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October 19, 2026

VIA ELECTRONIC SUBMISSION

U.S. Department of the Treasury
Attn: Office of the General Counsel
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale (TREAS-DO-2026-0496; RIN 1505-AC95)

To Whom It May Concern:

The Institute of International Bankers (“IIB”) welcomes the opportunity to submit this letter in response to the Department of the Treasury’s (“Treasury”) notice of proposed rulemaking (“NPR”)¹ 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 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

¹ Treasury, GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale, 91 Fed. Reg. 53368 (Aug. 18, 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 that are subject to the Bank Holding Company Act of 1956, as amended (the “BHCA”), pursuant to the International Banking Act of 1978 and the Federal Reserve Board’s Regulation K. *See* 12 U.S.C. § 3106; 12 C.F.R. § 211.21(o). Some of our members, however, operate in the United States only through non-bank 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 foreign banking organizations where appropriate for the specific issue being discussed.

U.S. economy through the direct employment of U.S. citizens, as well as through other operating and capital expenditures.

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 generally support Treasury's thoughtful approach to the complicated territorial questions presented by Section 3 of the GENIUS Act, including Treasury's practical focus on the location of relevant parties and its inclusion of reasonable-belief safe harbors to provide greater certainty for cross-border activity. We also support Treasury's goals of administrability and avoiding punitive outcomes while staying faithful to the text and intent of the Act. At the same time, we are concerned that certain aspects of the NPR are insufficiently defined and tailored, which could result in significant uncertainty and an overbroad application of criminal liability that would materially deter economically beneficial activity and create market fragmentation. Our comments below build on the proposal and address specific areas where we believe it must be further refined to address activity that is in or targets the United States while avoiding overinclusive applications that would criminalize both U.S. and non-U.S. activities that are properly outside of the Act's intended scope.

I. EXECUTIVE SUMMARY

The IIB supports Treasury's overall territorial framework, including its focus on the physical location of the relevant parties and its use of reasonable-belief safe harbors. We also agree with Treasury's interpretation of Section 18 as permitting qualifying foreign payment stablecoin issuers ("FPSIs") to issue into the U.S. market directly.

In this respect, it is critical that Treasury act swiftly to adopt rules necessary to carry out comparability determinations for FPSIs required under Section 18 of the Act. Absent contemporaneous adoption of an effective comparability regime for FPSIs with implementation of the framework for permitted payment stablecoin issuers ("PPSIs"), FPSIs subject to comparable regulation outside of the United States would temporarily be shut out of the U.S. market due to no fault of their own and face a substantial long-term competitive disadvantage that would create market fragmentation and impede market development. Pending completion of the Section 18 comparability and registration processes, Treasury should adopt appropriate transition relief for FPSIs that intend in good faith to pursue a comparability determination and satisfy reasonable initial standards, sufficient to cover any period before the appropriate comparability and

registration frameworks have been put in place and FPSIs have had an opportunity to apply and register (including the period when an FPSI has timely filed an application that is still pending).

This letter also recommends targeted changes to the NPR to address concerns over certain provisions where additional tailoring is merited, further clarify jurisdictional lines, and preserve practical pathways for *bona fide* non-U.S. issuers and intermediaries to issue, distribute, and trade payment stablecoins outside the United States without violating U.S. law and incurring potential criminal liability.

In particular, the IIB recommends that Treasury revise the proposed rules to preserve the distinctions Congress included in the Act (i) between the regulation of issuance under Section 3(a) and the regulation of subsequent offers and sales under Section 3(b) and (ii) between the commercial use of payment stablecoins as a means of exchange and the offer and sale of payment stablecoins by a digital asset service provider (“DASP”).

To this end, we recommend that Treasury avoid interpretations of “knowing participation” and “indirect issuance” that would establish an overly broad scope of potentially criminal Section 3(a) violations. The NPR’s approach to these concepts blurs the line Congress drew between issuer and DASP activities and creates ambiguity regarding when issuer liability under Section 3(f) applies to secondary market activities. Instead, Treasury should draw lines that clearly provide that, absent collusion between an FPSI and a DASP or other service provider to issue a payment stablecoin into the United States, once an issuer has transferred legal or beneficial property rights in a payment stablecoin to a third party acting as principal, responsibility for subsequent circulation should shift to that third party, subject to the Section 3(b) prohibition on DASP sales to persons in the United States. Regarding specifically the interpretation of “knowing participation” in an issuance, Treasury should use its interpretive authority to implement Section 3 and define terms to provide that liability under Section 3(f) should require both knowledge of material facts that make a specific issuance of payment stablecoins unlawful and the intent to further or assist that unlawful issuance. Tailoring the interpretation of “knowing participation” in this manner is critical for the functioning of secondary markets involving payment stablecoins and their institutional adoption.⁴

It is also critical for further institutional adoption that Treasury draw clear lines between the commercial use of payment stablecoins and the activities of a DASP that offers and

⁴ It is also consistent with Congress’s decision to phase in the restrictions on secondary market activity under Section 3(b)(1) after the effective date for Section 3(a). Claims that foreign issuers whose stablecoins remain available to U.S. persons on the secondary market during this interim period would enjoy a competitive advantage should carry little weight. Any such advantage would be marginal and temporary, as market participants will understand that continued FPSI access to the U.S. market ultimately depends on satisfying the requirements of Section 18 and will be highly unlikely to invest in adopting a payment stablecoin that may become unavailable to them the following year.

sells stablecoins as a business. Issuers, DASPs, and other market participants may use payment stablecoins as a means of payment, settlement, collateral, margin, or credit support in transactions whose economic subject is another asset or service. If such uses were considered “offers” or “sales” of payment stablecoins under Section 3(b), the usability of FPSI stablecoins generally as an asset class could be significantly curtailed. Accordingly, Treasury should provide explicit guidance to clarify that such commercial uses do not, without more, constitute an “offer or sale” of the payment stablecoin for purposes of Section 3(b).

The IIB also recommends targeted refinements to Treasury’s location-based framework to better reflect how internationally active commercial enterprises conduct business through branches, offices, affiliates, and regulated intermediaries in multiple jurisdictions. These include clarifying the treatment of (i) non-U.S. branches and offices of U.S. entities, (ii) collective investment vehicles, and (iii) international organizations; and ensuring that the concepts of “offer” and “make available” do not sweep preliminary communications that do not result in improper transactions into Section 3 unnecessarily.

Regarding the proposed safe harbors for issuers and DASPs, the IIB recommends that Treasury implement the applicable reasonable-belief and diligence standards in a practical, technology-neutral manner that permits reasonable reliance on representations and information reasonably available to the relevant issuer or DASP, including information made available on lists of authorized PPSIs and FPSIs maintained by Treasury.

Finally, because implementation of the final rules will require market participants to undertake significant operational, contractual, technological, and governance changes to avoid liability under Sections 3(a) and 3(f)—and because potential knowing participation liability may arise before the general Section 3(b)(1) restrictions become effective—the IIB also urges Treasury to adopt appropriate transition relief and targeted safe harbors under Section 3(c) for FPSIs and persons that might be deemed to participate in FPSI issuance activities. In particular, beginning in January 2027, transition relief should be available generally for FPSIs and those who might be deemed participants in an FPSI issuance for a reasonable period after the final rules are established in order to allow these entities to implement the policies and procedures to avoid violations of Sections 3(a) and 3(f).

Appendix A to this letter provides a complete list of the IIB’s recommendations, each of which is discussed in greater detail in the sections that follow. In response to Question 80, Appendix B of this letter contains select proposed questions and answers to supplement Treasury’s proposed interpretations in NPR Part 1523, Appendix A.

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II. SUPPORT FOR THE NPR’S OVERALL APPROACH TO TERRITORIALITY

A. General Approach to Territorial Framework

The IIB supports Treasury’s proposed approach to defining the territorial scope of Section 3 of the Act based on the location or domicile of the issuer (for purposes of Section 3(a)) and customer (Sections 3(a) and 3(b)), with safe harbors for non-U.S. issuers and DASPs based on their reasonably established belief that their customer is outside the United States. This provides a practical solution that avoids complex inquiries regarding the existence of a possible, but immaterial, U.S. nexus based on tangential touchpoints such as the location of computer servers or other jurisdictional theories and is consistent with the statutory structure. We agree with Treasury that the language of Section 3 of the Act indicates that Congress was concerned with both issuances to persons physically present in the United States and issuance by issuers located in the United States as each creates an expectation of protection by U.S. law.⁵ We also believe that establishing clear, practical lines for the scope of Section 3(a) is a central issue for regime success, given the strong deterrent effect of potential criminal liability where regime boundaries are ambiguous.

The NPR requested comment on several alternative approaches to defining the territorial scope of Section 3, including broader nexus-based standards, a “per se” approach to unlawful U.S. issuances, and a more comprehensive offshore transaction framework. We address each of those alternatives in turn below.

In response to Question 35, the IIB believes that “issuance in the United States [should] be determined based on the location of the parties to the transaction” and that Treasury should not adopt “broader measures of nexus to the United States during the issuance process, such as the use of U.S. financial institutions, payment rails, or other infrastructure.”⁶ Cross-border payment and digital asset transactions routinely rely on infrastructure located in multiple jurisdictions, and the use of such infrastructure does not change the fundamentally offshore character of an issuance where the issuer and recipient are both located outside the United States. Conversely, issuers in the United States and their counterparties clearly expect U.S. law to apply to such issuers, and persons physically present in the United States also expect to benefit from the protections of U.S.

⁵ See NPR, 91 Fed. Reg. at 53377 (“Various provisions of the Act suggest that Congress was concerned with both the issuance of payment stablecoins to persons located in the United States and the issuance of payment stablecoins by issuers located in the United States”). In particular, Section 3(a) prohibits any person other than a permitted payment stablecoin issuer from issuing a payment stablecoin “in the United States”; Section 3(b) addresses offers and sales to persons “in the United States”; and Section 3(e) provides that Section 3 is intended to have extraterritorial effect where conduct involves an offer or sale to a person “located in the United States.” GENIUS Act, Sections 3(a), 3(b), 3(e).

⁶ NPR, 91 Fed. Reg. at 53377.

law when interacting with non-U.S. located counterparties. The impact on the U.S. economy is also most material where the issuer or purchaser is physically present in the United States. A broader nexus standard would introduce considerations that are not material to the policies of the Act and yet present difficult issues of practical applicability, creating unnecessary uncertainty in a framework Treasury has otherwise anchored in the location and expectations of the relevant parties.

Treasury also should not adopt the alternative described in Question 44, which would treat an issuance to a person located in the United States as unlawful on a “per se” basis, while limiting the significance of knowledge or reasonable belief to the question of whether criminal liability would also attach under Section 3(f).⁷ By opening up a category of unknowingly unlawful activity, this approach would create significant uncertainty. Even where criminal liability under the GENIUS Act does not arise (e.g., for inadvertent issuances to persons believed to be outside the United States), the unlawful status of the issuance could cast doubt on the legal status of the issued payment stablecoins in the hands of downstream holders and DASPs, and could have unintended regulatory or private law consequences, such as inadvertent violations of representations or covenants, questions regarding enforceability, or collateral consequences under other regulatory regimes. Treasury should avoid creating a category of unlawful transactions with uncertain collateral consequences where the issuer has acted reasonably and in good faith.

In response to Question 45, the IIB agrees that Treasury need not adopt a full offshore transaction framework modeled on Regulation S, which addresses offerings of both U.S. and non-U.S. securities offshore, operates in the context of a different set of legal prohibitions for secondary market transactions, and was designed primarily for offerings with discrete timing, not bearer assets like payment stablecoins that are more likely to be in continuous distribution. We believe that approach may introduce undue complexity without significant benefits in terms of evasion or limiting “flowback” from non-U.S. issuances, and the latter issue of flowback is more efficiently addressed through the parallel DASP restrictions in Section 3(b). Instead, we recommend targeted modifications of the NPR to recognize certain additional categories of transactions that are clearly not directed to the United States, which we describe in Section III.A below.

B. Ability of FPSIs to Issue Directly into the United States

The IIB supports Treasury’s reading of Sections 3 and 18 of the GENIUS Act as permitting an FPSI that satisfies the requirements of Section 18(a) to issue payment stablecoins directly to persons located in the United States. This interpretation most properly reads Section 3 within the context of the statute as a whole, gives practical effect to the framework Congress established in Section 18 for comparably regulated foreign

⁷ *Id.* at 53380.

issuers to access the U.S. market, and ensures interoperability between payment stablecoins issued by licensed PPSIs and registered FPSIs.

Section 3(a) generally makes it unlawful for any person other than a PPSI to “issue a payment stablecoin in the United States.”⁸ PPSIs are by definition domestic issuers.⁹ Section 18(a), however, provides that “[t]he prohibitions under section 3 shall not apply to a foreign payment stablecoin issuer” if the conditions specified in Section 18(a) are satisfied.¹⁰

The only reasonable reading of Section 18(a) is that a qualifying FPSI is exempt from all of Section 3’s prohibitions, including Sections 3(a), 3(b), and 3(g). Each of these provisions prohibits certain activities related to payment stablecoins not issued by a PPSI; the authorization in Section 18(a) would be materially weakened if an FPSI or its payment stablecoins were still subject to these provisions.¹¹

Treasury’s interpretation appropriately reflects that text and permits a qualifying FPSI both to issue payment stablecoins directly into the United States and to have those payment stablecoins offered and sold in the United States with a status equivalent to a PPSI-issued payment stablecoin. This promotes interoperability between qualifying foreign stablecoin regimes and the U.S. market, consistent with Section 18’s framework for comparable foreign regulatory regimes and reciprocal arrangements. A contrary interpretation would require qualifying FPSIs to route U.S. access through unnecessary offshore issuance and secondary market steps, creating friction and fragmentation without any ascertainable regulatory benefit.

In order to give Section 18 effect, Treasury is required to issue rules to carry out the comparability determinations required under the Act. We urge Treasury to act swiftly to establish a transparent, risk- and outcomes-based framework for comparability determinations so that prudentially supervised foreign issuers subject to comprehensive oversight by home country authorities will have a fair and timely opportunity to participate in the U.S. stablecoin market and compete on equal footing with U.S.

⁸ GENIUS Act, Section 3(a).

⁹ GENIUS Act, Section 2(23) (“The term ‘permitted payment stablecoin issuer’ means a person *formed in the United States* that is”) (emphasis added).

¹⁰ *Id.* at Section 18(a).

¹¹ To be clear, FPSIs remain indirectly subject to lawful order requirements of Section 3(b)(2) of the Act, since DASPs may not offer or sell payment stablecoins in the United States issued by an FPSI unless the FPSI “has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18.” *Id.* at Section 3(b)(2).

issuers.¹² Timely implementation is particularly important for issuers that serve, or are seeking to serve, both U.S. and non-U.S. customers. Delays in the comparability process could disrupt existing customer relationships, impair ongoing business operations and planning, and create unnecessary uncertainty for market participants. To avoid these disruptions, Treasury should provide transition relief for FPSIs that intend in good faith to pursue a comparability determination and satisfy reasonable initial standards and for DASPs that offer and sell payment stablecoins of such FPSIs, as discussed further in Section VII.C below.

III. REGULATION OF ISSUANCE OF PAYMENT STABLECOINS

A. Definition of “Located in the United States”

The IIB supports Treasury’s physical location approach for individuals, including its treatment of U.S. residents temporarily abroad and non-U.S. residents temporarily in the United States.¹³ The NPR’s proposed approach to business entities, however, should be refined. Proposed NPR § 1523.1(c) would treat a business entity as located in the United States if it either (i) is organized or incorporated under U.S. law or (ii) has its principal place of business in the United States, and proposed NPR § 1523.2(b) would treat an issuance to be inside the United States if the issuance was to such a U.S.-located entity. We believe this approach is overinclusive insofar as it would treat issuance to the permanent non-U.S. branch, office, or other establishment of such a business entity as being in the United States.¹⁴ While we agree that business entities should generally be deemed to be located in the United States based on Treasury’s proposed criteria, neither the text of Section 3(a) nor the underlying policy rationale requires that an FPSI issuance be deemed to be in the United States when made exclusively to a non-U.S. establishment of a U.S. business entity.

For issuances to business entities, we recommend Treasury create an exception in the final rules providing that an issuance is not “in the United States” when a non-U.S. issuer issues to the office, branch, agency, or other establishment of a U.S. person that is

¹² The IIB is encouraged by Treasury’s recent joint policy statement with HM Treasury affirming the importance of formal mechanisms to enable cross-border stablecoin activity, noting that unnecessary fragmentation ought to be avoided, and supporting the use of payment stablecoins in cross-border transactions and capital markets. U.S. Department of the Treasury & HM Treasury, U.S.-UK Joint Statement on Stablecoins (July 14, 2026).

¹³ NPR § 1523.1(c) (“Located in the United States means: (1) With respect to an individual, the individual is physically present in the United States, unless the individual is not a resident of the United States and the individual’s physical presence in the United States is merely temporary[.]”).

¹⁴ See NPR, 91 Fed. Reg. at 53375 (Question 26 asks if “the proposed definition [is] underinclusive of persons who should properly be considered located in the United States” and “overinclusive of persons who should not properly be considered located in the United States”).

permanently located outside of the United States. An issuer should be permitted to treat an issuance to a U.S.-organized institution as outside the United States when the communications with such a person, both in offering or receiving a request for an issuance and in actually issuing the payment stablecoin, occur with personnel in a *bona fide* permanent non-U.S. establishment in the ordinary course of that establishment's business. For purposes of this carve-out from the broader interpretation in proposed NPR § 1523.2(b) and related definitions, the transaction should be attributed to the *bona fide* branch or office of the customer where the outward-facing activity of soliciting, negotiating, executing, and settling the purchase occurs.¹⁵ This refinement would preserve Treasury's physical location approach while appropriately recognizing how internationally active U.S. organizations conduct business through permanent establishments in multiple jurisdictions. Just as a U.S. resident traveling in a foreign country may need access to payment stablecoins used in that country to engage in ordinary transactions while in that country, a permanent non-U.S. office of a U.S. business entity would generally need to access local means of exchange. Indeed, the need is even more significant in this situation, as the purpose of locating a permanent branch or office in a foreign country is presumably to participate in the local economy on an ongoing basis.

Permitting issuances to a U.S. person's *bona fide* permanent office would be particularly useful for U.S.-headquartered banks and other financial institutions operating as DASPs, because it would facilitate their participation in non-U.S. stablecoin markets through their non-U.S. branches and offices. The GENIUS Act does not prohibit a U.S.-located DASP from offering and selling stablecoins that are not issued by PPSIs to persons located outside of the United States.¹⁶ To avoid imposing unnecessary and congressionally unintended obstacles on the participation of these U.S. institutions in non-U.S. markets, their non-U.S. branches and offices (at a minimum) should be able to acquire payment stablecoins directly from non-U.S. stablecoin issuers.¹⁷

In addition, in response to Question 29, Treasury should clarify the criteria for determining the principal place of business of collective investment vehicles, such as

¹⁵ The performance of back office and internal administrative or management functions in the United States should not, standing alone, cause an otherwise non-U.S. issuance to occur in the United States. Thus, the location of a customer's internal risk management, compliance, legal, operations, technology, treasury, custody, or general management functions should not influence whether the issuance is considered to occur in the United States.

¹⁶ Under Section 3(b), the restrictions on DASPs are limited to prohibiting offers and sales "to a person located in the United States" and offering, selling, or making available payment stablecoins "in the United States." GENIUS Act, Sections 3(b)(1)-(2). Non-U.S.-facing DASP activity is not regulated.

¹⁷ Such DASPs would remain subject to Section 3(b) of the GENIUS Act, which protects against the risk of "flowback" of non-U.S. stablecoin activity into the United States.

funds, that may have separate sponsors or originators and investment managers. Commodity Futures Trading Commission (“CFTC”) guidance that was issued relating to cross-border swaps provides a useful example of one approach to this issue, where the CFTC generally looks to either the location of the senior personnel responsible for (i) the execution of the vehicle’s investment strategy or (ii) the vehicle’s formation and promotion depending on whether the vehicle is actively managed by a manager exercising broad discretion or more programmatic in nature.¹⁸ Without endorsing the CFTC approach specifically, we recommend Treasury provide clear, practical criteria for determining the principal place of business of investment vehicles.

We also recommend Treasury clarify the treatment of international organizations such as the International Bank for Reconstruction and Development (“World Bank”) and International Monetary Fund (“IMF”), which may be physically present in the United States but are typically afforded special treatment under market regulations intended to protect U.S. market participants. Because of their international origins, nature, and mission, Treasury should clarify that such international organizations are not treated as “located in the United States” for purposes of Section 3 solely because they maintain offices, personnel, or other physical presence in the United States. Existing cross-border regulatory frameworks provide useful precedent for excluding these organizations from ordinary U.S.-person or U.S.-location concepts.¹⁹

B. Definition of “Issuance” as a Transfer of Rights

Treasury’s proposed definition of “issue” appropriately focuses on the first transfer by the issuer that results, or will result, in a person other than the issuer having the “right to use or transfer” the payment stablecoin or to have it converted, redeemed, or repurchased.²⁰ To avoid ambiguities that could arise when technological control may transfer, but legal rights remain with the issuer, we recommend that the “right to use or transfer” be defined as an authorized transfer of legal or beneficial property rights to a person other than the issuer.

¹⁸ CFTC, Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292, 45309-10 (July 26, 2013), available [here](#).

¹⁹ See, e.g., 17 C.F.R. § 240.15a-6(a)(4)(ii) (providing specified treatment for transactions by foreign broker-dealers with certain international organizations); 17 C.F.R. § 230.902(k)(2)(vi) (excluding specified international organizations from the definition of “U.S. person”); 17 C.F.R. § 230.902(h)(3) (treating offers and sales to certain persons excluded from the U.S.-person definition as offshore transactions); 17 C.F.R. § 240.3a71-3(a)(4)(iii) (excluding specified international organizations from the definition of “U.S. person” for purposes of cross-border security-based swap rules). In addition, Treasury could use its authority to create a safe harbor that is limited in scope and applies to a *de minimis* volume of transactions involving international organizations.

²⁰ NPR § 1523.1(c).

This would help avoid ambiguities that could otherwise arise where, for example, a stablecoin is transferred to a wallet that is technologically controlled by an employee, agent, custodian, or nominee acting solely for the issuer. In these cases, the payment stablecoin should be considered to remain issuer-controlled, assuming no third party acquires beneficial rights in the payment stablecoin.

Consistent with this principle, in response to Question 17, internal wallet movements, treasury-management transfers, testing, chain migrations, custody movements, and similar technical actions should not constitute issuances where they neither increase outstanding third-party claims nor vest legal or beneficial property rights in a third party.

C. Indirect Issuances

The NPR's proposed definition of "issue" includes the first transfer of a payment stablecoin by the issuer "whether directly or indirectly."²¹ The NPR explains that the reference to indirect transfers is intended to address circumstances in which the first transfer is effected through an agent or intermediary acting on behalf of the issuer, such as an underwriter or distributor.²² The NPR also asks in Question 12 whether additional clarification is needed regarding when a payment stablecoin is transferred "indirectly," including transfers that occur automatically through smart contracts or other mechanisms.²³

The IIB recommends that Treasury avoid use of the concept of an indirect issuance or other approaches that might require looking through the direct recipient of the issuance to an "ultimate purchaser" due to their vagueness.²⁴ Instead, Treasury should retain the concept that an issuance is the first transfer that includes a transfer of legal or beneficial property rights and clarify that an issuer has liability under Section 3(a) of the Act regardless of whether it delegates authority or otherwise uses agents or other third parties to facilitate that initial transfer of rights from the issuer to another person. The issuer would remain responsible for supervising the actions of an agent acting on its behalf in effecting an issuance.²⁵ However, absent collusion between an FPSI and a DASP or other service provider to issue a payment stablecoin into the United States, once legal or

²¹ *Id.*

²² *See* NPR, 91 Fed. Reg. at 53372.

²³ *Id.* at 53373.

²⁴ *See, e.g.,* NPR, 91 Fed. Reg. at 53378 (Question 38 asks whether an issuer should "be required or expected to work with the intermediary to confirm whether the ultimate purchasers of newly-issued payment stablecoins are located in the United States").

²⁵ We would expect the same safe harbor standards under NPR § 1523.2(c) regarding reasonable belief and reasonable controls to apply where an issuer is supervising its agent.

beneficial property rights have been transferred to a third party acting as principal, responsibility for subsequent circulation would shift to that third party. Consequently, subsequent circulation by DASPs would be regulated under Section 3(b)(1) and should not be brought into the liability regime of Section 3(a) through a concept of indirect issuance.

In most cases, a payment stablecoin would begin circulation after its initial issuance through the activities of exchanges, market makers, brokers, and other DASPs, as well as direct peer-to-peer transfers. In some cases, payment stablecoins may enter secondary circulation through vaults, liquidity pools, lending protocols, automated market makers, and other decentralized finance (“DeFi”) protocols. The GENIUS Act recognizes the bifurcated nature of the market and accordingly has separate provisions regulating issuance (under Section 3(a)) and secondary transactions by DASPs, including those who may purchase from a non-PPSI issuer (under Section 3(b)), while generally not regulating peer-to-peer activity. Consistent with the statutory structure, once an initial transfer of rights from an issuer has occurred, onward sales should be the responsibility of the secondary market intermediary, subject to the prohibition on U.S. offers and sales under Section 3(b), where applicable.²⁶ Treating those subsequent transactions as a continuation of the initial issuance would blur the distinction between issuance under Section 3(a) and subsequent secondary market activity under Section 3(b).

In response to Question 12, Treasury should clarify that an issuance does not occur until the first transfer of legal or beneficial property rights to another person. Depending on the function of the smart contract, that condition may not be satisfied until the smart contract directs the payment stablecoin to be transferred. In those circumstances, the issuer’s responsibility for the onward transfer may depend on its control over the smart contract and its ability to rely on the safe harbor in proposed NPR § 1523.2(c).

We also disagree with the suggestion of one commenter that some sort of cooling-off period for resales of newly issued payment stablecoins into the United States that is not otherwise provided for in the Act is merited to prevent foreign issuers from having a temporary unfair competitive advantage due to the staggered compliance dates of Sections 3(a) and 3(b). Congress expressly contemplated that payment stablecoins issued by non-PPSIs could continue to be offered and sold by DASPs to persons in the United States during the transition period before the general prohibition under Section 3(b)(1) becomes effective on July 18, 2028. Moreover, any temporary advantage for FPSIs would be significantly mitigated or offset for an FPSI not subject to a regime facially comparable to the U.S. regime, as market participants would understand that the FPSI’s

²⁶ For example, absent collusion, an issuer should not be held responsible for the later actions of an independent bridge operator or wrapped token provider.

payment stablecoins would cease to have unrestricted access in the United States once Section 3(b)(1) becomes effective and would be unlikely to invest in their use.

IV. LIABILITY FOR KNOWING PARTICIPATION IN AN UNLAWFUL ISSUANCE

Section 3(f) of the Act imposes criminal penalties on a person that “knowingly participates” in a violation of Section 3(a), but the Act does not define this term.²⁷ The NPR also does not define knowing participation in a violation, but it provides non-exhaustive examples of activities that would constitute participation when conducted “in connection with the issuance” of a payment stablecoin that violates Section 3(a), including (i) coordinating key issuance steps such as minting and solicitation of customers; (ii) undertaking an obligation to convert, redeem, or repurchase stablecoins; and (iii) market making, distribution, and other secondary market trading of newly issued stablecoins.²⁸

The IIB is concerned that the NPR’s approach to liability for knowing participation in an issuance, along with other features of the NPR, such as defining “issuance” to include both direct and indirect transfers of rights, ignores the scienter requirement in Section 3(f), blurs the line between issuer liability under Section 3(a) and the regulation of DASP activities under Section 3(b) in a manner inconsistent with the statutory framework, and leaves a broad range of activity unnecessarily subject to potential issuer liability under Section 3(a), including the risk of sweeping ordinary commercial transactions with an issuer into the scope of Section 3(a).²⁹ Section 3(f) expressly imposes criminal liability for knowing participation in a violation of Section 3(a), but not a violation of Section 3(b).³⁰ These differences indicate that Congress intended to sharply distinguish unlawful issuance under Section 3(a) from the secondary market offers and sales separately regulated under Section 3(b) notwithstanding that it did not further define “knowing participation.” Where a statute that imposes criminal liability has an undefined term subject to interpretation, the rule of lenity directs that the term should be interpreted

²⁷ GENIUS Act, Section 3(f)(1).

²⁸ NPR § 1523.2(d).

²⁹ The threat of criminal liability from an overly broad or imprecise definition of “participation” could cast a shadow over a broad range of ordinary commercial or secondary market players and activities, including, for example, the programmers, transaction validators, and operators of distributed ledger protocols and self-custodial software, and the use of payment stablecoins as collateral or settlement currency.

³⁰ Section 3(a) of the Act, and therefore potential liability under Section 3(f) for knowingly participating in a violation of Section 3(a), is expected to become effective when the Act becomes effective on January 18, 2027, while the general prohibition in Section 3(b)(1) applicable to DASPs does not become effective until July 18, 2028. *See* NPR, 91 Fed. Reg. at 53368.

narrowly.³¹ Accordingly, Treasury should define “knowing participation” to ensure criminal liability is not threatened in circumstances where Congress has not clearly directed it should apply.

For these reasons, we recommend that the test for knowing participation should be that the person has *knowledge of material facts that make the specific issuance in which they are participating unlawful*, as well as *intent to further or provide assistance to the unlawful issuance*, rather than simply engaging in activity “in connection with” an issuance. A person should not be deemed to participate in a violation merely because it knowingly provides a service to an issuer; the person must know of material facts that a reasonable person would understand to render the issuance unlawful and knowingly provide assistance intended to facilitate completion of that issuance. There should be a direct nexus between the participant’s conduct and the unlawful issuance, which may include an agreement to act in concert with the issuer or other actions demonstrating that the participant knowingly intended to take part in furthering the illegal issuance. In addition, the required coordination should be with respect to a specific issuance that violates Section 3(a), rather than coordination with the issuer or involvement in issuance activity generally.

Aiding-and-abetting principles provide a useful parallel to understand the scope of knowing participation subject to criminal liability under Section 3(f), because they distinguish knowing involvement with a person otherwise engaged in unlawful conduct from knowing and intentional assistance to the specific violation itself.³² Although Section 3(f) does not include liability for aiding and abetting an issuance, and the IIB does not suggest that Treasury read an aiding-and-abetting standard into the Act, we believe the courts’ approach to aiding-and-abetting liability supports construing

³¹ See, e.g., *United States v. Bass*, 404 U.S. 336, 347-48 (1971) (explaining that “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity” and “when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite”) (internal citations omitted).

³² See, e.g., *Rosemond v. United States*, 572 U.S. 65, 71, 77 (2014) (explaining, in the context of a drug-trafficking offense, that aiding-and-abetting liability requires an “affirmative act in furtherance of” the offense undertaken with “intent of facilitating [its] commission” and the defendant must “actively participate[] in a criminal venture with full knowledge of the circumstances constituting the charged offense”); *SEC v. Apuzzo*, 689 F.3d 204, 211 (2d Cir. 2012) (treating, in the context of securities-law violations, knowledge of the primary violation and “substantial assistance” in achieving that violation as distinct requirements); *United States v. Scotti*, 47 F.3d 1237, 1243 (2d Cir. 1995) (distinguishing between knowingly facilitating collection of extortionate debt and participating in the use of extortionate means to collect that debt, and finding the former to be insufficient to attach criminal liability under a “knowing participation” standard).

“knowingly participates in a violation” to require both knowledge of the facts making the specific issuance unlawful and conduct intended to assist that unlawful issuance.

Consistent with these principles, market making and other secondary market activity that does not violate Section 3(b) should constitute knowing participation only when it materially supports the unlawful *initial distribution* of payment stablecoins to U.S.-located persons, and is conducted with knowledge of the material facts that make a specific issuance unlawful and the intent to further or assist that unlawful issuance. We disagree with the suggestion in the NPR that proposed NPR § 1523.2(d)(3) should apply to assistance “provided at or around the point of issuance,” such as a DASP “making an initial listing of an unregistered payment stablecoin shortly after issuance, in effect supporting the mass initial distribution of the unlawful issuance,”³³ but not to “persons who merely purchase a smaller subset of the unlawfully issued payment stablecoins in the issuance for their own use (as opposed to for immediate resale in a dealer capacity)” or “secondary market trading activities that do not have a close temporal nexus to the initial issuance.”³⁴ Participation by a DASP should not be determined based on temporal proximity or the relative volume of stablecoins received by an intermediary in the initial issuance. Instead, a finding of knowing participation in these circumstances should require evidence in the form of an actual agreement or a pattern of behavior that demonstrates the DASP knowingly intended to take part in furthering the illegal issuance. DASPs that engage in secondary market activities without the requisite finding of knowledge and intent should be regulated under Section 3(b), not Section 3(a), consistent with the statutory structure.

Applying these principles, we would not expect commercial activities or arrangements that support general issuance activity to constitute knowing participation in an unlawful issuance where they are not directly connected to issuance and/or do not involve direct access to payment stablecoin purchasers. Counterparties engaged in such activities, including, for example, providing liquidity, guarantee, reserve, custody, payment, technology-support, or credit-support arrangements or services for an issuer, would not have the requisite knowledge or intent. In addition, we would not expect that a counterparty’s entrance into *bona fide* commercial arrangements of the kinds described above would require monitoring of issuances in order to avoid being treated as a participant in an unlawful issuance, absent red flags, because such counterparty would not have the requisite knowledge or intent.

Potential participants in an issuance may still be deterred from supporting lawful issuances by the threat of criminal liability where they do not have full knowledge of the facts and circumstances of an issuance. Because of this, in response to Question 43, we

³³ NPR, 91 Fed. Reg. at 53378.

³⁴ *Id.*

recommend that Treasury create a safe harbor for participants in an issuance (who may or may not be DASPs) that parallels the issuer and DASP safe harbors in proposed NPR §§ 1523.2(c) and 1523.3(e), respectively. The safe harbor should provide explicit guidance that DASPs and non-DASPs who may be deemed “participants” in an issuance would not meet the knowledge and intent standard described above where they have a reasonable belief, based on reasonable controls, that the issuance is lawful. Because it is not practical for a third-party service provider or other participant to reconstruct an issuer’s compliance with the requirements of proposed NPR § 1523.2(c), the “participant safe harbor” would establish that a participant would be subject to liability based on its own knowledge and reasonable belief rather than knowledge imputed from the issuer. Reasonableness should be assessed from the perspective of the participant, not the issuer, and should permit reasonable reliance on issuer representations absent red flags, particularly where a service provider or other participant does not have direct and independent contact with, or access to information about, the transferees in an issuance. This safe harbor would, for example, give a distributor comfort based on its own reasonable belief and reasonable controls that it can avoid criminal liability if another distributor—or the issuer itself—violates the rule or fails to qualify for a safe harbor.

Treasury should also clarify how this framework would apply to multi-issuer models, particularly where parallel issuers may operate in separate jurisdictions. The potential conditions and safeguards that would apply to these models in the United States must be addressed by each issuer’s prudential payment stablecoin regulator, but Treasury should not adopt an interpretation of liability for knowing participation that would create undue burdens for multi-issuer models that otherwise meet the expectations of the applicable prudential regulator. As a general rule, where a single payment stablecoin has multiple issuers, Section 3(a) responsibility for an issuance, defined as the first transfer of the payment stablecoin, should lie exclusively with the specific issuer who created and transferred that stablecoin. The acts of one issuer should not be imputed to the others by virtue of a multi-issuer structure, including where such an arrangement involves each issuer standing ready to redeem fungible payment stablecoins issued by other issuers. Generally standing ready to redeem such fungible payment stablecoins should not, without more, be deemed tantamount to having a specific intent to further or assist another issuer’s unlawful issuance.

Finally, we wish to emphasize that clarity on the definition of “knowing participation” and the availability of a “participant” safe harbor is particularly important because, under the staggered effective dates in Section 3 of the Act, potential liability for knowing participation in a Section 3(a) violation by a non-issuer would apply before the general restriction in Section 3(b)(1) becomes effective.³⁵ DASPs and other intermediaries

³⁵ See *supra* note 30.

therefore need to understand their risks and obligations before Section 3(a) becomes operative.

Given the limited time remaining before the January 2027 effective date for Sections 3(a) and 3(f), Treasury should also provide appropriate transition relief to give issuers, DASPs, and other market participants sufficient time to implement the final rules. We discuss the possibility of a temporally limited safe harbor in Section VII.B below.

V. OFFERS AND SALES OF PAYMENT STABLECOINS BY DASPs

A. Definition of “Located in the United States”

The definition of “located in the United States” raises the same issues for DASPs as it does for issuers.³⁶ Consistent with the recommendations in Section III.A above, we recommend that Treasury also refine the restrictions on offers and sales of payment stablecoins by DASPs to permit offers and sales to the non-U.S. offices, branches, agencies, or other establishments of a business entity located in the United States, and to clarify the treatment of collective investment vehicles and international organizations.

B. Definition of “Offer”

The GENIUS Act defines “offer” as making a payment stablecoin available for “purchase, sale, or exchange.”³⁷ Treasury’s proposal would treat directed communications, advertising, and even responses to reverse inquiries that indicate a general willingness to sell as “offers.”³⁸ Such a broad interpretation of the term, which does not appear to require expression of an actual commitment to make a sale, is not supported or compelled by the text of the Act, because something is not “available” unless and until one can actually obtain it. It would include innumerable statements that might typically be made at the initiation of an interaction with a person before even knowing who that person is. As such, it could seriously impinge on the ability of DASPs to freely communicate in the market as it would create a need for DASPs to determine a potential customer’s location before engaging in commercial speech in the nature of preliminary marketing or customer-development activity. We believe this approach is both overly burdensome and unnecessary to accomplish the policy goal of limiting sales of unlicensed payment stablecoins in the United States, and recommend Treasury adopt an alternative approach focused on acts that qualify as contractual offers in the sense that

³⁶ See NPR §§ 1523.1(c), 1523.3.

³⁷ GENIUS Act, Section 2(21).

³⁸ See NPR § 1523.3(d).

they communicate a present willingness to sell on reasonably definite terms that a reasonable person would understand as being binding on acceptance.

- Treasury should interpret both “offer” and “make available” as requiring an act that qualifies as a contractual offer—i.e., an act that can be accepted to create a binding transaction without additional action by the offeror. A DASP may not have an opportunity or ability to determine a person’s location before an initial communication, and the policy of prohibiting DASP offers and sales in Section 3(b) of the Act is not implicated unless the DASP actually makes a stablecoin transaction available for acceptance or execution in the United States.
- The solicitation and advertising examples in proposed NPR §§ 1523.3(d)(1) and (2) should not be deemed an offer standing alone. Such conduct may be relevant evidence of impermissible U.S. targeting for purposes of the safe harbor in proposed NPR § 1523.3(e), but a prohibited offer should arise only when the DASP actually makes a transaction available for acceptance or execution. General communications, including internet advertising providing factual product information or discussion of product availability on a website, likewise should not constitute an offer to persons located in the United States merely because U.S. users can view the content.
- The same principle should apply to the reverse-solicitation example in proposed NPR § 1523.3(d)(3). A response to an unsolicited inquiry that merely states a general willingness to sell should not, standing alone, constitute an offer if no intent to be bound on reasonably definite terms upon acceptance is communicated.
 - In response to Questions 37 and 63, Treasury should also recognize that a reverse inquiry need not result in an offer or sale to a person located in the United States where no affirmative response is communicated back into the United States and a transaction is subsequently conducted exclusively through a *bona fide* non-U.S. establishment of the customer, consistent with the principles discussed in Section III.A above. The treatment of the resulting transaction would depend on the location of the customer establishment through which the transaction is actually conducted, including the relevant negotiating and executing activity, and should not permit a transaction initiated and conducted by a U.S.-located customer to be converted into an offshore transaction merely through offshore booking, execution, or other formalities. This distinction would preserve Treasury’s focus on customer location while accommodating legitimate cross-border transactions conducted through permanent non-U.S. offices and branches.

- Treasury should also clarify how proposed NPR § 1523.4(c)(3) and Section 3(h)(1)(C) of the Act apply in the context of transactions with an FPSI or DASP, including reverse solicitations. These provide an exemption for “any transaction by means of a software or hardware wallet that facilitates an individual’s own custody of digital assets.”³⁹ Treasury should clarify whether, and to what extent, that exemption applies where, for example, an individual located in the United States using a qualifying self-custody wallet initiates an unsolicited request to acquire a payment stablecoin from a foreign issuer or a DASP, and whether the resulting response by an issuer or DASP to issue, sell, or otherwise transfer the payment stablecoin to the self-custody wallet would itself be outside the prohibitions of Section 3.
- Finally, the example in proposed NPR § 1523.3(d)(4) addressing advice to a purchaser on how to evade location controls should be treated as evasive conduct, rather than used to expand the ordinary meaning of “offer.”⁴⁰ The fact that particular conduct is designed to circumvent territorial restrictions does not mean that the communications should themselves be treated as offers.

C. Issuers as DASPs

The NPR would define any person who, “for compensation or profit, engages in the business in the United States of issuing payment stablecoins” as a DASP.⁴¹ Treasury explains that some core issuer activities overlap with the statutory definition of DASP activity—for example, redeeming a payment stablecoin may involve exchanging a digital asset for monetary value.⁴² Question 6 asks whether Treasury’s determination that all such issuers are also DASPs reflects the best reading of the Act, and whether additional clarity is needed regarding how Section 3’s offer and sale restrictions apply to issuers.⁴³

The IIB does not object to recognizing that issuer and DASP status may overlap where an issuer engages in distinct intermediary activities that independently fall within the DASP definition, such as dealing in or providing intermediary services with respect to payment

³⁹ NPR § 1523.4(c)(3); GENIUS Act, Section 3(h).

⁴⁰ See NPR § 1523.3(d)(4) (providing, as an example of an offer or sale, conduct in which a DASP advises or assists a purchaser in evading controls designed to determine whether the purchaser is located in the United States).

⁴¹ NPR § 1523.1(c) (definition of DASP).

⁴² NPR, 91 Fed. Reg. at 53371.

⁴³ *Id.*

stablecoins issued by another issuer. But Treasury should clarify that an issuer does not become subject to duplicative DASP obligations merely by engaging in the core activities necessary to issue, directly distribute, transfer, or redeem its own payment stablecoin. That distinction is especially important for activities inherent in administering an issuer's own stablecoin after issuance. A PPSI or FPSI should not be treated as acting as a DASP merely because it redeems its own payment stablecoin for monetary value or effects transfers of that stablecoin in its capacity as issuer. While we acknowledge that "exchanging" a digital asset for money could be read broadly to include issuing or redeeming that asset for money, we believe that the better reading of "exchanging" in the context of the Act is the transfer of an asset that already exists from one owner to another. This is conceptually similar to the distinction between a mutual fund and a dealer under the securities laws—broadly, a mutual fund could be viewed as "buying" and "selling" its securities as a business (which is the statutory definition for a "dealer" under the Securities Exchange Act of 1934), but it is understood that issuing and redeeming securities is issuer activity and not "buying" and "selling" in this context. Treating Section 3(a) issuing and redemption activities simultaneously as DASP exchange activity under Section 3(b) would create duplicative, overlapping regulation of a single issuance activity inconsistent with the intent of Congress in creating separate definitions and sets of obligations.

D. Commercial Use of Payment Stablecoins

Issuers, DASPs, and other market participants may use payment stablecoins as a means of payment, settlement, collateral, margin, or credit support in transactions whose economic subject is another asset or service. Particularly given the broad definition of "digital asset service provider," which picks up intermediaries in any digital assets, if such uses were considered to be "offers" or "sales" of payment stablecoins under Section 3(b), the usability of FPSI stablecoins generally as an asset class could be significantly curtailed, including in foreign markets for a variety of financial assets where U.S. persons might participate. Accordingly, Treasury should provide explicit guidance to clarify that such commercial uses do not, without more, constitute an "offer or sale" of the payment stablecoin for purposes of Section 3(b).⁴⁴ Question 60 expressly asks how the use of payment stablecoins in traditional financial instruments and markets should implicate the provisions governing offers and sales by DASPs, including where an underlying instrument pays dividends in payment stablecoins.⁴⁵

We recommend Treasury clarify that the use or transfer of a payment stablecoin as the payment, settlement, collateral, margin, or credit-support leg of a transaction for the *bona*

⁴⁴ Section 3(g) of the Act, not Section 3(b), regulates how payment stablecoins issued by unlicensed issuers may be used as collateral and a means of settlement.

⁴⁵ See NPR, 91 Fed. Reg. at 53383.

fide purpose of transferring or financing another asset should not be treated as an offer or sale of the stablecoin and should not, standing alone, be considered an activity that causes an entity to be regulated as a DASP. This clarification should explicitly include within its scope a DASP that acts for its own business or investment purposes, such as by providing liquidity or market making in another asset, or providing another *bona fide* banking or financial service, including transactions involving tokenized assets and decentralized protocols. In determining whether a person is offering or selling a payment stablecoin as such, Treasury should focus on the primary economic purpose of a transaction and the substance of the service being provided. Where a financial intermediary or other business entity or person is providing a service with respect to another asset or transaction and the payment stablecoin is merely the means of payment or settlement, the stablecoin should not itself be treated as the object of the offer or sale.

In addition, Treasury should clarify that offering or selling a security, fund interest, loan, derivative, or other financial instrument should not be deemed to be an offer or sale of a payment stablecoin merely because the instrument may pay an incidental dividend, distribution, or settlement amount in payment stablecoins, provided that access to the payment stablecoin as such is not the primary purpose of the transaction. The actual payment of that amount likewise should be treated as payment or settlement rather than as a separate DASP activity with respect to the payment stablecoin.

The same principle is particularly important for *bona fide* cross-border payments and foreign exchange (“FX”) transactions. Question 75 asks how Treasury’s interpretation of Section 3 may affect U.S. financial institutions participating in cross-border payments or other *bona fide* FX transactions involving foreign-issued, foreign-currency-denominated payment stablecoins.⁴⁶ Treasury should clarify that a U.S. financial institution does not offer or sell a payment stablecoin as such (or become a DASP) merely because it acquires, transfers, receives, or delivers a payment stablecoin as one leg of such a transaction, the primary purpose of which is to exchange one currency for another. An FX dealer, for example, may provide the service of exchanging one currency for another with the payment stablecoin functioning as the means by which the transaction is effected rather than as the product being offered or sold. Treasury should clarify, including through its interpretation of the scope of DASP activity where appropriate, that such *bona fide* financial services are not transformed into a business of offering or selling payment stablecoins solely because payment stablecoins are used commercially in the transaction.

More generally, the final rules should include a statement explicitly recognizing that payment stablecoins may enter the United States through ordinary commercial transactions, including transactions involving persons that are not DASPs, without any advertising, solicitation, or other U.S.-targeting activity by the issuer or any DASP. The *bona fide* commercial use of a payment stablecoin should not constitute an offer or sale of

⁴⁶ See *id.* at 53387.

the stablecoin under Section 3(b) or cause the person engaging in that activity to be treated as a DASP.

VI. CLARIFICATION OF REASONABLE BELIEF AND CONTROLS SAFE HARBORS

A. Policies, Procedures, and Controls Required for Safe Harbors

Proposed NPR §§ 1523.2(c) and 1523.3(e) provide important safe harbors for FPSIs and DASPs seeking to remain outside U.S. jurisdiction,⁴⁷ but those safe harbors will be workable only if “reasonable belief” can be established through normal institutional diligence, contractual representations, and practical, technology-neutral controls. Question 38 asks what policies, procedures, and controls should support a reasonable belief that the acquiring person is located outside the United States.⁴⁸

The IIB recommends Treasury adopt the following clarifications in its final rules to ensure these safe harbors provide practical pathways for *bona fide* non-U.S. issuers and intermediaries seeking to issue, distribute, and trade payment stablecoins outside the United States without violating U.S. law.

- Treasury should make clear that compliance is judged at the time of the issuance or sale based on contemporaneous information reasonably available to the issuer or DASP. Reasonable reliance should protect the issuer or DASP from facts it could not reasonably know, and later discovery that a customer was located in the United States should not invalidate a reasonable belief formed at the time of the transaction. A purchaser’s or intermediary’s contractual representation regarding its location should likewise be sufficient to establish reasonable belief, absent red flags.
- In response to Question 38, Treasury should remain technology neutral and should not prescribe specific controls or mechanisms that must be used to establish a reasonable belief regarding location. Geofencing, IP checks, device-location tools, blockchain analytics, identification documents, and similar technologies may be useful in particular contexts and business models, but none should be mandatory where other controls reasonably support the issuer’s or DASP’s belief. Similarly, use of a VPN or other location-masking technology should not, standing alone, constitute a red flag. The relevant question should be whether the issuer or DASP

⁴⁷ See NPR §§ 1523.2(c) & 1523.3(e) (providing safe harbors based, among other conditions, on reasonable belief regarding customer location and reasonable policies, procedures, and controls designed to avoid prohibited U.S. activity).

⁴⁸ NPR, 91 Fed. Reg. at 53378.

has concrete information indicating that the purchaser is located in the United States or is evading applicable controls.

- Consistent with the principles discussed in Sections III.C and IV above, where an issuer distributes to a DASP or other intermediary, the issuer should ordinarily be permitted to comply with Section 3(a) based on the location of its direct counterparty without a requirement to impose further controls on the counterparty. The issuer should have responsibility for onward sales only where it is acting in concert with the DASP or other intermediary with the intent to issue payment stablecoins in the United States. Otherwise, after the initial issuance, onward sales should be the responsibility of the intermediary, not the issuer, subject to the prohibition on U.S. offers and sales by DASPs under Section 3(b).
- Similarly, issuance on a non-U.S. exchange, permissioned network, or DeFi protocol should qualify for the safe harbor where the issuer can form a reasonable belief, based on reasonably designed policies, procedures, and controls, that its direct issuances will not be to persons located in the United States. What constitutes reasonable policies, procedures, and controls will vary depending on the facts and circumstances, but the fact that a non-U.S. exchange, network, or DeFi protocol is known to have U.S.-located customers or participants should not automatically prevent an issuer from relying on the safe harbor where it has implemented reasonable controls to prevent direct issuances to U.S.-located persons.

Developing and implementing the policies, procedures, and controls to comply with these safe harbors—including obtaining necessary customer and intermediary representations and adapting existing compliance systems—will require substantial time following publication of the final rules, providing another reason why Treasury should provide appropriate transition relief as discussed in Section VII.B below.

B. Safe Harbor Advertising and Solicitation Restrictions

Proposed NPR §§ 1523.2(c) and 1523.3(e) each condition their safe harbors on the absence of “advertising or solicitation activities that target, or could be reasonably expected to have the effect of targeting, any person located in the United States.”⁴⁹ Treasury should clarify how this standard applies to electronic media, internet advertising, and social media so that ordinary global communications do not inadvertently disqualify an issuer or DASP from the safe harbor.

As discussed above in Section V.B, general communications and advertising should not constitute an offer. Similarly, general internet availability, brand-awareness activity, and

⁴⁹ NPR §§ 1523.2(c) & 1523.3(e).

global advertising that is not primarily directed at the United States should not constitute U.S. targeting for purposes of the safe harbors, particularly where appropriate disclaimers or other reasonable controls are used. The fact that a website, social-media post, or other communication is accessible to persons in the United States should not, standing alone, mean that the communication targets the United States.

Because payment stablecoins may enter the United States through ordinary commercial transactions, without any advertising, solicitation, or other U.S.-targeting activity, Treasury also should clarify that legally required notices, technical support, and other non-marketing communications to holders in the United States do not, standing alone, constitute prohibited targeting. The same should be true of making redemption services available to U.S. holders. These communications and services may be necessary to satisfy legal, operational, or customer-protection obligations and should not cause an otherwise eligible issuer or DASP to lose the benefit of the safe harbor.

C. Issuer Compliance with Lawful Orders and Reciprocal Arrangements

Proposed NPR § 1523.3(c) appropriately recognizes that a DASP cannot independently guarantee an FPSI's technological capability or future willingness to comply with lawful orders and applicable reciprocal arrangements and therefore permits reliance on an FPSI's representations subject to reasonable due diligence.⁵⁰ That concept should be made more objective and should align with the same reliance principles discussed above for customer location.

- DASP should be permitted to rely primarily on an FPSI's representations as the principal compliance mechanism and should not be subject to extensive diligence or technical underwriting obligations that could make FPSI-issued stablecoins impracticable to offer even where the statute permits them. In particular, a DASP should be entitled to rely, absent red flags, on an FPSI's written representation that it has the technological capability to comply, and will comply, with lawful orders and applicable reciprocal arrangements, and Treasury should not require a DASP to conduct smart-contract audits, code testing, or independent verification of every freeze, seize, or burn function.
- Consistent with Treasury's discussion in the proposal,⁵¹ reasonable diligence should ordinarily consist of confirming that no Section 8⁵² secondary trading prohibition is in effect and reviewing readily available evidence of compliance

⁵⁰ NPR § 1523.3(c).

⁵¹ See NPR, 91 Fed. Reg. at 53382.

⁵² GENIUS Act, Section 8 (providing Treasury with the authority to designate FPSIs that do not comply with lawful orders).

from public or, where available, non-public sources. Licensed PPSIs and registered FPSIs should be presumed to comply with these requirements.

- To facilitate compliance and reduce the need for multi-step diligence and bilateral representations, Treasury should create and maintain a centralized, searchable database that DASPs may rely on in good faith when conducting diligence on issuers. At a minimum, the database should identify licensed state and federal PPSIs (including provisionally licensed issuers and issuers for whom compliance is waived pending approval of an application or a state certification), registered FPSIs, states that have been certified by Treasury as substantially similar, foreign jurisdictions that have been determined to be comparably regulated under Section 18, and issuers designated for noncompliance with a lawful order or subject to Section 8 secondary trading prohibitions.⁵³
- For reciprocal arrangements, a DASP should be responsible only for arrangements that are final, applicable to the relevant FPSI, and reasonably available to the DASP, with a reasonable implementation period after a new or amended arrangement becomes effective.
- A DASP should also be permitted to continue relying on the FPSI's representations and its initial diligence unless it receives actual notice of a material change, a Section 8 designation or trading prohibition, or other concrete information constituting a red flag.

VII. ADDITIONAL SAFE HARBORS AND TRANSITION RELIEF

A. *De Minimis* Safe Harbor

Treasury does not currently propose a *de minimis* safe harbor under Section 3(c)(1). The IIB recommends that Treasury include a safe harbor in the final rules for issuances—including for knowing participation in such issuances—that involve a *de minimis* amount of incidental U.S. issuance activity, which operates on an annual rolling basis. Such a safe harbor would be available to an offshore issuer that has isolated or inadvertent U.S. transactions. Although we expect that most issuers seeking to avoid liability for inadvertent U.S. issuances will rely on the safe harbor in proposed NPR § 1523.2(c), there may be circumstances in which, for example, a small FPSI that intends to issue outside the United States has not established specific policies and procedures tailored to the GENIUS Act to avoid issuing into the United States, but its total U.S. issuance remains *de minimis*.

⁵³ The IIB endorses the database approach described in the comment letter submitted by SIFMA on the NPR.

B. Transition Period Relief for Issuers and Other Participants

The proposal does not include a transition period for issuers and other market participants that may participate in FPSI issuances to adopt the necessary policies, procedures, and controls to remain outside the scope of Section 3(a) after Treasury's rules to implement Section 3 are finalized. This issue is particularly acute because the final rules are unlikely to be released until shortly before the Section 3(a) prohibition becomes effective on January 18, 2027, and offshore issuers will need time to understand the final requirements and safe harbors and implement controls and client documentation to comply with them. If the final rules are implemented substantially as proposed, compliance will require significant operational, contractual, and governance changes across issuers, DASPs, and other service providers, and those changes will take a significant period of time to design, negotiate, and implement.⁵⁴

The need for a sufficient transition period is especially important for DASPs and other persons who may be deemed to participate in FPSI offerings because potential liability for knowing participation in a Section 3(a) violation may arise before the Section 3(b)(1) restrictions on DASP offers and sales become effective.⁵⁵ As discussed in Section IV above, such persons need to understand, before January 18, 2027, how the final rules' standards for knowing participation interact with the issuer safe harbor, participant reliance, and other permitted interactions with issuers. Without transition relief, these persons could face potential liability before they have had a reasonable opportunity to implement the systems, contractual protections, and diligence processes contemplated by the final rules.

Accordingly, the IIB recommends Treasury adopt a transitional safe harbor from Sections 3(a) and 3(f) that begins on January 18, 2027, and extends to a date that is at least one year following the publication date of the final rules. Treasury has authority to issue a transitional safe harbor in Section 3(c)(1), because a one-year safe harbor would both be

⁵⁴ Among other things, issuers, DASPs, and other potential participants will need time to understand how the concepts of issuer, knowing participation, customer location, offers and sales, and the applicable safe harbors interact; develop or modify compliance programs and technological controls; negotiate new or amended relationship documentation, including between DASPs and issuers; obtain necessary representations and assurances; and review advertising and solicitation strategies. DASPs and other service providers will need to determine when their activities could constitute knowing participation in an unlawful issuance and when they may rely on issuer representations or other safeguards. Issuers and DASPs will also need to implement reasonable-belief controls and assess their advertising and solicitation practices under the final safe harbor standards. These steps will require coordination among issuers, DASPs, and other service providers and cannot reasonably be completed immediately upon publication of the final rules. This remains true even if Treasury simplifies aspects of the proposed compliance framework in the final rules. Simplification may reduce the implementation burden, but it cannot reduce the necessary implementation period to zero.

⁵⁵ See *supra* note 30.

“limited in scope” and apply to a “*de minimis* volume of transactions” due to its time-limited nature. Alternatively, Treasury could provide this relief by order under Section 3(c)(2) given that the very compressed timeline for addressing complicated new requirements creates an unusual and exigent circumstance.⁵⁶

C. Transition Period Relief for FPSIs Seeking Comparability Determinations

Separately, transition relief is also necessary for FPSIs that do actively seek to issue (or continue issuing) in the United States because the Section 18 comparability and registration framework may not be fully operational when Section 3(a) becomes effective. An FPSI subject to an established home-jurisdiction regulatory regime that could reasonably be deemed to be comparable to the GENIUS Act should not lose access to otherwise lawful U.S. activity and be subject to a material competitive disadvantage vis-à-vis U.S. issuers solely because additional time is required to establish a framework and make comparability determinations under Section 18, or because the Office of the Comptroller of the Currency (“OCC”) has not finalized its FPSI registration regulations or completed its review of a registration request.

Treasury should establish a transitional safe harbor for FPSIs that intend in good faith to pursue a comparability determination, to cover any period before the appropriate comparability and registration frameworks have been put in place and the FPSI has had an opportunity to apply for such a comparability determination and register with the OCC. The safe harbor should also be available where an FPSI has timely submitted any required application, notice, or supporting information and the relevant governmental review remains pending, absent an identified material compliance concern.⁵⁷ The safe harbor availability could be made conditional on an initial submission from the FPSI that it intends to seek a comparability determination and that it is subject to a regulatory regime, which it believes in good faith to be reasonably comparable based on review of the key pillars of an effective regulatory and supervisory framework present in the GENIUS Act. These pillars include a robust licensing and supervisory regime; reserve and other prudential and risk management requirements; customer protection standards, including provisions for client redemption rights and adequate protections in bankruptcy

⁵⁶ The IIB strongly supports a time-limited transition safe harbor for offshore issuers—and knowing participants in those issuances—under Section 3(c)(1). *See* NPR, 91 Fed. Reg. at 53386-87 (Question 73 requesting comment on potential regulatory safe harbors under Section 3(c)(1), including time-limited relief).

⁵⁷ In light of the statutory implementation deadlines, Treasury should consider publishing and maintaining centralized lists of licensed PPSIs, registered FPSIs, and FPSIs whose comparability or registration reviews remain pending and that qualify for transition relief.

or resolution; transparency-related measures; and risk-based measures to combat illicit finance.

The safe harbor should be available for offshore FPSIs seeking to issue in the United States beginning on January 18, 2027, and continuing until one year after (i) the establishment of a comparability determination process under Section 18, (ii) the adoption of Treasury’s final rules implementing this NPR, and (iii) the adoption of the OCC’s implementing rules for registering FPSIs. An FPSI that submits an application for a comparability determination within that transition period should receive further relief while its application remains pending.

Authority to issue a transitional safe harbor can be found in Section 3(c)(1) on the basis that the safe harbor would be “limited in scope” (both in terms of duration and because it would apply only to FPSIs that intend to apply for a comparability determination) and would apply to a “*de minimis* volume of transactions” as compared to the overall volume of transactions that will ultimately be subject to the GENIUS Act. In the alternative, we also believe that the short timeline for rulemaking in the GENIUS Act and the resulting inability to promulgate final rules and frameworks with sufficient time prior to the effective date of the Act justify a safe harbor under Section 3(c)(2), on the basis that the timing challenges present “unusual and exigent circumstances.”⁵⁸

D. Scope of Safe Harbors Under GENIUS Act Section 3(c)

Question 72 asks whether Section 3(c) should be read to authorize standalone safe harbors for offers and sales unrelated to an issuance of payment stablecoins, or only safe harbors for offers and sales incidental to an issuance.⁵⁹ Where Treasury adopts a safe harbor for the issuance of payment stablecoins, DASPs and other persons should benefit from corresponding relief from Section 3(b)(1) liability for offers and sales of the payment stablecoin and Section 3(f) liability for knowing participation in issuance of the payment stablecoin. Otherwise, the practical benefit of the issuer safe harbor could be substantially undermined if, for instance, downstream DASPs remained exposed for offers or sales of payment stablecoins whose issuance Treasury has determined should receive safe harbor relief.

* * *

⁵⁸ GENIUS Act, Section 3(c). In this regard, we do not believe Congress intended for comparability determinations to be delayed extensively beyond the effective date of the Act, given the 210-day statutory deadline for Treasury to render a decision on substantially complete comparability determination requests and the 30-day deadline for the OCC to respond to registration requests. *See* GENIUS Act, Sections 18(b)(3) & 18(c)(1)(B).

⁵⁹ NPR, 91 Fed. Reg. at 53386.

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,

A handwritten signature in blue ink that reads "Beth Zorc". The signature is fluid and cursive, with the first name "Beth" and last name "Zorc" clearly distinguishable.

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

APPENDIX A

Summary List of Recommendations

Support for the NPR's Overall Approach to Territoriality

General Approach to Territorial Framework

1. Treasury should adopt the NPR's proposed location-based approach to defining the territorial scope of Section 3, while providing further clarity in specific places to ensure that issuers and DASPs have practical pathways to compliance. It should not adopt broader measures of U.S. nexus or a "per se" approach to violations for inadvertent issuances to persons located in the United States, and it is not necessary to adopt a full offshore transaction framework modeled on Regulation S.

Ability of FPSIs to Issue Directly into the United States

2. Treasury should adopt its proposed interpretation of Section 18 as permitting a qualifying FPSI to issue payment stablecoins directly to persons located in the United States and exempting the FPSI from all the prohibitions in Section 3, including Sections 3(a), 3(b), and 3(g).
3. Treasury should act swiftly to establish a transparent, risk- and outcomes-based framework for comparability determinations under Section 18 so that prudentially supervised foreign issuers subject to comprehensive home country oversight will have a fair and timely opportunity to participate in the U.S. stablecoin market and compete on equal footing with U.S. issuers.

Regulation of Issuance of Payment Stablecoins

Definition of "Located in the United States"

4. Treasury should adopt an exception from the general rule for business entities that are organized or have their principal place of business in the United States to recognize that an issuance by a non-U.S. issuer to a non-U.S. office, branch, agency, or other establishment of a U.S. person that is permanently located outside of the United States is not an issuance "in the United States."
5. Treasury should provide clear, practical criteria for determining the principal place of business of collective investment vehicles, such as funds, that may have separately located sponsors or originators and investment managers.

6. Treasury should clarify that international organizations such as the World Bank and IMF are not treated as “located in the United States” solely because they maintain offices, personnel, or other physical presence in the United States.

Definition of “Issuance” as a Transfer of Rights

7. Treasury should clarify that the concept of the “right to use or transfer” a payment stablecoin with respect to issuance requires an authorized transfer of legal or beneficial property rights to a person other than the issuer; transfer of mere technological control to employees, agents, custodians, or nominees acting solely for the issuer without a transfer of beneficial rights should not constitute issuance.

Indirect Issuances

8. Treasury should avoid the concept of an “indirect issuance” or other approaches that might require looking through the direct recipient of the issuance to an “ultimate purchaser,” and instead treat issuance as the first transfer of legal or beneficial property rights. Absent collusion between an FPSI and a DASP or other service provider to issue a payment stablecoin into the United States, once an issuer has transferred legal or beneficial property rights in a payment stablecoin to a third party acting as principal, responsibility for subsequent circulation should shift to that third party, subject to Section 3(b)(1).
9. Treasury should not implement a cooling-off period for resales of newly issued payment stablecoins into the United States that is not otherwise provided for in the Act, as doing so would be inconsistent with the express intent of Congress.

Liability for Knowing Participation in an Unlawful Issuance

10. Treasury should construe “knowing participation” to require knowledge of the material facts that make a specific issuance unlawful and intent to further or assist that unlawful issuance.
11. Market making and other secondary market activity that does not violate Section 3(b) should constitute knowing participation only when it materially supports the unlawful initial distribution of payment stablecoins to U.S.-located persons and is conducted with knowledge of the material facts that make the specific issuance unlawful and with the intent to further or assist that unlawful issuance; temporal proximity or transaction volume should not be sufficient.
12. Commercial activities or arrangements that support general issuance activity should not constitute knowing participation where they are not directly connected to issuance and/or do not involve direct access to payment stablecoin purchasers,

because counterparties engaged in such activities would not have the requisite knowledge or intent.

13. Treasury should create a participant safe harbor paralleling the issuer and DASP safe harbors in proposed NPR §§ 1523.2(c) and 1523.3(e), under which DASPs and non-DASPs who may be deemed “participants” in an issuance would not meet the knowledge and intent standard where they have a reasonable belief, based on reasonable controls, that the issuance is lawful. The safe harbor should permit reasonable reliance on issuer representations absent red flags, particularly where the participant lacks direct and independent contact with, or access to information about, the transferees in an issuance. A participant relying on the safe harbor should be protected even if another participant or the issuer violates the rule or fails to qualify for a safe harbor.
14. Treasury should clarify how the knowing participation framework applies to multi-issuer models and should not interpret issuer liability in a manner that would prevent such models where permitted by the relevant prudential regulator. Where a single payment stablecoin has multiple issuers, responsibility for an issuance should rest with the specific issuer that created and transferred the stablecoin, and the acts of one issuer should not be imputed to the others, including where each issuer stands ready to redeem fungible payment stablecoins issued by other issuers.

Offers and Sales of Payment Stablecoins by DASPs

Definition of “Located in the United States”

15. Consistent with our recommendations for issuers, Treasury should also amend the restrictions on offers and sales of payment stablecoins by DASPs to permit offers and sales to the non-U.S. offices, branches, agencies, or other establishments of a business entity located in the United States, and to clarify the treatment of collective investment vehicles and international organizations.

Definition of “Offer”

16. Treasury should interpret “offer” and “make available” as requiring a contractual offer that can be accepted to create a binding transaction without further action by the offeror.
17. The solicitation and advertising examples in proposed NPR §§ 1523.3(d)(1) and (2) should not, standing alone, constitute offers. General communications, such as internet advertising providing factual product information or discussion of product availability on a website, likewise should not constitute offers to persons located in the United States merely because U.S. users can view the content.

18. Responses to unsolicited inquiries should not constitute offers where they merely state a general willingness to sell and do not communicate an intent to be bound on reasonably definite terms upon acceptance.
19. Treasury should recognize that a reverse inquiry originating in the United States need not result in an offer or sale to a person located in the United States where no affirmative response is communicated back into the United States, merely because a separate transaction is subsequently conducted exclusively through communications with a *bona fide* non-U.S. establishment of the customer.
20. Treasury should clarify how the Section 3(h) self-custody exemption, as implemented in proposed NPR § 1523.4(c)(3), applies to transactions with issuers and DASPs, including transactions initiated by a U.S.-located individual through a qualifying self-custody wallet.
21. Conduct advising a purchaser how to evade location controls under proposed NPR § 1523.3(d)(4) should be treated as evasive conduct, rather than used to expand the ordinary meaning of “offer.”

Issuers as DASPs

22. Treasury should clarify that issuer and DASP status overlap only where an issuer engages in distinct intermediary activities that independently fall within the DASP definition, such as dealing in another issuer’s stablecoin. An issuer should not become subject to duplicative DASP obligations merely by engaging in the core activities necessary to issue, directly distribute, transfer, or redeem its own payment stablecoin.

Commercial Use of Payment Stablecoins

23. Treasury should clarify that the commercial use of a payment stablecoin—for example as the payment, settlement, collateral, margin, or credit-support leg of a transaction for the *bona fide* purpose of transferring or financing another asset—should not be treated as an offer or sale of the stablecoin and should not, standing alone, be considered an activity that causes an entity to be regulated as a DASP. This principle should extend to transactions involving financial instruments, cross-border payments, and *bona fide* FX transactions.

Clarification of Reasonable Belief and Controls Safe Harbors

Policies, Procedures, and Controls Required for Safe Harbors

24. Treasury should clarify that compliance with the safe harbors in proposed NPR §§ 1523.2(c) and 1523.3(e) is assessed at the time of issuance or sale based on

- contemporaneous information reasonably available to the issuer or DASP, and that reasonable reliance—including on contractual representations—protects against facts that could not reasonably have been known.
25. Treasury should remain technology neutral and should not mandate specific controls or mechanisms that must be used to establish a reasonable belief regarding location.
 26. Where an issuer distributes to a DASP or other intermediary, the issuer should ordinarily be permitted to comply with Section 3(a) based on the location of its direct counterparty without a requirement to impose further controls on the counterparty, and should have responsibility for onward sales only where it is acting in concert with the DASP or other intermediary with the intent to issue payment stablecoins in the United States.
 27. Issuance on a non-U.S. exchange, permissioned network, or DeFi protocol should qualify for the safe harbor where the issuer can form a reasonable belief—based on reasonably designed policies, procedures, and controls—that its direct issuances will not be to persons located in the United States.

Safe Harbor Advertising and Solicitation Restrictions

28. Treasury should clarify that general internet availability, brand-awareness activity, and global advertising not primarily directed at the United States do not constitute prohibited U.S. targeting merely because persons in the United States can access the content.
29. Because payment stablecoins may enter the United States through ordinary commercial transactions without any advertising, solicitation, or other U.S.-targeting activity, Treasury should clarify that legally required notices, technical support, other non-marketing communications, and redemption services for U.S. holders do not—standing alone—constitute prohibited U.S. targeting or cause an otherwise eligible issuer or DASP to lose the benefit of the safe harbor.

Issuer Compliance with Lawful Orders and Reciprocal Arrangements

30. DASPs should be permitted to rely primarily on FPSI representations regarding compliance with lawful orders and reciprocal arrangements, without extensive technical diligence or independent testing.
31. Reasonable diligence should ordinarily consist of confirming that no Section 8 secondary trading prohibition is in effect and reviewing readily available compliance information. Licensed PPSIs and registered FPSIs should be presumed to comply with these requirements.

32. To facilitate compliance and reduce the need for multi-step diligence and bilateral representations, Treasury should create and maintain a centralized, searchable database that DASPs may rely on in good faith when conducting diligence on issuers.
33. DASPs should be responsible for confirming an issuer's compliance with reciprocal arrangements only when such arrangements are final, applicable, and reasonably available, with a reasonable implementation period for new or amended arrangements.
34. DASPs should be permitted to continue relying on FPSI representations and initial diligence absent actual notice of a material change, Section 8 restriction, or other concrete red flags.

Additional Safe Harbors and Transition Relief

De Minimis Safe Harbor

35. Treasury should adopt a *de minimis* safe harbor under Section 3(c)(1) operating on an annual rolling basis for isolated or inadvertent U.S. issuance activity, including corresponding protection for knowing participation in such issuances.

Transition Period Relief for Issuers and Other Participants

36. Treasury should provide a time-limited transition safe harbor for issuers to adopt the necessary policies, procedures, and controls to remain outside the scope of Sections 3(a) and 3(f) after Treasury's rules to implement Section 3 are finalized.
37. Treasury should extend this transition relief to DASPs and other persons that may face potential liability for knowing participation under Section 3(f).

Transition Period Relief for FPSIs Seeking Comparability Determinations

38. Treasury should establish a transitional safe harbor for FPSIs that intend in good faith to pursue a comparability determination and satisfy reasonable initial standards, covering any period before the appropriate comparability and registration frameworks have been put in place and the FPSI has had an opportunity to seek a comparability determination and register with the OCC. The safe harbor should also be available where an FPSI has timely submitted any required application, notice, or supporting information and the relevant governmental review remains pending, absent an identified material compliance concern.

Scope of Safe Harbors Under GENIUS Act Section 3(c)

39. Treasury should clarify that where it adopts a safe harbor for issuance of payment stablecoins, DASPs and other persons should receive corresponding relief from Section 3(b)(1) liability for offers and sales and Section 3(f) liability for knowing participation in the issuance of those stablecoins.

APPENDIX B

Supplemental Interpretations

FACT PATTERN 1

A protocol operator operates a permissioned blockchain network primarily designed for institutional financial markets. The blockchain network operates globally, meaning it has permissioned U.S.-located as well as non-U.S.-located persons to transact on the network. The protocol operator reaches an understanding with an FPSI that is not yet registered under the GENIUS Act to enable minting of its payment stablecoins onto the network. The FPSI limits issuance to non-U.S.-located persons on the network. The FPSI also whitelists U.S.-located persons on the network purely to enable their participation in secondary market activity and to use stablecoins as collateral or settlement currency in other transactions recorded on the blockchain. Any marketing by the issuer targets non-U.S.-located persons, while specifying that U.S. persons cannot obtain payment stablecoins from the FPSI. The FPSI will maintain policies, procedures, and controls that support these limitations, including a strict ban on issuance to U.S.-located persons.

Question 1: Will the FPSI be considered to have issued its payment stablecoin in the United States in violation of Section 3(a) by virtue of permitting minting onto the network under these facts?

Answer 1: No. The FPSI has not issued its payment stablecoin to a person in the United States in violation of Section 3(a) of the Act. The facts described, without more, also allow for reliance on the safe harbor in § 1523.2(c).

Question 2: Has the protocol operator knowingly participated in a violation of Section 3(a)?

Answer 2: No. Because the issuance onto the network does not violate Section 3(a) of the Act, the protocol operator is not knowingly participating in a violation subject to liability under Section 3(f) of the Act.

Question 3: Can a DASP located outside the United States acquire the payment stablecoin directly from the FPSI and use the stablecoin as collateral or a settlement currency in an on-chain financial transaction with a U.S. counterparty without (i) knowingly participating in a violation of Section 3(a) or (ii) (from July 2028) offering or selling a payment stablecoin in violation of Section 3(b)?

Answer 3: Yes. Because the issuance does not violate Section 3(a), the DASP is not knowingly participating in a violation within the meaning of Section 3(f). Further,

because the use of the payment stablecoin for collateral or settlement purposes is not an offer or a sale of the payment stablecoin, there would be no violation of Section 3(b), provided that the primary purpose of the transaction is for the DASP to obtain or finance another financial asset rather than to sell the payment stablecoin. The economics of the transaction, in particular, which side of the transaction provides compensation for entering into the transaction, would generally provide strong objective evidence of its primary purpose. In this example, payment by the DASP to the other party of a fee, rate, spread, or other form of compensation to enter into the transaction (and absence of receipt of any compensation fully offsetting such payment) would be evidence of its use as a means of payment or collateralization for a permissible commercial purpose.

Question 4: Can the parent of the FPSI, a non-U.S.-based DASP, use the payment stablecoin acquired from the FPSI as collateral or settlement currency in an on-chain financial transaction with a U.S. counterparty without (i) knowingly participating in a violation of Section 3(a), or (ii) (from July 2028) offering or selling a payment stablecoin in violation of Section 3(b)?

Answer 4: Yes. Same answer as under Question 3, again assuming the primary purpose of the transaction is for the FPSI parent to obtain or finance another financial asset.

FACT PATTERN 2

Under a dual issuer model, an FPSI licensed under the EU's Markets and Crypto-Assets Regulation and not authorized under the Act issues payment stablecoins exclusively to persons located in the European market (i.e., not persons that are U.S.-located). Redemption by such issuer is restricted to holders that are located in the European market. The same payment stablecoin (same ISIN, no distinguishing markers) is also issued by an affiliated issuer licensed under the Act. It issues the stablecoin exclusively to U.S.-located holders and accepts their redemption requests. The structure is publicly communicated as a dual issuer structure with separate targeted marketing for each jurisdiction by the relevant issuer.

Question 1: Has the FPSI or the U.S. issuer violated any part of § 1523.2?

Answer 1: No. The FPSI has not issued the payment stablecoin to a person in the United States in violation of Section 3(a) of the Act. The facts described, without more, also allow for reliance by the FPSI on the safe harbor in § 1523.2(c). Because the issuance does not violate Section 3(a), the U.S. issuer is not knowingly participating in a violation of Section 3(a).