

Clients & Friends Memo

Use of Payment Stablecoins as Margin and Collateral under the GENIUS Act

August 5, 2025

Introduction

The Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (the “**GENIUS Act**” or the “**Act**”) establishes a legal framework for defining, issuing, custodying and managing a specific kind of digital asset—“Payment Stablecoins” (“**PSCs**”). After months of deliberation, on July 17, 2025, Congress passed the GENIUS Act during the eponymous “crypto week”¹ and, the day after, the President signed it into law. Relevant regulatory agencies are already drafting rules and regulations that will implement various aspects of the Act.

Also, on July 17, 2025, the U.S. House passed The Digital Asset Market Clarity Act of 2025 (the “**CLARITY Act**”) and sent it to the Senate. The CLARITY Act addresses the entirety of digital assets marketplace infrastructure—a much broader remit than the GENIUS Act, which again, is focused on PSCs. If the Senate passes the bill as is, it too will go to the President for signature. However, many expect that the CLARITY Act will need reconciliation with the Senate’s own version of companion legislation before it would be enacted.

Further, on July 30, 2025, The President’s Working Group on Digital Asset Markets (the “**Working Group**”) issued its report, Strengthening American Leadership in Digital Financial Technology (the “**Working Group Report**”),² in response to President’s Executive Order No. 14178 dated January 23, 2025. The Working Group Report provided a number of recommendations in relation to PSCs’ use as collateral and margin in U.S. financial system.

¹ In addition to the GENIUS Act and the CLARITY Act, the U.S. House also passed the Anti-Central Bank Digital Currency Surveillance (“**CBDC**”) Act, which would prohibit the Federal Reserve from issuing central bank digital currency.

² See at: <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/>

Stablecoins have existed for several years now and are worth many billions.³ The PSCs defined under the Act constitute a subset of the broader asset class, and the Act applies an entirely new regulatory approach to them.⁴ Therefore, if one intends to use PSCs as collateral, it is not enough to assume that existing arrangements suffice—one must review and properly assess anew all existing custodial, collateral, margin and other arrangements to determine how to accommodate PSCs consistent with the Act. Further, the use of PSCs must be examined from a variety of perspectives, including banking, bankruptcy, regulatory, technology, documentation, anti-money laundering (“**AML**”) and law enforcement. These topics are the focus of this article.

Because the Act is newly enacted and its substantive provisions have yet to take effect, no PSCs have been issued under or in compliance with its provisions to date. But as the market awaits effectiveness of the Act, two practical questions arise: (1) can existing stablecoins be accepted currently by custodians and used as collateral or as margin, and if yes, how? and (2) what will be necessary to accept PSCs issued under the Act when it becomes effective?

Definitions and Implementation of the GENIUS Act

While regulators have discussed stablecoins in various contexts for several years, before the enactment of the Act there was no official and uniform definition of stablecoins from those regulators. The Act now provides a definition for PSCs that will allow these kinds of stablecoins to function in the U.S. financial market, as well as providing a number of other definitions.

The Act defines PSC as a “Digital Asset,” (*i.e.*, a digital representation of value on a distributed ledger⁵) that is (or is designed to be) used as a means of payment or settlement, the issuer of which: (i) is obliged to convert, redeem or repurchase the PSC for a fixed amount of monetary value, and (ii) represents that it will maintain (or create a “reasonable expectation” of) a fixed amount of monetary value. However, PSCs as defined by the Act do not include Digital Assets that are “national currency,” bank deposits (including blockchain-recorded deposits, or tokenized deposits), “securities” or “commodities.”⁶

³ Per coinbase.com, total market capitalization of currently-issued PSCs is approximately \$240 billion, with Tether (“**USDT**”), USD Coin (“**USDC**”), Dai (“**DAI**”), TUSD, USDP and EURC capturing most of the outstanding issued supply of PSC.

⁴ “Stablecoins, a special type of token designed to maintain a stable value relative to a reference asset like U.S. dollar, often rely on smart contract for different aspects of their functionality...” the Working Group Report at 11. The Working Group Report further explains in note 23 that: “A token represents an asset issued on an existing blockchain; the transfer of tokens and the addresses that currently hold them are the subject of the network’s consensus activities.”

⁵ See § 2(6) of the Act.

⁶ See § 2(22) of the Act. Note that the definition does not refer to “commodities,” and it is only in § 17(f) of the Act that amends the CEA to remove PSC from the “commodity” definition in § 1a(9) of the CEA.

The Act provides that until its effectiveness,⁷ PSCs may be *issued* without complying with provisions of the Act (“**non-compliant PSCs**”), and for a term of three years from the enactment of the GENIUS Act, these non-compliant PSCs may also be *marketed and sold* to U.S. persons.

Several implications follow from this interregnum between enactment and effectiveness. First, there will be a period during which the non-compliant PSCs will coexist with PSCs that are compliant with the Act (the “**compliant PSCs**”) and issued in anticipation of the Act’s effectiveness. Second, existing and future collateral and custody arrangements will need to differentiate between these distinct baskets of PSCs. This will be important because upon effectiveness, compliant PSCs will be treated as “cash and cash equivalents,”⁸ but not as national currency, securities or commodities, while the non-compliant PSCs will no longer be treated as “cash and cash equivalents,” but could instead be considered to be securities⁹ or commodities.¹⁰

Custody of Payment Stablecoin Reserve and Collateral

The Act prescribes requirements for entities that provide custodial or safekeeping services not only for PSCs, but also for PSC reserves and the private keys that are issued along with permitted PSCs.¹¹ Only entities subject to Federal or State supervision (including by the U.S. Securities and Exchange Commission (“**SEC**”), the U.S. Commodity Futures Trading Commission (“**CFTC**”) or state bank/credit union regulators) may provide these services.¹²

Consistent with existing custodial concepts, custodians of PSCs must treat PSCs, PSC private keys, PSC reserves, cash and other property as belonging to the customer. Therefore, no commingling of customer property with the custodian’s own assets is permitted. However, the custodian may have omnibus accounts that hold the property of more than one customer.

⁷ Per § 20 of the Act it will become effective on the earlier of 18 months after the date of enactment of the Act (*i.e.*, July 18, 2025), or 120 days after the date primary Federal payment stablecoin regulators issue any final regulations implementing the Act.

⁸ See § 3(g) of the Act.

⁹ On April 4, 2025, the SEC issued an advisory stating that PSCs generally are not “securities.”

¹⁰ The CFTC in several of its enforcement actions has asserted that PSCs are “commodities.” See Tether and Bitfinex, CFTC Release No. 8450-21 (Oct. 15, 2021). Presumably, the non-compliant PSCs will remain characterized as “commodities,” which means that there will be a mix of commodity and non-commodity PSCs.

¹¹ See § 10 of the Act.

¹² The Working Group Report notes that: “U.S. regulatory agencies have attempted to classify digital assets under existing frameworks. For example, the CFTC recognized that bitcoin and ether are commodities, while the SEC has treated other digital assets as securities based on their structures, methods of distribution, and uses.” See The Working Group Report at 45.

Such omnibus accounts can be used to transfer, adjust or settle a transaction or transfer of assets, including for purposes of paying commissions, taxes, storage and other charges accrued for the custodying services themselves. Further, and again, consistent with existing custodial practices, such custodians must protect the PSC-related customer property from their own creditor claims. Additionally, PSC reserves must be fully segregated from other property types at all times (but may also be held in omnibus accounts).

The Act specifies also that agencies like the National Credit Union Association (“**NCUA**”) and SEC may not treat customer-held digital assets as liabilities of the custodian and may not impose additional custody/safekeeping capital requirements, unless they find that they would be needed to mitigate operational risk.¹³

PSCs and Insolvency Proceedings

Prior to enactment of the GENIUS Act, the Bankruptcy Code did not address PSCs directly. The GENIUS Act added several new provisions to the Bankruptcy Code that address treatment of PSCs in bankruptcy.¹⁴

The Act elevates claims of PSC holders (both primary and all successive holders) above all other unsecured creditors, including administrative expense claims, and applies in any insolvency proceeding of a permitted payment stablecoin issuer (“**PPSI**”) (including under Chapter 11 of the Bankruptcy Code) where reserves are not sufficient to satisfy holders’ claims.

The Act also specifically amends Bankruptcy Code § 507 to prioritize stablecoin holder claims over all other unsecured claims if reserves are insufficient.¹⁵ Transferees of PSCs may not have contractual redemption rights. The Act deems them to still hold valid “claims” against the PPSI. Section 11(a)(2) ensures that subsequent holders are treated like original holders for claim purposes.

Section 11(e) of the Act excludes stablecoin reserves from a PPSI’s bankruptcy estate. However, this creates tension with § 11(c) of the Act, which applies the “automatic stay” to those same reserves—despite being excluded from the debtor’s estate.

The automatic stay halts acts to collect or litigate against a debtor. Section 11(c) states that the automatic stay prohibits redeeming PSCs from reserves. However, the PPSI must file motion to lift

¹³ See § 16(c) of the Act.

¹⁴ See § 11 of the Act.

¹⁵ See § 11(d) of the Act. This section also states that the PSC holders may reach the issuer’s estate if the reserves prove insufficient to satisfy all PSC holders’ claims.

the stay at the outset of its bankruptcy. The Court must promptly decide whether redemptions can occur on a ratable basis if reserves are available. These provisions appear designed to ensure that reserves are used solely for redeeming stablecoins—rather than to satisfy the claims of general creditors.

Further, it provides that if a PPSI is a regulated depository institution, the FDIC, NCUA or a state regulator will oversee the proceeding. Finally, the Act requires a study on potential PPSI insolvencies and legal gaps, due within three years of the Act's enactment.¹⁶

Banking Regulations

The GENIUS Act provides several provisions specifically applicable to U.S. Prudential Regulators (“**USPRs**”). For example, only payment stablecoins that are issued by a PPSI (or Foreign Payment Stablecoin Issuer (“**FPSI**”)) are “acceptable as a settlement asset to facilitate wholesale payments between banking organizations” and only such PSCs may be used “by a payment infrastructure or [to] facilitate exchange and settlement among banking organizations.”¹⁷ USPRs are specifically directed to issue regulations, interpretations and/or guidance in terms of risk management treatment.

Therefore, financial institutions that begin to custody existing PSCs which are non-compliant PSCs should likely treat such payment stablecoins consistent with how the financial institution treats commodities and should build in an “exit strategy” for such custodying.

On July 14th, two days before the GENIUS Act was passed by Congress, the Federal Reserve, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation issued a joint statement on “Crypto-Asset Safekeeping by Banking Organizations.”¹⁸ Safekeeping refers to any service provided by banks that involves “holding an asset on a customer’s behalf” and safekeeping of crypto-assets means controlling the keys associated with the crypto-assets. Consistent with guidance, financial institutions can likely hold non-PSC payment stablecoins in custody accounts. The guidance confirms that financial institutions may also consider accepting existing PSCs as collateral in financings, making sure that all appropriate risk controls are in place. The USPRs noted “the statement does not create any new supervisory expectations.”

¹⁶ See § 11(h) of the Act.

¹⁷ See § 3(g) of the Act.

¹⁸ Available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250714a1.pdf>.

Even though PSCs will be treated as “cash or cash equivalents” under the GENIUS Act, there will likely be significant issues with determining appropriate haircuts for collateral posted in various PSCs, given the USPR’s focus on risk management.

Commodity Derivatives Implications

The CFTC has implemented specific regulations on posting margin and use of eligible collateral for futures and swaps.¹⁹ Unless these regulations are changed (or the CFTC provides appropriate relief), it is unlikely that PSCs can be utilized for this purpose until effectiveness of the Act. However, if there will be a bifurcated market consisting of compliant PSCs and the non-compliant PSCs, these issues will continue post effectiveness of the Act.

Therefore, several questions arise in CFTC’s jurisdictional context—for example, can a futures trader post stablecoins today to a futures commission merchant (“**FCM**”) to secure its futures trades cleared through a derivatives clearing organization (“**DCO**”) under the Commodity Exchange Act (“**CEA**”)²⁰ and the CFTC regulations²¹ thereunder? Or can a counterparty to a registered swap dealer (“**SD**”)²² or a Security-Based SD²³ post variation margin to fulfill the uncleared swap margin regulatory requirements under CFTC or SEC regulations?

Without CFTC’s guidance or relief, FCM’s customers cannot post PSCs to satisfy their regulatory margin obligations and FCMs cannot invest customer funds in PSCs.²⁴ Accordingly, the CFTC has initiated a regulatory sandbox in February 2025 to explore ways to accept PSCs as margin collateral. Further, SDs cannot accept PSCs as eligible collateral for uncleared swaps²⁵ and CFTC-registered DCOs must have direct access to customer funds securing derivatives positions, and these funds must be clearly identified and segregated. It is unlikely that PSCs held in a wallet will meet the requirements of § 1.20 and 1.25 of CFTC Regulations. This means that unless the CFTC changes its regulations or issues some form of relief (*e.g.*, a no action letter), until the effective date of the Act, PSCs cannot be accepted as eligible margin collateral.

¹⁹ See §§ 1.17, 1.20, 1.25, 1.36 and 39.13 of CFTC Regulations.

²⁰ 7 U.S.C. § 1a *et seq.*, as amended.

²¹ 17 C.F.R. § 1.1 *et seq.*

²² See § 1a(49) of CFTC Regulations.

²³ See § 1a(43) of CFTC Regulations.

²⁴ See §§ 1.17, 1.20, 1.25, 1.36 and 39.13 of CFTC Regulations.

²⁵ See §§ 23.152–153 of CFTC Regulations. We note, however, that these rules only apply with respect to regulatory margin, and any excess margin can certainly be provided at the discretion of SDs by using PSC or any other acceptable assets to secure counterparties’ obligations. § 23.154 of CFTC Regulations. Also see CFTC GMAC Report dated November 21, 2024 at: <https://www.cftc.gov/PressRoom/PressReleases/9009-24>

The GENIUS Act intends that PSC could be posted as collateral and margin after the effectiveness of the Act and after the CFTC amended its regulations to implement the Act or issued guidance that PSCs are to be treated as “cash.” Section 3(g) of the Act specifically states that PSC that are not issued by a PPSI cannot be: “eligible as cash or as a cash equivalent margin and collateral for futures commission merchants, derivative clearing organizations ... and swap dealers.”

In other words, the Act has left open the possibility that a PSC issued by a PPSI can be treated as cash. Given that “cash” certainly can be used to meet margin obligations, we expect that PSCs could be eligible to be used as regulatory margin collateral in the future.²⁶

The Working Group Report provides certain recommendations to steer future development. Specifically, the Working Group Report recommends, among other things, that [the CFTC] ... [p]rovide clarity on haircuts on digital assets held by registered intermediaries (including FCMs, swap dealers, and DCOs) for purposes of calculating and reporting margin, financial resources/capital, segregation, and settlement obligations, including working with the SEC around the non-marketable securities haircut framework and its applicability to non-security digital assets.²⁷ The Working Group Report further recommends²⁸ that: “[the CFTC] provide guidance for DCO acceptance of digital asset collateral (including payment stablecoins) including DCO financial resource requirements, valuation of assets and haircuts for margin purposes, settlement finality, treatment of digital asset custodians and self-custody, systems safeguards requirements, and end-of-day reporting for assets that trade 24/7/365, and legal risk considerations in such areas as netting and interests in collateral under CFTC Regulations 39.11, 39.13, 39.14, 39.15, 39.18, 39.39, and 39.27.”

Securities Implications

The SEC and USPRs have implemented specific regulations on posting margin and use of eligible collateral for futures and swaps. Unless these regulations are changed, it is unlikely that PSCs can be utilized for this purpose until effectiveness of the Act.

On April 25, 2025, the SEC stated that covered payment stablecoins (*i.e.*, those backed by 1:1 USD) are not “securities.”²⁹ SEC-registered broker-dealers cannot give “loan value” to PSCs for margin accounts for Regulation T³⁰ purposes. Security-Based SDs cannot accept PSCs as eligible

²⁶ Again, as noted before, this position will not prevent counterparties to post non-compliant PSC as excess of additional non-regulatory collateral and margin, so long as such PSC is legal.

²⁷ See The Working Group Report at 52.

²⁸ See Working Group Report at p. 53.

²⁹ Available at <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

³⁰ 12 C.F.R. § 220.1.

collateral for uncleared swaps. Exchange Act Rules §§ 18a-3 and 18a-4 require collateral to consist of cash, securities, money market instrument, a major foreign currency, the relevant settlement currency of the swap or gold (this is consistent with applicable rules issued by the CFTC and USPRs with respect to SDs that are USPR-supervised). This means that unless the SEC modifies its regulations or the SEC issues guidance stating that PSCs should be treated as cash, PSCs cannot be accepted as margin collateral.

Further, the maintenance margin rules adopted by the Financial Industry Regulatory Authority (“**FINRA**”) also likely would not consider stablecoins to be cash (pending further guidance from the SEC); thus, in certain instances, the treatment of stablecoins for purposes of the FINRA maintenance margin rule (Rule 4210) also may be relevant.

Similar to the treatment under CFTC Regulations, PSCs could be allowed as collateral upon the promulgation of SEC regulations to implement the Act or the issuance of guidance by the SEC that PSC are to be treated as “cash.” The Act at § 3(g) specifically states that PSCs that are not issued by a PPSI cannot be “eligible as cash or as a cash equivalent margin and collateral for broker-dealers, registered clearing agencies ... and swap dealers.”

In other words, the Act has left open the possibility that a PSC issued by a PPSI can be treated as cash. Given that “cash” can be certainly used to meet margin obligations, we expect that PSCs could be eligible to be used as margin collateral in the future.

Treatment under the UCC

Assessing how each kind of PSC is treated under the Uniform Commercial Code (“**UCC**”)³¹ requires an inquiry into the relationship between the legal rights intended to be accorded the PSC and the technological structure of the PSC digital token. A PSC may very possibly be comprised of a bundle of UCC assets, each of which would need to be examined separately.

Because the Act defines a PSC as a “Digital Asset,” and a Digital Asset is required to be “recorded on a cryptographically secured distributed ledger,”³² a PSC will likely include a digital token minted on a blockchain. The smart contracts pursuant to which such a digital token is issued will include functions providing for identifying the holders of the tokens and for transfers of tokens from one

³¹ References to the UCC in this article are to the Uniform Commercial Code as amended by the Uniform Commercial Code Amendments (2022) promulgated by the Uniform Laws Commission and the American Law Institute (the “**2022 Amendments**”). However, as of the date of this article, only 32 of the 53 jurisdictions in the U.S. have enacted the 2022 Amendments.

³² See § 2(6) of the Act.

holder to another.³³ While UCC analysis would require examination of the underlying smart contracts and applicable front-end interfaces, it is likely that the digital token of a PSC would be characterized (in whole or in part) as a controllable electronic record (“**CER**”) under the UCC.³⁴

The UCC affords special rights to CERs. When a PSC includes a CER, a buyer of a PSC or a person taking a security interest in a PSC who obtains control of the CER for value, in good faith, and without notice of a claim of a property right in the CER may be a “qualifying purchaser,”³⁵ and consequently may benefit from “take-free” rights of negotiability that cut off competing property claims in the CER.³⁶ Further, a secured party may perfect a security interest by taking control of the CER,³⁷ and such perfection by control would defeat a competing security interest perfected by filing—even if the filing was earlier in time.³⁸

Both the characterization of a PSC as a CER, and the negotiability and take-free rights available if the PSC is a CER, require analysis of “control” under Article 12.³⁹ Such analysis will include considering the technical structure of both the token and the wallet in which the token is held.

However, a PSC is likely not simply a digital token, for purposes of the UCC. The GENIUS Act expressly requires that PSCs carry redemption rights against their reserves. Those redemption rights would presumably be contractual rights. Under the UCC, a contract right such as this may generally be characterized as a general intangible.⁴⁰

It is very possible that, to minimize computation costs, many of the contract terms for the PSC redemption rights may be evidenced in documents stored off-chain (*e.g.*, in traditional contracts). Whether the token “ties” to the redemption rights sufficiently such that transfer of the PSC’s digital

³³ PSCs that are issued on an Ethereum-based blockchain are likely to be based on the ERC-20 token standard (or an extension thereof), which requires such functions. *See generally* Fabian Vogelsteller <fabian@ethereum.org>, Vitalik Buterin <vitalik.buterin@ethereum.org>, “ERC-20: Token Standard,” Ethereum Improvement Proposals, no. 20, November 2015. [Online serial.] Available at <https://eips.ethereum.org/EIPS/eip-20>.

³⁴ UCC § 12-102(a)(1).

³⁵ UCC § 12-102(a)(2).

³⁶ UCC § 12-104(e).

³⁷ UCC § 9-314(a).

³⁸ UCC § 9-326A.

³⁹ UCC § 12-105. In brief, control of a CER requires that the CER, its related records or its protocol (1) give the control person (A) power to avail itself of substantially all the benefit from the electronic record; and (B) exclusive power . . . to: (i) prevent others from availing themselves of substantially all the benefit from the electronic record; and (ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and (2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

⁴⁰ UCC § 9-102(a)(42).

token also assigns those underlying redemption rights requires a legal analysis of the contract documents and a technical analysis of the token structure.⁴¹

Today, as noted earlier, some existing payment stablecoin tokens are structured in a manner such that the rights of certain holders who are subsequent to the original holders of the stablecoins may not afford such subsequent holders with privity to enforce the underlying contractual redemption rights against the issuer. To the extent the redemption right is a general intangible, sale of the redemption right would generally be outside the scope of the UCC, and perfection of a security interest in the redemption right as original collateral would generally require filing a financing statement.⁴²

However, if any portion of the redemption right consists of the payment stablecoin issuer's obligation to pay money, that portion may be characterized as a payment intangible. Further, if that payment intangible is "evidenced" by a CER that "provides" that such issuer will pay the person having Article 12 control of the CER, then the payment intangible might be a controllable payment intangible ("**CPI**") under the UCC.⁴³

The potential effect of a PSC's redemption right being characterized as a CPI is far-reaching. If it were so characterized, the CER of the PSC would be treated under the UCC as in effect embedding the redemption payment right directly in the CER, and would extend to that payment right the special treatment accorded to the CER itself—"take-free" negotiability and control perfection with non-temporal priority. From the standpoint of a transferee of a PSC or a secured party taking a PSC as collateral, characterization of the redemption right as a CPI provides a much superior position. Such parties would be able to treat the PSC as being effectively embodied directly in the digital token.

⁴¹ Certain well-known existing stablecoins expressly provide that certain classes of token holders do not have direct redemption rights against the stablecoin issuer.

⁴² See generally UCC § 9-310. Note that a financing statement requires the name of the debtor but, unlike the method of identification for Article 12 control, a blockchain address is not sufficient for a financing statement. Therefore, secured parties who only transact with debtor counterparties on-chain and only have a blockchain address as identification will need to take additional steps to obtain a filing address of the debtor. See UCC § 9-503(a).

⁴³ See UCC § 9-102(a)(27B). Determining whether the CER "evidences" the payment intangible and "provides that" the account debtor pay the person with control under UCC § 12-105, once again, requires analysis of the technical structure of the token. See UCC § 9-102, Official Comment 5.d.1. ("... the definitions contemplate that a controllable electronic record evidencing an account or payment intangible (or an associated record) would indicate in some fashion an account debtor's obligation and that the controllable electronic record evidences the account or payment intangible.")

The foregoing UCC analysis is, however, subject to complex conflicts of law issues that result from the incomplete adoption of the 2022 Amendments to the UCC.⁴⁴

Documentation Issues

Given regulatory uncertainty and clear prohibition on posting non-eligible collateral, existing standard transactional documentation does not include provisions allowing the posting of PSCs as collateral or transactional margin. For example, ISDA credit support annex (“**CSA**”) would need to be amended, and the definitions as well—provided that PSC can be posted as discussed above; likely additional revisions will be necessary given that PSC will be qualified as “cash” upon effectiveness of the Act. Further, numerous standard lending and financing documentation will need to be carefully reviewed and amended if PSC were to be used as collateral for various financing arrangements.

Enforcement Issues

Because PSCs have been carved out from “security” and “commodity” categorization, enforcement with respect to PSCs issued in compliance with the GENIUS Act will likely be carried out by PSC regulators and the U.S. Department of Justice (“**DOJ**”), but only once the GENIUS Act is fully in effect.

Currently, stablecoins are recognized as “commodities,” therefore, the CFTC has anti-fraud and anti-manipulation jurisdiction.⁴⁵ The SEC also has initiated several enforcement actions involving payment stablecoins (arguing that algorithmic stablecoins are unregistered securities⁴⁶); however, from April 2025, the SEC has taken the position that PSCs are not securities.

Until the GENIUS Act is fully in effect, the federal agencies and DOJ are unlikely to bring enforcement actions against existing PSC issuers on the basis of registration failures.⁴⁷ Given that the Act carves out from the definition of “commodity” and “security” PSCs that (in the future) comply with the GENIUS Act’s registration requirements, the CFTC and the SEC will not be able to exercise their enforcement jurisdictional reach over PSCs that properly register in the future.

⁴⁴ See Permanent Editorial Board for the Uniform Commercial Code, Report on Choice-of-Law Issues Under 2022 Uniform Commercial Code Amendments, Draft for Public Comment (Nov. 16, 2023).

⁴⁵ See, e.g., Tether and Bitfinex (2021), Mirror Trading Intl (2022). See also The Working Group Report at page 48 and note 177.

⁴⁶ See, e.g., Tether (2021), Terraform Labs (2023).

⁴⁷ See “Ending Regulation by Prosecution” Deputy Attorney General, Todd Blanche Memo, April 7, 2025.

Once the GENIUS Act's PSC registration obligations are fully in effect, Federal and State PSC regulators and the DOJ can be expected to enforce the Act's registration and related requirements.

Risk Management Considerations for the Technical Aspects of Holding Payment Stablecoins

When custodians hold payment stablecoins of any kind, a whole host of operational, technical and risk management concerns arise. Digital assets are transferred on the blockchain; however, when they are built on a public blockchain (as are most existing PSCs⁴⁸), the beneficial transparency that blockchain software provides itself raises concerns related to compliance with privacy and security requirements.

Therefore, custodians must think carefully about what digital wallets will be used to custody the PSCs and how visible movements of such PSCs will be to the world at large. For example, it may be appropriate for custodians to consider utilizing sub-wallets on a custom blockchain solution to manage the movement of PSCs within their organization to shield such movements from public view.

Pursuant to the Crypto-Asset Safekeeping Guidance⁴⁹ discussed above, financial institutions that are safekeeping PSCs and their private keys must fully understand the technical aspects of the PSCs, including the underlying blockchain, the smart contracts that are built into the digital token, as well as the smart contracts that are layered on top of the blockchain solution. Financial institutions must also understand the contractual rights allocated to the PSCs, as discussed in the UCC section above, so that they can ensure that contractual redemption rights are not interrupted because of the safekeeping activities.

In addition, the Crypto-Asset Safekeeping Guidance provides that proper control of a PSC can only be demonstrated by the safekeeping entity having the sole ability to transfer the PSC. Therefore, while the financial institution is safekeeping the private keys to the PSCs, as well as the PSCs themselves, that private key may only be used by the financial institution and not by the customer. Within the financial institution, though, such institutional wallets frequently incorporate control sharing mechanisms as security measures, such as multi-sig or multi-party computation ("sharding") arrangements.⁵⁰ As noted above, because the holders of such wallets may require that

⁴⁸ Specifically, most existing PSCs are issued on the Ethereum blockchain and are based upon the ERC-20 token standard (or an extension thereof). *Supra*, footnote 33.

⁴⁹ *Supra*, footnote 18.

⁵⁰ See generally Coinbase, "What is Multi-Signature (Multi-Sig)?", "What is a Multi-Party Computation (MPC) wallet?", <https://www.coinbase.com/learn/wallet/what-is-a-multi-signature-multi-sig-wallet>, <https://www.coinbase.com/learn/wallet/what-is-a-multi-party-computation-mpc-wallet> (accessed 7/26/2025).

they obtain the status under the UCC of a “qualifying purchaser”⁵¹ of the CER related to a PSC, such wallet control sharing mechanisms need to be assessed to ensure that they do not run afoul of a qualifying purchaser’s “exclusive” control powers under Article 12.⁵²

In summary, risk management considerations must be taken into account when a financial institution is evaluating whether to offer safekeeping services for PSCs. Of course, such considerations will also apply to any potential PPSI or FPSI, although it is likely that the USPRs will incorporate concepts in the Crypto-Asset Safekeeping Guidance in the rules and regulations they draft specifically for those entities. The risk management considerations include the ability to fully understand the PSC asset class; fully understanding the software or hardware necessary to support PSCs; ensuring there is a strong internal control environment for the safekeeping, custodying and issuing of PSCs; and developing contingency plans in the case that private keys are stolen, leading to unauthorized transactions, or are lost entirely.

Other Regulatory Considerations

As mentioned above, the nature of digital assets on the blockchain gives rise to a variety of privacy and security concerns. As a result, whenever a financial institution is engaged with digital assets, including PSCs, it is necessary to evaluate how to meet obligations under applicable privacy and security laws, including the Gramm-Leach-Bliley Act (“**GLBA**”).⁵³

For example, GLBA applies generally and requires that financial entities must maintain a comprehensive security program that is reasonable in the marketplace. Regulation P⁵⁴ also applies, meaning that financial institutions must evaluate how much information about payment stablecoins is revealed to the public and whether the institution’s activities with respect to the payment stablecoins are evident. FFIEC Authentication Guidance⁵⁵ may also apply when providing access to the digital wallets held by financial institutions on behalf of customers.

From an AML perspective, the GENIUS Act imposes AML program obligations on PSC issuers, but not on custodians that are not PSC issuers. Nonetheless, custodians of stablecoins fall within the definition of “digital asset service providers” and, to avoid penalties for dealing in an unregistered PSC, will need to confirm the regulatory status of any PSC’s issuer, whether domestic or foreign, before agreeing to custody a particular stablecoin. In addition, custodians such as banks or

⁵¹ UCC § 12-102(a)(2).

⁵² UCC § 9-326A.

⁵³ 15 U.S.C. § 6821, *et seq.*

⁵⁴ 12 C.F.R. § 1016.

⁵⁵ Available at: <https://www.ffiec.gov/sites/default/files/media/press-releases/2021/authentication-and-access-to-financial-institution-services-and-systems.pdf>.

broker-dealers that are financial institutions subject to affirmative AML program requirements under the Bank Secrecy Act (“**BSA**”) will need to consider the information needed to comply with the BSA and their own AML program requirements. These financial institution custodians will need to diligence their customers—the depositors of PSC and lenders with rights over the collateral—and may require information both from the stablecoin issuer and diligence services that provide wallet and transaction information visible on the relevant blockchain.

Read our other recent publications on the GENIUS Act and Payment Stablecoins:

- [Making Way For Stablecoin—Genius Act Would Amend Bankruptcy Code to Accommodate Certain Crypto Assets](#)
- [Operation and Structure of the GENIUS Act of 2025 on Payment Stablecoins](#)
- [Are Payment Stablecoins Like Onions?](#)

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Peter Y. Malyshev	+1 (202) 862-2474	peter.malyshev@cwt.com
Mercedes Kelley Tunstall	+1 (202) 862-2266	mercedes.tunstall@cwt.com
Douglas Mintz	+1 (202) 862-2420	douglas.mintz@cwt.com
Kathryn Borgeson	+1 (202) 862-2384	kathryn.borgeson@cwt.com
Daniel Meade	+1 (202) 862-2294	daniel.meade@cwt.com
Christopher McDermott	+1 (704) 348-5184	chris.mcdermott@cwt.com
Maurine Bartlett	+1 (212) 504-6218	maurine.bartlett@cwt.com
Christian Larson	+1 (202) 862-2402	christian.larson@cwt.com