INSTITUTE OF INTERNATIONAL BANKERS

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

September 21, 2026

BY ELECTRONIC SUBMISSION

New York State Department of Financial Services
One State Street
New York, NY 10004

VIA Electronic Mail: ethan.goldstein@dfs.ny.gov

Re: Proposed 23 NYCRR 202 Authorized Payment Stablecoin Issuers

To Whom It May Concern:

The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the New York State Department of Financial Services ("NYDFS" or the "Department") proposed new regulation 23 N.Y.C.R.R. 202 (the "Proposed Regulation"),[1] which is intended to align the Department's regulatory regime for authorized payment stablecoin issuers ("APSIs") with the federal regulatory framework established by the Guiding and Establishing National Innovation for U.S. Stablecoins Act ("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

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1 NYDFS, Proposed New 23 N.Y.C.R.R. 202, Authorized Payment Stablecoin Issuers (July 22, 2026) [hereinafter, the Proposed Regulation].

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

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

for U.S. borrowers. IHFIs comprise the majority of U.S. primary dealers, enhancing the depth and liquidity of U.S. financial markets. They also contribute significantly to the U.S. economy through the direct employment of U.S. citizens, as well as through other operating and capital expenditures.

The IIB supports the fundamental goals of the Proposed Regulation: to ensure that New York's regulations are in full alignment with the GENIUS Act's requirements, while also protecting consumers and fostering responsible innovation. Consistent with the IIB's expectations for federal regulation under the GENIUS Act, the Proposed Regulation should ensure that the U.S. operations of foreign banks and IHFIs are treated equally to, and allowed to participate in the U.S. stablecoin market to the same extent as, domestic banks and financial institutions in accordance with the principles of national treatment and equality of competitive opportunity. These principles have been enshrined in U.S. banking law and policy for decades.

The IIB has submitted comment letters to the U.S. Department of the Treasury ("Treasury"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC"), urging them to ensure equal treatment for the U.S. operations and uninsured branches of foreign banks as they promulgate regulations to implement the GENIUS Act.[4] The IIB previously also submitted comments to the Department in response to its preview of the Proposed Regulation. Because we wish to reiterate those comments and recommendations, we hereby attach our previously submitted letter for your review.

We appreciate your consideration of the issues raised therein and stand ready to provide any further information that may be helpful.

Sincerely,

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

[4] *See* IIB, Comment Letter on Treasury's Advance Notice of Proposed Rulemaking to Implement GENIUS Act (Nov. 4, 2025), *available* here; IIB, Comment Letter on the OCC's Proposed Rule to Implement GENIUS Act (May 1, 2026) (the "OCC Comment Letter"), *available* here; IIB, Comment Letter on Treasury's Proposed Rule to Implement GENIUS Act (June 2, 2026), *available* here; IIB, Comment Letter on FDIC's Proposed Rule to Implement GENIUS Act (June 9, 2026), *available* here.

ATTACHMENT

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The Institute of International Bankers ("IIB") appreciates the opportunity to comment on the pre-proposed outreach from the New York State Department of Financial Services ("NYDFS" or the "Department") on proposed regulation 23 N.Y.C.R.R. 202 (the "Proposed Regulation"),[1] which is intended to align the Department's regulatory regime for authorized payment stablecoin issuers ("APSIs") with the federal regulatory framework established by the Guiding and Establishing National Innovation for U.S. Stablecoins Act ("GENIUS Act" or the "Act").[2] The IIB understands that this is a preview of the forthcoming official rule proposal that is intended to provide stakeholders with an opportunity to offer initial comments.

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[1] NYDFS, Proposed New 23 N.Y.C.R.R. 202, Authorized Payment Stablecoin Issuers (June 9, 2026) [hereinafter, the Proposed Regulation].

[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.).

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

The IIB supports the fundamental goals of the Proposed Regulation: to ensure that New York's regulations are in full alignment with the GENIUS Act's requirements, while also protecting consumers and fostering responsible innovation. Consistent with the IIB's expectations for federal regulation under the GENIUS Act, the Proposed Regulation should ensure that the U.S. operations of foreign banks and IHFIs are treated equally to, and allowed to participate in the U.S. stablecoin market to the same extent as, domestic banks and financial institutions in accordance with the principles of national treatment and equality of competitive opportunity. These principles have been enshrined in U.S. banking law and policy for decades.

The IIB has submitted comment letters to the U.S. Department of the Treasury ("Treasury"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC"), urging them to ensure equal treatment for the U.S. operations and uninsured branches of foreign banks as they promulgate regulations to implement the GENIUS Act.[4] We take this opportunity to urge the NYDFS to do the same.

I. Summary of Recommendations

Our recommendations for the Proposed Regulation are summarized below:

- APSIs should be permitted to hold payment stablecoin reserves as demand deposits at both insured and uninsured U.S. branches of foreign banks and to use uninsured deposits, including those held at uninsured U.S. branches of foreign banks, to meet operational backstop requirements.

- When acting as a custodian for payment stablecoins and payment stablecoin reserves, the U.S. branches of foreign banks should be treated equally to other U.S. insured depository institutions, including with respect to commingling reserves in an omnibus account, holding cash reserves and related cash custody

We use the term IHFI in this letter to refer broadly to both categories and refer to foreign banks or FBOs where appropriate for the specific issue being discussed.

[4] *See* IIB, Comment Letter on Treasury's Advance Notice of Proposed Rulemaking to Implement GENIUS Act (Nov. 4, 2025), *available* here; IIB, Comment Letter on the OCC's Proposed Rule to Implement GENIUS Act (May 1, 2026) (the "OCC Comment Letter"), *available* here; IIB, Comment Letter on Treasury's Proposed Rule to Implement GENIUS Act (June 2, 2026), *available* here; IIB, Comment Letter on FDIC's Proposed Rule to Implement GENIUS Act (June 9, 2026), *available* here.

assets in the form of a deposit liability, and NYDFS's proposed prior approval requirement for payment stablecoin reserve custodians.

- When reviewing applications to establish APSI subsidiaries of FBOs and other IHFIs, the NYDFS should give due regard to the U.S. federal regulatory framework that already applies to an IHFI's U.S. operations.

- Risk management standards and capital requirements for APSIs controlled by IHFIs should be flexible enough to accommodate a range of legal and governance structures of foreign-owned APSIs, including variations that reflect differences in home-country regulations and practices.

II. THE OVERARCHING PRINCIPLE OF EQUAL TREATMENT FOR THE U.S. OPERATIONS OF FOREIGN BANKS AND IHFIS

As the Department prepares to publish the Proposed Regulation in the State Register, we urge it to consider carefully the importance of the principles of national treatment and equality of competitive opportunity for the U.S. operations of foreign banks. These principles have been enshrined in U.S. banking law and policy for decades.[5] Under these tenets, U.S. banking policy "generally gives foreign banks operating in the United States the same powers as U.S. banking organizations and subjects them to the same restrictions and obligations."[6] For the federal branches and agencies of foreign banks, the IBA generally requires that the "operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and subject to all the same duties."[7] The main principle is "one of non-

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

[6] SR Letter 08-9 at n.3.

[7] § 4(b) of the IBA, 12 U.S.C. § 3102(b). *See also* FDIC, Risk Management Manual of Examination Policies, International Banking, § 11.1 at 22 (last updated Mar. 31, 2026) *available* here [hereinafter, the FDIC Examination Manual]; Comptroller's Handbook, Federal Branches and Agencies Supervision, at 4 (version 1.5, Sept. 30, 2019); 68 Fed. Reg. 70691 (Dec. 19, 2003) (discussing the principles of national treatment under the IBA); *CSBS v. Conover*, 715 F.2d 604, 616 (D.C. Cir. 1983)

discrimination or *national treatment*, which eliminates the advantages and disadvantages that foreign branches previously faced compared to domestic branches."[8] Congress intended these principles of equal treatment to apply in the context of the GENIUS Act.[9]

The IIB urges the Department to adhere to these principles in its rulemaking and interpretation of the GENIUS Act, as well as in exercising its supervisory authority. Observing national treatment supports robust competition, market liquidity, and diversified sources of credit for households and businesses in New York and across the United States. It enhances financial stability by encouraging internationally active firms to maintain efficient, well-capitalized, and well-supervised U.S. platforms, rather than retreat from U.S. markets in response to duplicative or discriminatory rules. It also reinforces U.S. and New York leadership in global financial markets and the strength of the U.S. dollar by linking the U.S. financial and banking markets to the global networks of IHFIs.

These principles are particularly important in New York, as the premier financial capital of the world and the home to the largest concentration of foreign bank branches and agencies in the United States. The Department licenses, examines, and supervises most of the state-licensed, uninsured U.S. branches of foreign banks that would be harmed if they were excluded from competing on equal footing with domestic depository institutions. These institutions have operated under the Department's careful oversight for decades, serving institutional clients in New York and around the world. The Department has a direct and substantial interest in ensuring the Proposed Regulation does not inadvertently exclude these institutions, its own licensees, from the opportunity to participate fully in the U.S. stablecoin market.

Consistent with these principles, the Department should ensure that its regulations allow the U.S. operations of IHFIs to participate in the U.S. payment stablecoin market to the same extent, and subject to the same or equivalent rules, as domestic banks and financial institutions.

("[T]he IBA seeks to treat federally chartered foreign and domestic banks as similarly as possible under the Act"), *cert. denied*, 466 U.S. 927 (1984).

8 FDIC Examination Manual, § 11.1 at 22.

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

III. Recommendations

A. APSIs Should Be Permitted to Hold Reserves as Demand Deposits at the (Insured and Uninsured) U.S. Branches of Foreign Banks

Consistent with our prior comments to the Treasury, OCC, and FDIC, the IIB recommends that the Department clarify in its Proposed Regulation that APSIs will be permitted to place payment stablecoin reserves as demand deposits with the uninsured U.S. branches of foreign banks.[10] As we explained in our OCC Comment Letter, this issue can be addressed by recognizing the GENIUS Act's broad definition of insured depository institution and specifying that it includes the uninsured U.S. branches of foreign banks.

Section 4(a)(1) of the GENIUS Act permits permitted payment stablecoin issuers ("PPSIs") to hold reserves as demand deposits at insured depository institutions[11] and defines insured depository institutions, in relevant part, by a broad reference to Section 3 of the Federal Deposit Insurance Act ("FDI Act").[12] Section 3 of the FDI Act defines the scope of insured depository institutions in two ways, depending on the context, and expressly *includes* the uninsured U.S. branches of foreign banks as "insured depository institutions" for purposes of the FDI Act's enforcement provisions.[13] The GENIUS Act does not specify which of the two definitions should be used.[14]

The OCC's proposed regulations to implement the GENIUS Act for OCC-regulated PPSIs (the "OCC NPR") did not acknowledge this ambiguity.[15] Instead, it proposed adopting a narrower reading by adding a specific reference to 12 U.S.C. § 1813(c)(2), a reference that does not appear in the GENIUS Act itself.[16] It did this without detailing

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10 *See, e.g.*, OCC Comment Letter.

11 GENIUS Act, § 4(a)(1)(A).

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

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

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

15 OCC, Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency, 91 Fed. Reg. 10202 (Mar. 2, 2026) [hereinafter, the OCC NPR].

16 *Compare* OCC NPR § 15.2 ("*Insured depository institution* means: (1) An insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813(c)(2)) and (2) an insured credit union.") *with* GENIUS Act, § 2(15) ("an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)").

the analytical steps it may have employed to get there or citing any discussion of how the structure and purpose of the GENIUS Act, or its legislative history, would support this reading. The NYDFS, in turn, incorporates this narrow interpretation by reference in the Proposed Regulation.[17]

The impact of this interpretive issue is significant, as a contrary reading would exclude the uninsured branches of foreign banks from the definition of "insured depository institution" and, therefore, from the ability to serve as a deposit provider to APSIs; this would be a sharp departure from the principle of equality of competitive opportunity and contrary to the legislative history of the GENIUS Act. Representative Andy Barr addressed this specific issue in his floor speech upon passage of the Act, stating that equal treatment of FBOs and U.S. banks "is particularly important with respect to . . . reserve and custody services . . . *irrespective of whether they are deposit insured* . . . ."[18]

We believe that a narrow reading of the insured depository institution definition misconstrues the purpose of this requirement in the GENIUS Act. In our view, the requirement is intended to identify banking institutions subject to robust federal supervision where demand deposits can be placed. We do not believe it was intended to require those institutions to carry deposit insurance, because requiring deposit insurance would interfere with the principle of equality of competitive opportunity without providing a noticeably greater level of protection for holders of payment stablecoins in light of deposit insurance limits.

Except for a limit on retail deposit taking and the related availability of deposit insurance of up to $250,000 per depositor, the uninsured U.S. branches of foreign banks are eligible to accept deposits to the same extent as insured U.S. banks. This includes accepting institutional deposits, including those from payment stablecoin issuers. U.S. branches of foreign banks are subject to the same type of federal and state safety and soundness examination and oversight, and the same enforcement powers under Section 8 of the FDI Act and relevant state law, as U.S. banks, and, like U.S. banks, they are eligible to borrow from the FRB's discount window under applicable law and FRB regulations.[19] If Congress had intended to override longstanding practices that allow foreign banks operating through uninsured state or federal branches to compete fairly in the areas of banking and custody, we believe it would have done so expressly.

There is relevant recent precedent for this reading of insured depository institution in similar statutory contexts. For example, in the context of the "swap push out" provision in Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of

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17 *See* Proposed Regulation, § 202.2.

18 Barr Speech (*emphasis added*).

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

2010 ("Dodd-Frank"),[20] the FRB concluded that the statutory exemption available to "insured depository institutions" was ambiguous and should be read to include (and provide the same exceptions and transition period relief for) the uninsured U.S. branches and agencies of foreign banks.[21]

We understand that this is an interpretive issue that cuts across the various agencies responsible for implementing the GENIUS Act. Consistent with the Act's text, congressional intent, public policy, and the principle of equality of competitive opportunity, we have urged the OCC and other agencies to address this issue by adopting the broader definition of insured depository institution that includes Section 3(c)(3) of the FDI Act.[22]

The IIB's overriding priority is that the uninsured U.S. branches of foreign banks be permitted to compete on an equal footing with U.S. banks as providers of reserve and custody services to NYDFS-regulated APSIs, including by holding issuer reserves as demand deposits. To that end, we believe the most effective path forward is coordination, and we encourage the NYDFS to continue to engage with federal regulators to achieve a consistent and workable approach at both the state and federal level.

If the OCC adopts the broader definition we have proposed, the Proposed Regulation's cross-references to the definition of insured depository institution and the reserve asset composition standards in the OCC NPR should address the issue.[23] If the OCC chooses a different approach to address the issue, we recommend the NYDFS make appropriate adjustments to the Proposed Regulation to ensure consistency. If, however, the OCC does not resolve the issue, we urge the Department to exercise its independent rulemaking and interpretive authority over New York-regulated APSIs to preserve equal

[20] 12 U.S.C. § 8305.

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

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

[23] *See* Proposed Regulation, §§ 202.2(a) (cross-referencing OCC NPR § 15.2) and 202.6(b) (cross-referencing OCC NPR § 15.11(b)).

treatment for New York-licensed branches of foreign banks.[24] We agree with the Department's position that Section 7(d) of the GENIUS Act authorizes the NYDFS to issue rules interpreting Section 4 obligations with respect to APSIs,[25] including the reserve composition standards under Section 4(a)(1)(A), and believe that an interpretive rule clarifying that APSIs are permitted to place reserves as demand deposits with uninsured U.S. branches of foreign banks would meet the requirements under Section 4(c) for the New York regime to be "substantially similar" to the federal regulatory framework and "meet or exceed" the standards and requirements described in Section 4(a) of the Act.[26]

B. APSIs Should Be Allowed to Use Uninsured Deposits, Including Those Held at Uninsured U.S. Branches of Foreign Banks, to Meet the Proposed Regulation's Operational Backstop Requirement

Section 202.8(d) of the Proposed Regulation proposes to require an APSI to hold a designated pool of highly liquid assets equal to 12 months of expenses to maintain the ongoing operations of the APSI during a business disruption. Only a limited set of assets would be allowed to comprise the operational backstop, namely those listed in proposed 12 C.F.R. § 15.41(b)(2), including "[d]emand deposits . . . at a U.S. insured depository institution, the balances of which are fully insured by the FDIC . . . ."[27]

The NYDFS should expand the scope of permitted operational backstop assets to include uninsured deposits, including those held at uninsured U.S. branches of foreign banks. The purpose of the backstop is to ensure that funds are held securely and are available quickly to support operations in a disruption, not to require that all such balances be structured to maximize deposit insurance coverage. A rule that excludes uninsured deposits altogether would be unnecessarily restrictive and could push APSIs into more complex cash-management arrangements, such as reciprocal or other types of deposit networks, which could pose additional operational risk.

The operational backstop requirement is a creation of discretionary rulemaking, not based on a detailed statutory mandate. Section 4(a)(4)(A) of the GENIUS Act gives the Department the authority to adopt rules implementing capital requirements for APSIs, including the operational backstop, consistent with safety and soundness considerations

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24 *See* GENIUS Act, § 7(d) ("A State payment stablecoin regulator may issue orders and rules under section 4 applicable to State qualified payment stablecoin issuers to the same extent as the primary Federal payment stablecoin regulators issue orders and rules under section 4 applicable to permitted payment stablecoin issuers that are not State qualified payment stablecoin issuers.").

25 *See* NYDFS, Comment Letter on Treasury's Proposed Rule to Implement GENIUS Act (June 2, 2026), *available* here.

26 GENIUS Act, §§ 4(c)(1) and 4(c)(5)(a)(i).

27 OCC NPR § 15.41(b)(2)(ii).

and the GENIUS Act requirement that New York's payment stablecoin regime must be substantially similar to the federal regulatory framework.[28] The operational backstop would be considered a "state-calibrated requirement" pursuant to Treasury's proposed rule to establish broad-based principles for determining when a State-level regulatory regime is substantially similar to the Federal regulatory framework under Section 4(c) of the GENIUS Act.[29] Under the principles set out in that proposal, we believe allowing operational reserve deposits to be held at uninsured U.S. branches of foreign banks would satisfy the requirement that New York's regime be substantially similar to the federal regulatory framework.[30]

We have urged the OCC and other agencies to address this issue by adopting the broader definition of insured depository institution and removing the requirement that the operational backstop deposit be insured. If the OCC adopts our proposal, the Proposed Regulation's cross-references to the definition of insured depository institution and the operational backstop asset composition standards in the OCC NPR should address the issue.[31] If the OCC chooses a different approach, or does not address the issue, we recommend the NYDFS make appropriate adjustments to the Proposed Regulation to ensure the uninsured branches of foreign banks can accept deposits that serve as the operational backstop for APSIs.

C. When Acting as a Custodian for Payment Stablecoins and Payment Stablecoin Reserves, the U.S. Branches of Foreign Banks Should Be Treated Equally to Other U.S. Insured Depository Institutions

Section 10 of the GENIUS Act sets forth requirements for the provision of custodial services or safekeeping services for payment stablecoin reserves, payment stablecoins used as collateral, and the private keys used to issue permitted payment stablecoins. It

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28 GENIUS Act, §§ 4(a)(4)(A) and 4(c).

29 *See* Treasury, GENIUS Act Broad-Based Principles for Determining Whether a State-Level Regulatory Regime Is Substantially Similar to the Federal Regulatory Framework, 91 Fed. Reg. 16844 (April 3, 2026) (the "Treasury Principles Proposal").

30 Treasury's proposal would require the state regime to include an operational backstop that includes a "liquid pool of identifiable assets . . . equal to or greater than the amount required under the Federal regulatory framework," but does not specify what assets can qualify. Treasury Principles Proposal, § 1521.4(e)(3). We respectfully submit that allowing such liquid assets to be held as uninsured deposits at the U.S. branch of a foreign bank would not be a material difference that causes the New York standard to be less "stringent" or "protective" than the federal standard. *See* Treasury Principles Proposal, § 1521.2(b)(1)(ii).

31 *See* Proposed Regulation, §§ 202.2(a) (cross-referencing OCC NPR § 15.2) and 202.8(d)(2) (cross-referencing OCC NPR § 15.41(b)(2)).

authorizes the U.S. operations of FBOs, including their U.S. branches, to provide such custodial and safekeeping services.[32]

We support the decision to incorporate Section 10 of the Act into the Proposed Regulation, but we recommend that the Department clarify that New York-licensed branches of foreign banks are permitted to commingle reserves in an omnibus account when acting as custodians under Section 10 and to hold payment stablecoin reserves in the form of a deposit liability to the same extent as other domestic banks.[33] Though the Proposed Regulation addresses custody through Section 202.16, it does not directly address the ability to commingle reserves or the ability to treat cash held by custodians as a deposit liability.[34]

The GENIUS Act authorizes an "insured depository institution" that provides custodial or safekeeping services to commingle and deposit assets "in an omnibus account holding the payment stablecoin reserves, payment stablecoins, cash, and other property of more than 1 permitted payment stablecoin issuer or customer."[35] It also provides that any "insured depository institution" providing custodial or safekeeping services is permitted "to hold payment stablecoin reserves in the form of cash on deposit provided such treatment is consistent with Federal law."[36] As explained above, the definition of insured depository institution in the GENIUS Act has two possible readings, and we believe that congressional intent, the principle of equality of competitive opportunity, and public policy all support the broader reading that includes uninsured branches.[37]

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

[33] *See, e.g.*, OCC NPR § 15.21(d) ("[A]n insured national bank or Federal savings association that provides custodial or safekeeping services, including as a sub-custodian, for covered assets that are in the form of cash may hold such cash in the form of a deposit liability, provided such treatment is consistent with Federal law."); OCC NPR § 15.22(b) (permitting "covered custodians" to commingle reserve assets in omnibus accounts).

[34] *See* Proposed Regulation, § 202.16(a).

[35] GENIUS Act, § 10(c)(2)(A).

[36] GENIUS Act, § 10(c)(2)(D).

[37] Even within the scope of § 10(c), the GENIUS Act uses both "depository institution" and "insured depository institution" when discussing reserves held as deposit liabilities. *See* GENIUS Act, § 10(c)(2)(A) ("[A]ny payment stablecoin reserves in the form of cash held in the form of a deposit liability at a depository institution shall not be subject to any requirement relating to the separation of such cash from the property of the applicable depository institution").

To ensure New York-licensed branches of foreign banks are not unfairly disadvantaged, the Department should add clarifying language in Section 202.16 of its Proposed Regulation as follows:

> "(c) Commingling assets. A custodian that is subject to the supervision of the Department, including a licensed branch of a foreign banking corporation, may, for convenience, commingle the payment stablecoin reserves, payment stablecoins, cash and other property received from multiple customers in the course of the provision of custodial or safekeeping services in one or more omnibus accounts."
>
> "(d) Holdings of cash. Notwithstanding any other provision of this Section, any insured depository institution that is subject to the supervision of the Department, including a licensed branch of a foreign banking corporation, that provides custodial or safekeeping services, including as a sub-custodian, for covered assets that are in the form of cash may hold such cash in the form of a deposit liability, provided such treatment is consistent with state and Federal law."

We also recommend that the Department clarify that APSIs will not be required to obtain prior approval under Section 202.6(a)(3) to hold reserves at (i) a custodian that is an uninsured U.S. branch of a foreign bank, because they qualify as insured depository institutions for purposes of this provision, or (ii) any eligible financial institution that has been previously authorized by the Department to provide stablecoin reserve services for stablecoin issuers and is operating within the scope of its authorization.[38] As discussed above, the uninsured U.S. branches of foreign banks are subject to regulation and supervision comparable to that applicable to domestic banks, and entities that have already been vetted and approved to provide stablecoin reserve services by the Department should not require additional approvals to provide those services to APSIs.

D. Application, Risk Management and Capital Standards for APSIs Controlled by IHFIs Should Give Due Regard to Existing U.S. Regulation of the IHFIs and Accommodate a Range of Legal and Governance Structures

1. Standards for Reviewing APSI Applications from IHFIs

When reviewing applications to establish APSIs from FBOs and other IHFIs under Section 202.3, the NYDFS should give due regard to the U.S. federal regulatory framework that already applies to an IHFI's U.S. operations (including, for FBOs, U.S. federal safety and soundness standards). An IHFI's operation of a U.S. financial

[38] *See* NYDFS, Industry Letter Regarding Prior Approval for Covered Institutions' Virtual Currency-Related Activity (Dec. 15, 2022).

institution, whether it be a bank or nonbank, that is subject to ongoing federal regulation and supervision in the United States should be a strong indicator that the IHFI parent has the requisite financial and management resources, competence, and integrity to operate an APSI, and the Department should seek to rely on and defer to other regulatory approvals and supervisory materials to the greatest extent possible.

2. Risk Management Standards

We support the Department's decision to propose flexible risk management standards for APSIs in Section 202.10, consistent with the GENIUS Act's mandate that such standards be "principles-based" and "tailored to the business model and risk profile" of an APSI. As the Department moves forward to implement and enforce these standards, it should take into account the variety of legal and governance structures an APSI may have, including for foreign-owned or controlled APSIs, that reflect differences in home country regulations and practices.

* * *

We appreciate your consideration of the issues raised in this letter and stand ready to provide any further information that may be helpful.

Sincerely,

Beth Zorc

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