qualify as "United States customers," provide any differentiated protection for such persons specifically tied to their status or location (or the location of FPSI reserves) or prescribe a particular methodology for estimating U.S. customer demand or U.S. customer holdings of a payment stablecoin.

Our members recognize that confidence in the payment stablecoin market will require both PPSIs and FPSIs to stand firmly behind their commitments to fulfill redemption requests at par and in a timely manner, and we support the goal of the GENIUS Act to ensure that PPSIs and FPSIs alike have sufficient, accessible liquidity to meet the requests of customers. At the same time, requirements to satisfy the general statutory

[77] *See* GENIUS Act, Section 18(a)(3).

obligation to measure potential U.S. liquidity demands must reflect practical realities, including technological and informational limitations on issuers' ability to identify and/or locate the holders of their payment stablecoins.

If an issuer's payment stablecoins are used at commercial scale, the issuer is very unlikely to be able to have visibility into the identity and/or location of every wallet holder. It may be possible to trace ownership accurately if an issuer's payment stablecoin is only transferrable on the relevant distributed ledger to a limited number of wallets that are whitelisted by the issuer after obtaining required information from the wallet holder, but such a configuration would likely be rare and of uncertain commerciality. Payment stablecoins issued on public, permissionless ledgers are in effect electronic bearer assets that can be exchanged across multiple platforms, including on peer-to-peer and other decentralized networks, and held through intermediaries or self-custodied in hot or cold wallets. Particularly in the case of self-custody, it would be operationally difficult—if not impossible—to determine where the holders of an issuer's payment stablecoins are located.

Given these technological hurdles, the proposed requirement for FPSIs to provide a monthly composition report "describing the total number of outstanding payment stablecoins . . . held by United States customers" is unworkable and should be replaced with a flexible, principles-based approach that permits FPSIs to use a range of reasonable, well-documented methodologies to estimate U.S. customer liquidity demands.[78]

We believe it is too early to prescribe a one-size-fits-all approach to estimating liquidity demands in the United States, and the OCC should remain open to a variety of solutions, at least until it has more experience and data from FPSIs that issue payment stablecoins in the United States. Until that time, the OCC should simply require reasonable, best efforts estimation methods supported by policies, controls and periodic reassessment and subject to supervisory review, rather than a rigid one-size-fits-all reporting mandate.[79]

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[78] NPR § 15.32(d)(3)(ii). The NPR contains several open-ended questions that reflect the difficult definitional and measurement issues raised by this requirement. See, e.g., NPR at Question 4 (regarding the appropriate definition of customer), Question 24 (regarding the definition of United States customer), Question 170 (regarding how to estimate U.S. holders and required U.S. reserves).

[79] For example, we understand that some current stablecoin issuers that have commitments to meet redemption requests in multiple jurisdictions rely on reports from digital asset platforms regarding the distribution of stablecoins among the platforms' customers and use that to extrapolate an estimate of total holdings in various jurisdictions. Another, potentially complementary, approach might be to rely on historic redemption data informed by historical stress experiences, which may also provide a second opportunity to obtain location information regarding stablecoin holders.

4. *FPSI assessments should be appropriately calibrated to reflect the scope of their U.S. operations and the OCC's narrower scope of supervisory responsibilities for FPSIs as compared to PPSIs*

We appreciate the OCC's goal of approaching assessments to recoup the OCC's supervisory costs "in a fair, efficient, and cost-effective manner."[80] Currently, the NPR would assess FPSIs and PPSIs equally, based on the relative asset size of the issuer. This approach to FPSIs assessments fails to account for (i) the narrower scope of the OCC's supervisory responsibility for FPSIs as compared with PPSIs; (ii) the primary role of home-country regulators in supervising FPSIs; and (iii) the fact that the OCC's supervision of an FPSI should be limited to the FPSI's U.S. activities, not its non-U.S. business. Each of these factors suggests that an FPSI's assessments should be smaller than a PPSI of similar asset size.

In order to calibrate FPSI assessments appropriately, we recommend that the OCC first apply a standard discount to PPSI rates to reflect the more limited role the OCC will have in supervising FPSIs as compared to PPSIs.[81] The approach should then be further tailored to reflect the scope of each FPSI's U.S. operations, rather than its worldwide operations. This adjustment could be based on the proportion of issuances an FPSI directs to U.S markets, the amount of U.S.-located reserves it maintains to satisfy anticipated U.S. liquidity demands or other measures of U.S.-facing activity.

Some calibration to reflect U.S. versus non-U.S. activity is necessary to avoid applying assessments based on worldwide assets and activities to an FPSI with only a small proportion of its business touching the United States. It also would be consistent with the NPR's recognition, in other contexts, that supervision of an FPSI may appropriately be tailored where U.S. holdings and transactions represent only a small fraction of the issuer's overall business.

5. *The OCC should coordinate a statement with Treasury recognizing that FPSIs permitted to issue in the United States through a comparability determination and satisfaction of Section 18 should be entitled to the same scope of preemption that federally qualified PPSIs receive under Section 5(h)*

The GENIUS Act is a new statutory scheme that creates a comprehensive licensing and registration regime for payment stablecoin issuers. The Act establishes the exclusive

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80 NPR, 91 Fed. Reg. at 10249.

81 As explained in Sections III.B.1-2 above, the OCC's supervisory role with respect to FPSIs should be focused on the U.S. operations of the FPSIs and limited to registration and monitoring compliance with specific statutory conditions—particularly the requirement to maintain U.S.-located reserves sufficient to meet U.S. liquidity demands—rather than the fuller supervisory framework applicable to domestic PPSIs. *Compare* NPR §§ 15.31-15.32 (FPSIs) *with* NPR §§ 15.10-15.16 (PPSIs).

means by which issuers may receive federal or state licenses as PPSIs, imposes comprehensive minimum requirements for federal and state regulators that license and supervise PPSIs, and opens a path for FPSIs to make their payment stablecoins available in the United States subject to a Treasury comparability determination and registration with the OCC. Both the statutory structure and express statements of congressional intent demonstrate a federal interest in establishing a nationally coherent licensing regime for payment stablecoin issuers. Where federal law creates a "pervasive" regulatory scheme or establishes a "dominant" federal interest, federal law "occupies the field" and preempts supplementary or conflicting state licensing and registration requirements.[82]

In debating the GENIUS Act, Congress was concerned over the lack of a "clear Federal framework for dollar-backed payment stablecoins,"[83] and understood that by passing the Act, it was creating "a clear and defined stablecoin framework."[84] To this end, Section 5(h) of the GENIUS Act expressly preempts state licensing and chartering requirements as applied to federal qualified payment stablecoin issuers and subsidiaries of insured depository institutions. Section 7(f) includes similar express preemption language regarding the application of host state requirements to state qualified payment stablecoin issuers. Section 18 does not include express preemption language for FPSIs, but the lack of express preemption language on a particular topic does not preclude a finding of field or conflict preemption based on the statutory structure as a whole,[85] particularly where, as here, the FPSI provisions are part of the same comprehensive federal regime for licensing and registration of payment stablecoin issuers.

Notably, neither the express preemptive language in Sections 5(h) and 7(f) of the Act, nor application of the principles of field and conflict preemption, require full preemption of state law. Both Section 5(h) and 7(f) are limited to state chartering, licensing and

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82 *See Arizona v. United States*, 567 U.S. 387, 399 (2012) ("The intent to displace state law altogether can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'") (internal citations omitted); *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) ("Pre-emptive intent may also be inferred if the scope of the statute indicates that Congress intended federal law to occupy the legislative field, or if there is an actual conflict between state and federal law.") (internal citations omitted).

83 171 Cong. Rec. H3405, at H3421 (daily ed. July 17, 2025) (statement of Rep. Bryan Steil) ("For too long, the United States has operated without a clear Federal framework for dollar-backed payment stablecoins, leaving consumers vulnerable to fraud, innovators in limbo, and our global competitiveness at risk.").

84 *Id*. (statement of Rep. Thomas Emmer). *See also id.* at H3424 (statement of Rep. Michael Flood) ("[T]his bill absolutely provides a comprehensive and safe Federal framework for stablecoin regulation.").

85 *See Altria* at 76 ("Congress may indicate pre-emptive intent through a statute's express language or through its structure and purpose. If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains.") (internal citations omitted).

authorization to do business requirements because those laws would conflict and interfere with the GENIUS Act's comprehensive licensing regime; state consumer protections laws, for example, are expressly preserved. We believe the principles of federal preemption also require preemption of state chartering, licensing and authorization to do business requirements as applied to FPSIs.[86]

The purpose of Section 18 is to allow the United States to benefit from non-U.S. payment stablecoins where the issuers are subject to comprehensive regulation by non-U.S. regulators comparable to regulation under the GENIUS Act plus ongoing monitoring of their local operations for compliance with the requirements of the Act. It does this by empowering Treasury to determine that an FPSI is subject to a comparable regulatory and supervisory regime and conditionally exempting such FPSIs from Section 3's prohibitions, and by empowering the OCC to review and accept or deny registration applications from FPSIs and to determine "reporting, supervision, and examination requirements" for the OCC's ongoing monitoring of FPSIs in the United States.[87]

Treasury's comparability determination is the key federal consideration under Section 18. Once Treasury makes a determination, an FPSI's entry into the U.S. market is governed by the federal Section 18 pathway through OCC registration and monitoring. Allowing states to impose separate chartering or licensing requirements would frustrate that determination and undermine the uniform national framework Congress established. In this scenario, comparability would lose significant practical value, and the result would be regulatory fragmentation, higher entry costs and reduced willingness by well-regulated foreign issuers to serve U.S. markets. Where, as here, a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," it is preempted.[88]

We recognize that the OCC has extensive experience with issues of federal preemption under the National Bank Act and the Dodd-Frank Act, based on an extensive line of court precedents that generally find preemption when a state law "prevent[s] or significantly interfere[s] with the national bank's exercise of its powers."[89] We also recognize that the GENIUS Act is a new statute, not necessarily controlled by precedents interpreting the National Bank Act, but we believe the standard is informative, because imposing state licensing or chartering requirements on an FPSI that already has received a comparability

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86 In this context, the preemption language in Section 5(h) and 7(f) should be read as clarifying the scope of the Act's preemption over state law—state licensing, chartering, and authorization to do business requirements are preempted, but not, e.g., state consumer protection laws.

87 *See* GENIUS Act, Section 18(c). *See also* Sections III.B.1-2, above.

88 *Arizona* at 399 (internal citation omitted).

89 *See, e.g.*, *Cantero v. Bank of Am., N.A.*, 602 U.S. 205 (2024); *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996).

determination and registered with the OCC would significantly interfere with the FPSI's access to the U.S. market, in conflict with the purpose of Section 18.[90]

Although ultimate authority for establishing the scope of federal preemption under the Act does not rest with the OCC, the OCC could help bring clarity to the market if it coordinates with Treasury to issue a joint statement affirming its understanding that Section 18 preempts state requirements relating to chartering, licensing or other authorization to do business that might otherwise apply to an FPSI where Treasury has determined that the FPSI is subject to comprehensive home-country regulation and supervision comparable to the GENIUS Act, including particularly all relevant elements of Section 4(a) of the Act, and the FPSI has registered with the OCC under Section 18.

C. Ensuring a Vibrant U.S. Market for Non-U.S. Dollar Payment Stablecoins

1. *Reserve asset requirements should be tailored to accommodate PPSIs that issue non-U.S. dollar payment stablecoins*

As discussed in Section II.C above, the potential inclusion of non-U.S. dollar stablecoins in the scope of payment stablecoins regulated under the GENIUS Act raises serious questions because of the asset-liability mismatch between non-U.S. dollar liabilities and the predominantly U.S. dollar reserves. The IIB ANPR Letter asked Treasury to use its broad rulemaking and interpretive authority under Section 3(d) to exclude non-U.S. dollar stablecoins from the definition of payment stablecoin and highlighted the importance of allowing non-U.S. dollar-denominated stablecoins access to the U.S. market.[91] If Treasury does not exercise this authority, the OCC should coordinate with the other Primary Federal Payment Stablecoin Regulators to modify reserve requirements for non-U.S. dollar payment stablecoins issued by PPSIs using their authority under Section 4(a)(4)(B) to "tailor and differentiate among issuers on an individual basis or by category, taking into consideration . . . business model risk profile, complexity . . . and any other risk-related factors."[92]

PPSIs that issue payment stablecoins in non-U.S. currencies have different risk profiles because of the different currency risks embedded in their products. Section 4(a)(4)(B) authorizes the OCC to modify reserve standards to reflect this different set of risks. The

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[90] *See id. See also, e.g., KalshiEX LLC v. Flaherty*, No. 25-1922, 2026 WL 924004, at *4 (3d Cir. Apr. 6, 2026) (finding that New Jersey sports gambling law was likely to be preempted under conflict preemption when applied to sports events contracts listed on a CFTC-licensed designated contract market ("DCM") because state enforcement would effectively prohibit the DCM from offering sports-related events contracts in New Jersey, in conflict with the regulatory regime for DCMs established under federal law).

[91] IIB ANPR Letter at 15.

[92] GENIUS Act, Section 4(a)(4)(B)(i).

OCC should expressly authorize non-U.S. dollar reserve assets for PPSIs that issue non-U.S. dollar payment stablecoins to address these risks.[93] If not addressed, it may be impractical, or at least unduly risky and expensive, for a PPSI to issue non-U.S. dollar payment stablecoins in the United States. At a minimum, it would introduce the need to use potentially complicated derivatives strategies to hedge the risk of the mismatch between the currency in which a payment stablecoin is denominated and its U.S. dollar-denominated reserves, creating significant unnecessary risk and imposing significant costs on issuers and users.

If these issues are not resolved, non-U.S. dollar stablecoin activity is likely to remain offshore, where there can be more workable reserve treatment for non-U.S. dollar products, which could lead to fragmentation of stablecoin markets as more non-U.S. and U.S. dollar stablecoin activity develops outside the United States. The OCC should therefore address this issue clearly in the final rule, both to mitigate currency-mismatch risk and to avoid driving stablecoin issuance, liquidity and related financial innovation offshore.

2. *PPSIs that issue non-U.S. dollar payment stablecoins should be expressly permitted to engage in traditional FX risk mitigation strategies*

In addition to expanding the scope of permitted reserve assets for non-U.S. dollar payment stablecoin issuers, the OCC should provide in NPR § 15.10(a) that FX risk management and FX hedging is a permitted activity for PPSIs that issue non-U.S. dollar payment stablecoins.[94] Although substantially less optimal than matching the currencies of reserves to payment stablecoin liabilities, unless the OCC permits 100% currency matching between reserves and the payment stablecoins they support (e.g., a Euro-denominated payment stablecoin could have only Euro-asset reserves), the use of FX hedging and other FX risk management techniques will be a necessary tool to address the risk inherent in cross-currency transactions.

D. Application and Reporting Forms

1. *The OCC should publish proposed application and reporting forms for public review and comment*

The NPR references application and reporting forms and instructions that have not yet been published. It is important for prospective PPSIs and FPSIs and other market

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[93] As noted in Section II.C, currently the only non-U.S. dollar reserve assets that would appear to be permitted under the Act and NPR are demand deposits at insured depository institutions, which could include foreign currency deposit accounts, and "money" received on overnight repos backed by short-term Treasuries. *See* note 25 above.

[94] *See* NPR at Question 34.

participants to have the opportunity to review and comment on these forms. Without transparency into the specific information the OCC will require, prospective issuers and other market participants cannot fully evaluate the implications of becoming a PPSI or FPSI.

Before adopting a final rule, the OCC should publish and solicit comment on the forms and instructions referenced in NPR §§ 15.14(h)-(i), 15.30(b)(1)(i), 15.31(b)(2), and 15.32(b)(1)(i), along with any separate forms the OCC is considering for covered custodians under Section 10(d) of the Act. The OCC should also specify that it may not add substantive information requirements, approval conditions or ongoing reporting obligations absent further notice-and-comment rulemaking.

IV. SPECIFIC QUESTIONS RAISED BY THE NPR

> *Question 1: Are the definitions in the proposed rule appropriately scoped? How should they be improved?*

As discussed in Section III.A.1 above, the definition of "insured depository institution" under NPR § 15.2 should be revised to no longer limit it to Section 3(c)(2) of the FDI Act and clarify that the uninsured U.S. branches of foreign banks are therefore included.

> *Question 5: Section 2 of the GENIUS Act (12 U.S.C. 5901) does not define "depository institution." Is the definition of "depository institution" in the proposed rule sufficiently clear? Are there particular types of institutions for which it would be unclear whether the type of institution is a depository institution and which agency is the primary Federal payment stablecoin regulator for the type of institution? What additional clarifications would be helpful?*

Please see Section III.A.6 above for a discussion of the definition of depository institution.

> *Question 8: Is the term "director" sufficiently clear, including with respect to Federal branches? How should the OCC further clarify the term?*

As discussed in Section III.A.7.b, we support the OCC's determination to define a board of directors to include a "group of individuals that serve[s] the nearest equivalent function," and we recommend that the OCC define directors and boards flexibly to accommodate non-U.S. and branch governance models.

> *Question 10: Is the definition of "eligible financial institution" appropriately scoped? How could the term be further refined? Are there particular elements of the definition that should be excluded or should be addressed elsewhere in the proposed rule?*

Consistent with Section 10(a) of the Act, we understand that the definition of eligible financial institution would include the U.S. branches and other U.S. operations of foreign banks. Please see Sections III.A.1-4 for a discussion of other issues related to the U.S. branches of foreign banks acting as custodians.

> *Question 13: The term "outstanding issuance value" refers to the total consolidated par value of all of an issuer's payment stablecoins. Should the definition also include the par value of non-consolidated affiliates? If so, what changes should be made to the reserve asset requirements to ensure 1:1 backing across all affiliated entities?*

If the OCC chooses to include affiliates in the definition of "outstanding issuance value," PPSIs owned by IHFIs should only include other affiliated PPSIs and should not include affiliated FPSIs (whether or not an affiliated FPSI has used Section 18 to make its payment stablecoins available in the United States). IHFIs should not be required to count their non-U.S. payment stablecoin activities towards issuance thresholds that apply to their U.S. licensed PPSI.[95]

> *Question 15: Is the exclusion of a digital asset that ''is a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), including a deposit recorded using distributed ledger technology'' from the definition of ''payment stablecoin'' sufficiently clear? Should the OCC clarify which tokenized products this exclusion may apply to?*

The definition of deposit, which operates as a carve-out from the definition of payment stablecoin, should be clarified to confirm that deposits, including tokenized deposits, issued by foreign banks, including by their uninsured state branches, do not constitute payment stablecoins under the GENIUS Act. The NPR adopts the definition of deposit in Section 3 of the FDI Act, which generally includes deposits issued by a "bank or savings association;" those terms in turn do not include the non-U.S. operations of foreign banks, or their uninsured state-licensed branches.[96] We do not believe Congress intended to treat bank deposits as payment stablecoins, and the corresponding definitions should be corrected to clarify this issue.

> *Question 24: Should the OCC define United States customer to mean a customer that resides in the United States, as proposed, or use a different definition? For example, should the definition be limited to United States citizens or include both*

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[95] A parallel to this approach can be found in FRB's Regulation YY, which applies enhanced prudential standards on banking organizations based on asset size and applies thresholds relevant to foreign banking organizations based on combined U.S. assets, as opposed to global assets. *See* 12 C.F.R. § 252.5.

[96] *See* 12 U.S.C. §§ 1813(a)(1); (b)(1).

citizens and residents of the United States? Should the definition be limited to permanent residents of the United States?

We do not believe the OCC should introduce a specific definition of U.S. customer for purposes of Section 18 at this time because it would imply a level of informational precision that is unlikely to exist and would impose undue operational rigidities on FPSIs. As we discuss in Section III.B.3 above, the requirement to estimate liquidity demands from U.S. customers should be flexible enough to accommodate practical constraints, including technological and informational limitations, on issuers' ability to identify and/or locate the holders of their payment stablecoins. Instead of prescribing a specific solution and set of definitions, the OCC should remain open to a variety of solutions for estimating U.S. liquidity demands, at least until it has more experience and data from FPSIs that issue payment stablecoins in the United States.

If the OCC nevertheless determines to move forward with a definition of United States customer, it should keep a few principles in mind:

- First, we believe that the definition needs to be practical to implement based on the information available to the issuer, which may depend on the method the issuer has implemented to estimate U.S. liquidity demands. For example, an issuer that relies on historic redemption data knows more about the identity of persons that have historically submitted redemption requests to the issuer, whereas issuers that rely on DASPs to provide information about the distribution of their payment stablecoins, or that make inferences based on networks and communications channels used by holders, may have less biographical and geographical information.

- Second, as a matter of policy, it may be appropriate to focus the definition on persons that might have a reasonable expectation of protection under U.S. law. We believe a definition based on residency or a permanent physical presence in the United States would generally be consistent with this principle, assuming that it is practically ascertainable or estimable based on information available to the issuer.

- Third, any attempt to precisely define U.S. customer would also need to keep in mind the numerous scenarios where the "U.S." status of an individual or institutional person may not be entirely clear, such as the status of U.S. and non-U.S. offices and subsidiaries of multinational corporations, the status of persons acting through agents, fiduciaries and brokers who may be in different locations

than their clients and the treatment of persons temporarily resident or traveling through another jurisdiction.[97]

Question 34: Should the OCC explicitly provide that managing foreign exchange risk is a permissible activity for the issuers of stablecoins that are not denominated in the United States dollar? If so, should the OCC include limitations on the activity (e.g., that the permitted payment stablecoin issuer may not over-hedge its position and may not use foreign exchange risk management as a pretext to engage in speculation)? If the OCC permits this activity, what requirements should the OCC impose to mitigate risks? For example, should there be a capital add-on for foreign exchange risk?

As discussed in Section III.C.2 above, it is essential that PPSIs that issue non-U.S. dollar payment stablecoins be permitted to manage FX risk through FX hedging and other strategies, subject to principles-based risk management standards. Permitting non-U.S. dollar reserves will mitigate the cross-currency risk to some extent, but any entity operating across multiple reference currencies should have some ability to hedge FX risk.

Regulatory standards for FX risk management should be principles based—it should not be necessary for the OCC to impose haircuts, capital add-ons or other quantitative or technical limits on FX risk management.

Question 54: The proposed rule would, consistent with the GENIUS Act, allow as reserve assets funds held as demand deposits at an insured depository institution (including any foreign branches or agents, including correspondent banks). Should the proposed rule add definitions for these terms to make them clearer or impose restrictions on the use of foreign branches or agents and correspondent banks? For example, should the proposed rule require that stablecoins denominated in United States dollars only be backed by demand deposits at U.S.-based depository institutions (i.e., reserve assets could not include Eurodollar deposits)? Should the OCC include any additional requirements with respect to reserve assets held abroad, such as applying a haircut to the reserve assets, imposing a capital charge, or including additional policies and procedures to manage the risks associated with holding reserve assets abroad?

By including deposits held at foreign branches, agents and correspondent banks in the list of permissible reserve assets,[98] the GENIUS Act recognizes that a PPSI may have a good reason to place some reserves as demand deposits in non-U.S. locations. Holding deposits outside the United States could facilitate non-U.S. redemption (and non-U.S. issuance);

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97 *See, e.g.*, IIB ANPR Letter at 10-11.

98 *See* GENIUS Act, Section 4(a)(1)(A)(ii).

they could also be used to satisfy reserve localization requirements if another jurisdiction adopts provisions similar to the requirement in Section 18(a)(3) of the GENIUS Act.[99]

The inclusion of foreign branches, agents and correspondent banks also offers further evidence that Congress did not intend to limit the eligibility to hold demand deposits to institutions that have U.S. deposit insurance because even deposits held at the non-U.S. branch of a U.S. bank generally do not benefit from U.S. deposit insurance.[100]

These observations further support the broad construction of the term "insured depository institution" discussed in Section III.A.1 above, which includes the uninsured U.S. branches of foreign banks. A further corollary of this construction is that, when reserve assets are held as deposits at the U.S. branch of a foreign bank, the foreign bank's non-U.S. branches must qualify as foreign branches for purposes of this provision. Otherwise, a foreign bank that holds reserve assets in the form of deposits in its insured [101] or uninsured U.S. branch would not be able to meet non-U.S. liquidity demands or reserve localization requirements by transferring deposits abroad, while a U.S. bank would be permitted to do so. This would interfere with the principle of equality of competitive opportunity *both inside and outside the United States*, based on the arbitrary distinction of whether a foreign bank's U.S. presence is through a bank subsidiary, an insured branch or an uninsured branch.

If the OCC chooses to add restrictions on the use of foreign branches, agents and correspondent banks, it should apply them equally across both U.S.- and foreign-headquartered firms, irrespective of whether their U.S. presence is in the form of a bank subsidiary with federal deposit insurance, or an insured or uninsured branch.

> *Question 63: Should the proposed rule include other measures to encourage reserve assets to be held in the form of insured deposits or insured shares? Proposed § 15.11(d) would include a requirement for larger permitted payment stablecoin issuers to maintain a minimum percentage of assets as insured deposits or insured shares. While it may be difficult for larger permitted payment stablecoin issuers to hold reserve assets as insured deposits due to deposit insurance limits and the finite number of insured depository institutions in the United States, should permitted payment stablecoin issuers be required to hold some minimum amount of reserves as insured deposits in order to provide extra protection for stablecoin holders? Should the thresholds in proposed § 15.11(d) be set at different levels: for example, apply to issuers with an outstanding*

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99 GENIUS Act, Section 18(a)(3) (an FPSI generally must hold reserves in a U.S. financial institution "sufficient to meet liquidity demands of United States customers").

100 *See* 12 C.F.R. § 330.3(e).

101 The term "foreign branch" would have to be given meaning in relation to insured U.S. branches even under the narrow construction of "insured depository institution" proposed by NPR § 15.2.

issuance value of $1 billion, $10 billion, $50 billion, or $100 billion or more? Should covered larger issuers be required to maintain a smaller or larger percentage of reserve assets as insured deposits or insured shares (for example, 0.1 percent, 0.25 percent, 1 percent, or 2 percent)? Should the cap be higher or lower (for example, $100 million, $250 million, or $1 billion)?

No. The GENIUS Act does not require PPSIs to hold a minimum amount of reserves as insured deposits or insured shares, and the OCC should not read such a requirement into the statute through regulation. Please refer to Section III.A.1 above for additional detail.[102]

Question 65: There are approximately 4380 total insured banks in the United States. Should the proposed rule include other measures to spread insured stablecoin deposits throughout the banking system? If so, how broadly should insured deposits from permitted payment stablecoin issuers be distributed? For example, should the final rule be calibrated so that essentially every bank in the United States could hold some amount of insured deposits from permitted payment stablecoin issuers if consistent with their risk appetite and risk management abilities? If so, why? If not, why not?

No. Please refer to Section III.A.1 above.[103]

Question 67: Could reserve diversification requirements that encourage diffusion of deposits cause risks to the banking system (for example, increasing run risks at banks or replacing more stable deposits with deposits that more likely to be withdrawn quickly and in large volumes)? Could such diversification requirements raise operational risks for permitted payment stablecoin issuers or banks? How difficult would it be for permitted payment stablecoin issuers to liquidate such deposits in a stressed environment? If deposit insurance rules change, so that even larger permitted payment stablecoin issuers could be able to hold all their required deposits as insured, should all deposits held as reserve assets be required to be insured?

The OCC should avoid reserve diversification requirements that effectively force PPSIs to spread demand deposits across a very large number of banks. Although diversification can reduce concentration risk, overly prescriptive requirements could increase operational and liquidity risk by fragmenting reserves across institutions that may be less able to absorb and service large wholesale balances. Indeed, the Act limits the scope of deposit diversification standards that the OCC may require to those that "do not exceed

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[102] We note that similar issues are discussed in Questions 64 and 69.

[103] We note that similar issues are discussed in Questions 68, 70 and 72.

requirements that are sufficient to ensure the ongoing operations" of PPSIs.[104] Please refer to Section III.A.1 above for additional detail.[105]

> *Question 69: How would the proposed rule affect the amount of deposits maintained in the United States banking system? Would the proposed rule reduce the number of deposits maintained in the United States banking system and therefore affect the ability of United States banks to lend? What, if any, measures should the proposed rule include to mitigate such concerns? Should the proposed rule include a minimum percent of reserve assets as deposits in order to offset potential reductions in overall deposit levels?*

Please refer to Section III.A.1 above for an explanation of why demand deposit reserve accounts should be permitted at the uninsured U.S. branches of foreign banks, where they serve to lend to the U.S. economy in similar fashion to the deposits maintained at other U.S. insured depository institutions.

> *Question 170: How should the OCC evaluate whether reserves held by foreign payment stablecoin issuers in the United States are sufficient to meet the demands of United States customers? Will foreign payment stablecoin issuers be able to reliably determine which of their customers are United States customers? Should the amount of reserves held in the United States be required to exceed by some margin (e.g., 50 percent) the estimated one-month redemptions by United States customers? Should the amount of reserves held in the United States be based on the estimated number of United States holders of the payment stablecoin issued by the foreign payment stablecoin issuer? Is some other method appropriate for determining the amount of reserves that must be held in United States institutions? How are foreign payment stablecoin issuers likely to determine whether their customers are located in the United States? Are they likely to have access to sufficient information to make this determination? Is the scope of United States institutions in which a foreign payment stablecoin issuer may hold reserve assets appropriately calibrated? Should it include any other eligible financial institutions?*

Please see Section III.B.3 above and our response to Question 24 for a discussion on the need for flexibility in identifying United States customers and estimating U.S. liquidity demands.

> *Question 171: Should the OCC require different or additional information to be reported by foreign payment stablecoin issuers? If so, what additional information should the OCC require? How frequently should the OCC require*

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104 GENIUS Act, Section 4(a)(4)(A)(i).

105 We note that similar issues are discussed in Question 66.

such information? Should any additional information be made public? Should the OCC expressly require foreign payment stablecoin issuers to provide the same reports, publish the same reports, and make and publish the same certifications as permitted payment stablecoin issuers? If not, what modifications to the reporting, publication, and certification requirements would be appropriate for foreign payment stablecoin issuers?

Please see Section III.B.2 for a discussion of the need to tailor FPSI reporting requirements. Reporting requirements for FPSIs should be limited to what is reasonably necessary to monitor the FPSI's U.S. payment stablecoin activity and its compliance with the GENIUS Act, including U.S. reserve sufficiency, and any U.S. financial stability or illicit finance risks. In addition, the OCC should defer to home-country reports to avoid duplicating efforts for an FPSI, which would put an FPSI on uneven footing with domestic institutions that would not be subject to multiple regimes.

FPSIs should not be required to provide, publish, or certify the same reports as PPSIs on an enterprise-wide basis. Instead, reporting, publication, and certification requirements should be limited to U.S.-relevant information, permit reliance on home-jurisdiction audits and attestations where Treasury has made a comparability determination and avoid duplicative public disclosures. Frequency should be periodic and risk based, with public disclosure confined to high-level reserve and redemption information necessary for market transparency, and more detailed information provided confidentially to the OCC as warranted.

Question 172: In proposed § 15.30 related to approval of permitted payment stablecoin issuers and in proposed § 15.32 related to the registration of foreign payment stablecoin issuers, should the OCC require that a permitted payment stablecoin issuer or a foreign issuer be allowed to only issue a single type (i.e., brand) of payment stablecoin? What other arrangements designed to ensure legal separateness with respect to the reserve assets backing a particular brand of payment stablecoin should the OCC consider? For example, should the OCC require a permitted payment stablecoin issuer (or its parent company) to hold reserves in a special purpose, bankruptcy remote vehicle that is fully capitalized by the issuer and has no liabilities. What are the merits of these arrangements relative to requiring each issuer to issue only one brand of payment stablecoin? If the OCC requires a separate issuer for each brand of payment stablecoin, should the OCC streamline the approval process for certain applicants (e.g., by only requiring the applicant to provide notice if the parent or affiliate of the new issuer has previously received approval to act as a permitted payment stablecoin issuer)? In the absence of a restriction on issuing more than one brand of stablecoin, how would issuers ensure that reserve assets are properly legally and operationally allocated to the backing of each brand of stablecoin? Are there any other issues or challenges that permitted payment stablecoin issuers could

encounter in complying with the Act in the absence of such a restriction? If the OCC were to impose any of the requirements on issuers as described above, how would these requirements interact with State qualified payment stablecoin issuers that transition to the Federal regulatory framework that are not subject to the approval process by the OCC? To ensure equitable treatment across OCC-regulated entities, should the OCC, for example, prohibit all permitted payment stablecoin issuers from issuing more than one brand of payment stablecoin (per legal entity) in § 15.10?

The OCC should not require a one-brand-per-issuer rule, especially for FPSIs. The better approach is to focus on whether each payment stablecoin has distinct and segregated reserve assets and that other arrangements are clearly separated for each payment stablecoin, rather than forcing every issuer into a single organizational model. For domestic issuers, that may be achieved through brand-specific reserve accounts, recordkeeping and governance controls. But for FPSIs, a rigid one-brand rule could be especially problematic where the same foreign issuer lawfully issues both a U.S. dollar payment stablecoin and a home-currency payment stablecoin under its home-country framework.

For FPSIs in particular, the OCC should take a more principles-based approach. FPSIs may have a number of different organizational structures and methods for segregating reserves, and the OCC should not prejudge their choice of structure but instead focus on the substantive outcomes identified in the statute. A blanket one-brand requirement could make the Section 18 pathway much less workable for well-regulated foreign issuers without materially improving the security of payment stablecoin reserves if equivalent safeguards can be achieved through other means. The final rule should instead ask whether the issuer can demonstrate clear legal and operational allocation of reserves by brand and whether those protections are sufficient in light of the issuer's home-country regime and U.S.-specific risks.

*Question 173: Proposed §§ 15.31 and 15.32 refer to foreign payment stablecoin issuers holding reserve assets in United States financial institutions, consistent with section 18(a)(3) of the Act (12 U.S.C. 5916(a)(3)). Should the OCC further define "financial institution" for the purposes of these provisions? For example, the OCC could determine that the reserves must be held at State chartered depository institutions, insured depository institutions, national banks, or trust companies. These are the entities where permitted payment stablecoin issuers' stablecoin reserves may be commingled in an omnibus account under section 10(c)(2)(A) of the GENIUS Act (12 U.S.C. 5909(c)(2)(A)). Should the regulation state that the reserve assets must be held with United States eligible financial institution*s?

Please see Section III.A.4 for a discussion of the scope of eligible U.S. financial institutions.

Question 174: Should the OCC apply the capital requirements in proposed subpart E to the United States operations of foreign payment stablecoin issuers registered with the OCC? If so, how should the OCC modify these capital requirements to appropriately apply to the United States operations of foreign payment stablecoin issuers?

The GENIUS Act does not give the OCC authority to impose capital requirements on FPSIs.[106] To the extent the OCC can identify authority to the contrary, it should give due regard and deference to comparable home-country capital requirements for relevant FPSIs and their parents, and to the comparability findings required of Treasury before an FPSI can make its payment stablecoins available in the United States.

Discretionary capital add-ons for the U.S. operations of FPSIs would risk applying discriminatory capital requirements against FBOs already subject to Basel-aligned group-wide requirements, when compared to U.S. issuers whose obligations are confined to domestic standards and who, under the GENIUS Act, deconsolidate the PPSI at parent level for regulatory capital purposes.

Question 175: Are there particular requirements that apply to permitted payment stablecoin issuers that should or should not apply to foreign payment stablecoin issuers? Please describe any such requirement and why the requirement should or should not apply.

Please see Section III.B above for a discussion of the OCC's authority to impose substantive requirements on FPSIs. Section 18 of the Act assigns Treasury and the OCC different roles with respect to FPSIs, and the OCC's role does not include imposing a broader substantive regime on foreign issuers beyond the registration, monitoring and rescission framework Congress provided. The OCC should defer to Treasury's determination of comparable regulation under Section 18, and limit the requirements it imposes on FPSIs to the application process for FPSIs and for reporting, supervision, and examination requirements for registered FPSIs.

Question 176: Section 5 of the GENIUS Act (12 U.S.C. 5904) refers to "substantially complete" applications for permitted payment stablecoin issuers, but section 18 of the Act (12 U.S.C. 5916) does not refer to "substantially complete" applications with respect to foreign payment stablecoin issuers registering with the OCC (section 18 does refer to a "substantially complete" determination request to the Department of the Treasury). For parity, should the implementing regulations refer to a "substantially complete" application for both types of entities?

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[106] *See* Section III.B above for a discussion of the scope of the OCC's authority to regulate FPSIs under the GENIUS Act.

We believe the differences between the Section 5 application process and the Section 18 registration process are intentional. Section 5 of the Act establishes a licensing regime for PPSIs that turns on a "substantially complete" application to become an issuer with the OCC as primary regulator and supervisor, while Section 18 of the Act allows for the registration of FPSIs that are already subject to comparable home-country regulation and supervision.

Under Section 18, the "substantially complete" concept appears in connection with Treasury's comparability determination, not OCC registration.[107] That ordering is important: Treasury first determines whether the foreign regulatory and supervisory regime is comparable, and the OCC then acts on registration within the narrower role Congress assigned to it. It should not be necessary for the OCC to create a new "substantially complete" requirement in the FPSI registration process. Once Treasury has been satisfied and made a comparability determination, the Act has already established the basis for federal treatment of the FPSI. The OCC should defer to Treasury and make determinations within 30 days of receiving a registration request once a comparability determination has been made.

> *Question 182: Should the OCC adopt a capital requirement based on price risk, credit risk, operational risk, or interest rate risk, including variations on any of the proposals discussed above? Please provide any data supporting your views. For example, should the OCC impose a charge for credit risk, such as a 2 percent capital charge for uninsured deposits? Should the OCC impose a capital charge to reflect the interest rate risk of certain reserve assets, such as Treasury securities? Should the OCC impose a minimum operational risk capital charge that scales with the size of the issuer, as discussed above (i.e., with a charge of 1 percent for small issuers with a smaller additional marginal charge applying at certain thresholds)? Should any such operational charge be based, in part, on the issuer's recent losses?*

The OCC should not impose a separate capital charge for uninsured deposits held as reserve assets. The relevant counterparty credit risk and liquidity risk will vary by counterparty bank and is best addressed through the PPSI's risk management, including deposit diversification, which in turn should take into account a bank's own prudential capital, liquidity, balance sheet capacity and supervisory requirements.

Please see Section III.A.1 above for additional discussion of uninsured deposits.

> *Question 190: Instead of satisfying risk-based or leverage capital requirements, a Federal branch must maintain a capital equivalency deposit. This deposit is calculated in part based on total liabilities of the Federal branch and would*

[107] *See* GENIUS Act, Section 18(b)(3).

include any liabilities associated with a stablecoin program. Are there options the OCC should consider with respect to calculation of the capital equivalency deposit for a Federal branch's stablecoin program?

Please see Section III.A.7.c above.

Question 197: The OCC considered whether to reduce assessment for institutions subject to subpart B whose GENIUS Act-related activities would be subject to joint or coordinated review as between the OCC and either State permitted stablecoin regulators or foreign payment stablecoin regulators. The appropriateness of assessing one or more classes of institutions subject to subpart B at lower rates would depend on whether the cost of supervising those institutions' GENIUS Act-related activities is in fact shared jointly with another regulator such that the cost to the OCC is meaningfully lower than the cost of assessing national banks and Federal savings associations. Based on the OCC's supervisory experience in similar circumstances involving joint or coordinated circumstances, in the agency's judgement it is not likely that the costs will be any lower. The OCC nevertheless seeks comments or any information that may support adopting alternative assessment methodologies under proposed subpart B for all or a subset of institutions subject to subpart B and subject to joint or coordinated supervision in connection with their GENIUS Act-related activities, such as applying a discount in the range of 35 to 55 percent to Foreign or State qualified payment stablecoin issuers, or both, to reflect shared supervisory jurisdiction. In addition, the OCC requests comment on whether the 35 to 55 percent range is appropriate.

Please see Section III.B.4 above.

Question 203: Should the proposed rule explicitly address permitted payment stablecoin issuers that also issue/redeem the same or similar stablecoins in one or more foreign jurisdictions? Could these issuers be subject to additional risks or operational challenges that are not sufficiently addressed by the proposed rule? To what extent should stablecoin holders be able to distinguish between the same or similar stablecoins issued under the GENIUS Act versus another regulatory regime? If the holder should be able to establish that it is holding a GENIUS Act compliant stablecoin, how should the OCC assist the holder in making this determination? For example, should the OCC impose required disclosures or technical requirements, such as through smart contracts, including those that use wrappers or other techniques?

PPSIs should be permitted to issue and redeem the same or similar stablecoins in one or more foreign jurisdictions, and the OCC should avoid adopting prescriptive requirements, such as separate labeling, wrapper or smart-contract requirements, that could disrupt global issuance and redemption models or conflict with disclosure or technical

requirements imposed by foreign regulatory frameworks. Overly restricting the issuance of the same or similar stablecoins in one or more jurisdictions could lead to market fragmentation and harm U.S. leadership in digital asset markets, contrary to the Administration's goals.[108]

> *Question 204: What additional issues could arise with respect to a business model where a foreign affiliate issues or redeems payment stablecoins abroad? How should the OCC address these issues?*

The IIB ANPR Letter describes the urgent need for guidance clarifying the extraterritorial scope of the GENIUS Act to mitigate the risk of market fragmentation and provide reasonable pathways for issuers and intermediaries that intend to operate outside the United States to do so without unintentionally violating U.S. law. Because Treasury, not the OCC, is responsible for addressing these issues under the GENIUS Act's regulatory framework, we have not addressed them in detail in this letter, but we have included a brief explanation of the issue below.

Section 3 of the Act makes it unlawful for any person other than a PPSI to issue a payment stablecoin "in the United States" and for a DASP to offer or sell a payment stablecoin issued by a non-PPSI to a person "in the United States." The Act does not, however, otherwise define these jurisdictional terms.

There are already numerous stablecoin issuers, including bank-affiliated issuers and subsidiaries of U.S. companies, serving their local markets in important jurisdictions outside the United States, including, for example, the EU and Japan. More are certain to appear as more jurisdictions establish regulatory regimes for issuing stablecoins. As the Section 3(a) prohibition goes into effect, these issuers need guidance on how they can continue to operate outside the United States without unintentionally violating U.S. law and potentially incurring criminal liability under Section 3(f) of the Act. DASPs will also need clarity on how to comply with the provisions of Section 3(b) of the Act.

A lack of clear guidance and safe harbors is highly likely to chill legitimate overseas markets, harm cross-border interoperability, create negative reputation effects for the United States and undermine the Administration's objective of fostering a robust, well-regulated international market environment under U.S. leadership.

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[108] *See* PWG Report at 61.

The IIB appreciates the opportunity to submit these comments. We look forward to engaging with Treasury and other federal and state regulators as they implement the GENIUS Act.

Sincerely,



Beth Zorc
Chief Executive Officer
Institute of International Bankers
bzorc@iib.org