



October 19, 2026

Via electronic submission: <http://www.regulations.gov>

The Honorable Rachel Miller
Acting General Counsel
U.S. Department of the Treasury
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)**

Dear Ms. Miller:

The Blockchain Association (“BA”) submits this letter in response to the request for comments by the U.S. Department of the Treasury (“Treasury”) on its proposed rule implementing Section 3 of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (“GENIUS Act” or the “Act”), GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale, 91 Fed. Reg. 53,368 (Aug. 18, 2026) (the “Proposed Rule”).

The BA is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset economy.¹ The BA endeavors to achieve regulatory clarity and to educate policymakers, regulators, courts, and the public about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. The BA represents member companies reflecting a wide range of the dynamic blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors, and others supporting the public blockchain ecosystem. Many of those member companies are building, supporting, or deeply interested in stablecoin products in the United States.

Introduction and Executive Summary

The BA supports Treasury’s core objective in promulgating the Proposed Rule: ensuring that payment stablecoins in the United States are safe, trustworthy, and issued by regulated companies that maintain adequate reserves. All of the BA’s members across the payment stablecoin ecosystem share Treasury’s interest in clear, administrable rules that channel U.S. stablecoin activity

¹ See Blockchain Association, <https://theblockchainassociation.org>.

toward compliant issuers and service providers without disrupting the markets, infrastructure, and use cases that give payment stablecoins their value.²

The BA also supports many of the Proposed Rule’s key design choices. Treasury was correct to “focus[] on the text of the GENIUS Act itself” rather than attempt to force payment stablecoins into a pre-existing securities- or commodities-law framework. 91 Fed. Reg. at 53,369–70. The BA also supports Treasury’s efforts to ensure the “administrability and certainty” of the proposed regulations, including Treasury’s goal of setting standards for criminal enforcement “as simply as practicable” and thereby providing clarity to regulated companies. *Id.* at 53,376 n.45, 53,380. This letter identifies areas in which Treasury should better delineate Section 3’s application to various actors in the payment stablecoin ecosystem and ensure that the final rule is consistent with Congress’s intent.

Specifically, the BA urges Treasury to make the following revisions and clarifications to the Proposed Rule:

- **DASP Definition, Exclusions, and Decentralized Finance (“DeFi”):** Treasury should confirm that the statutory definition of a digital asset service provider (“DASP”) in Section 2(7)(A) of the Act applies to service providers, not other market participants, and should expressly acknowledge and incorporate the exclusions that Congress enacted in Section 2(7)(B). *See* 12 U.S.C. § 5901(7)(A). For example, Treasury should: (1) clarify that a company trading for its own account, including on decentralized venues, does not, without more, become a DASP subject to Part 1523; (2) interpret the exclusion for “participating in a liquidity pool or other similar mechanism for the provisioning of liquidity for peer-to-peer transactions” in a functional and technology-neutral manner so as to account for future changes in technology, 12 U.S.C. § 5901(7)(B)(v); and (3) confirm that conduct that falls within Section 2(7)(B)’s exclusions is not narrowed by other sections of Part 1523.
- **Issue, Issuance, and Issuer Status:** Treasury should retain its first-transfer definition of “issue,” including that an issuance can occur “directly or indirectly,” while ensuring that secondary-market transactions are not improperly construed as issuances. 91 Fed. Reg. at 53,389. Treasury also appears to be correctly interpreting issuer status to attach only to a single issuer. Multiple entities (including certain white-labeling entities) should not be considered issuers for the same payment stablecoin. Treasury should also maintain

² *See* Exec. Order No. 14178, 90 Fed. Reg. 8,647, 8,647 (Jan. 23, 2025) (establishing the policy of the United States to “promote the development and growth of lawful and legitimate dollar-backed stablecoins worldwide”).

the current conjunctive two-part definition of an “issuer” while clarifying that independent holders or market makers, ordinary technical functions, and many bridge, custody, collateral, and settlement movements do not themselves create new issuers or issuances.

- **Knowing Participation:** Treasury should confirm that “knowing” participation under proposed Section 1523.2(d) requires actual knowledge of the underlying facts that make an issuance unlawful and should allow companies to rely on an issuer’s representations. Treasury should also confirm that ordinary market-making, distribution, or secondary-market activity does not constitute “participation” in an unlawful issuance unless a person provides affirmative, substantial assistance in coordination with the issuer who issues a stablecoin. And Treasury should ensure that proposed Section 1523.2(d) does not, in practice, accelerate the July 18, 2028, compliance date that Congress provided for DASPs under Section 3(b)(1).
- **Payment Stablecoin Definition and Exclusions:** Treasury should confirm, as the BA previously recommended in response to Treasury’s September 19, 2025, Advance Notice of Proposed Rulemaking (“ANPRM”), that stable-value digital assets that do not satisfy the definition of a payment stablecoin (such as algorithmically self-balancing stable-value tokens or other stable tokens that lack an issuer-redemption obligation) are outside the scope of the GENIUS Act and are therefore not subject to Part 1523. To the extent Treasury is considering expanding the definition of a “payment stablecoin” to include assets redeemable for the “functional equivalent” of monetary value, Treasury should adopt a discrete, enumerated list of such functional equivalents in lieu of an open-ended functional-equivalence standard.
- **DASP Compliance Burdens for FPSIs:** Treasury should not require DASPs to conduct open-ended due diligence on foreign payment stablecoin issuers (“FPSIs”) in order to offer payment stablecoins issued by FPSIs. Many companies that could be considered DASPs under the Proposed Rule lack any direct relationship with FPSIs and would be unable to obtain issuer representations. Instead, Treasury (in coordination with other relevant regulatory bodies) should permit DASPs to rely on regulators’ public lists—namely, the statutory Section 18 and Section 8 lists of approved registrations and prohibitions, and any notices of rescissions or revocations—absent knowledge of contrary material facts, in order to comply with any due diligence obligations.
- **Geographic Standards for Issuance, Offers, and Sales:** Treasury should replace the “reasonably believes” standard proposed in §§ 1523.2(c) and 1523.3(e) for whether a person is located in the United States with a standard based on actual knowledge and information reasonably obtained in the ordinary course of transactions. 91 Fed. Reg. 53,389–

90. Treasury should clarify that there is no additional obligation to identify counterparties where such information is not readily available, such as in DeFi venues, on-chain protocols, or automated payment or settlement processes. Treasury should otherwise retain its proposed approaches, rather than adopting *per se* or Regulation S-style alternatives.

- **Impact Analyses:** Treasury should, when considering the revisions urged in this letter, revise its regulatory impact analyses to account for a materially larger potential DASP universe and the real costs of diligence, geolocation, monitoring, recordkeeping, legal review, and venue-specific controls, depending on the final regulations adopted.
- **Other Technical Matters:** To the extent not already addressed, Treasury should clarify that several common technical arrangements (e.g., chain migrations and wrapped representations) do not, without more, constitute new issuance or change an actor's regulatory status.
- **Harmonization with Other Rulemakings:** Treasury should coordinate with other federal regulators to ensure that this Proposed Rule and all other final payment stablecoin rules are streamlined and harmonized with one another. To that end, Treasury should set an effective date for Part 1523 that is coordinated with the effective dates of the related GENIUS Act rulemakings on which Part 1523 depends.

I. Treasury should confirm that digital asset service providers include only companies that provide the services enumerated in the Act

A. The final rule should clearly delineate conduct satisfying Section 2(7)(A) of the Act and exclude proprietary activities

Section 2(7)(A) defines a “digital asset service provider” as a person who, “for compensation or profit,” engages “in the business in the United States (including on behalf of customers or users in the United States) of”:

- (i) exchanging digital assets for monetary value;
- (ii) exchanging digital assets for other digital assets;
- (iii) transferring digital assets to a third party;
- (iv) acting as a digital asset custodian; or
- (v) participating in financial services relating to digital asset issuance.

12 U.S.C. § 5901(7)(A). Section 2(7)(B) excludes from that definition certain enumerated activities, including, among other things, self-custodial software interfaces, validating transactions or operating a distributed ledger, and “participating in a liquidity pool or other similar mechanism for the provisioning of liquidity for peer-to-peer transactions.” *Id.* § 5901(7)(B).

A person that is not a DASP under Section 2(7)(A) is not a DASP, period—regardless of whether it is subject to a statutory exclusion under Section 2(7)(B).³ And Congress did not define a DASP broadly to include *any* person that exchanges, transfers, or holds digital assets. Rather, Congress intentionally used the term “service provider” and defined a DASP as a person that “engages in the business” of specified activities “including *on behalf of customers or users.*” 12 U.S.C. § 5901(7)(A) (emphasis added). In doing so, Congress limited the DASP definition to companies that provide the enumerated digital-asset services as a business on behalf of customers or users, rather than companies that merely transact in digital assets for their own accounts.

Thus, a business that accepts a permitted payment stablecoin issuer (“PPSI”)-issued stablecoin as a means of payment, a corporate treasury that holds stablecoins, or any other person that provides none of the services enumerated in Section 2(7)(A) clearly falls outside the statutory definition of a DASP. So, too, for proprietary traders acting for their own accounts. Activities like these are fundamentally different from providing an exchange, custodian, transfer, or issuance service on behalf of customers or users for compensation or profit.

In addition, Treasury should expressly confirm two corollary points. First, Treasury should confirm that independently trading a firm’s own assets does not establish DASP status merely because the activity generates profits from price movements, spreads, or inventory value, or involves quotations, purchases, sales, ordinary minting and redemption, or transfers, whether bilateral, on-exchange, or on-chain. Trading a compliant stablecoin also does not, by itself, transfer the issuer’s reserve, supervisory, or other issuer-specific obligations to the trader. Second, where a firm separately conducts a covered service business, Treasury should clarify the treatment of its independent proprietary activities and ensure that those independent proprietary activities do not create additional obligations solely because of the firm’s separate covered services.

This reading is consistent with Treasury’s Financial Crimes Enforcement Network’s (“FinCEN”) treatment of analogous language under the Bank Secrecy Act. FinCEN has distinguished commercial money-services activity from incidental private activity and, more specifically, has concluded that a person purchasing and selling virtual currency exclusively for its own account is not

³ See Letter from Blockchain Association to Brian P. Morrissey, Jr., General Counsel, U.S. Dep’t of the Treasury, re Comment on Treasury Department Advance Notice of Proposed Rulemaking Regarding GENIUS Act Implementation, at 2–4, 7–9 (Nov. 4, 2025) (hereinafter “BA ANPRM Letter”).

“engaged in the business of exchanging” virtual currency “for other persons.” See FinCEN, *Application of FinCEN’s Regulations to Virtual Currency Software Development and Certain Investment Activity*, FIN-2014-R002 (Jan. 30, 2014). Other digital-asset frameworks draw the same common-sense line: The European Union’s Markets in Crypto-Assets Regulation defines a “crypto-asset service provider” as a person whose business is “the provision of one or more crypto-asset services to clients on a professional basis,” and treats own-account dealing as a distinct activity.⁴ Illinois’s digital-asset statute likewise excludes buying, selling, or trading digital assets for a person’s own account in a principal capacity from the definition of “exchanging.”⁵

A contrary reading that captured every profitable trade as the “business” of exchanging or transferring digital assets as a DASP would expand the service-provider concept well beyond Congress’s intended boundaries. And that would impose obligations applicable to DASPs on companies for which those obligations would be impracticable and otherwise unreasonable. For example, proposed §§ 1523.3(b)–(c) require a DASP that offers or sells an FPSI’s stablecoin to obtain the FPSI’s representation that it can and will comply with lawful orders and to conduct diligence on the FPSI. 91 Fed. Reg. at 53,381–82. But firms that trade for their own accounts in the secondary market ordinarily have no relationship with the issuer through which to satisfy those requirements. See *infra* Part V. Treasury should avoid those results by hewing closely to the text of Congress’s definition of DASP.

B. The final rule should codify the exclusions in Section 2(7)(B) of the Act and ensure that they are applied in a functional and technology-neutral manner

Treasury also should provide additional explanation regarding the scope of the Section 2(7)(B) exclusions to the definition of DASP. The exclusions reflect a deliberate congressional judgment that the infrastructure of public blockchains—e.g., the protocols themselves, the software that lets users hold their own assets, the validators that secure the network and transmit or verify cross-chain messages, and the mechanisms that supply liquidity without an intermediary—are not “service providers” under Section 2(7)(A). Treasury should confirm that DASP status does not attach solely because blockchain infrastructure enables user-directed transfers; instead, the activities must satisfy Section 2(7)(A) subject to the exclusions of Section 2(7)(B). Treating such infrastructure providers as DASPs would conflict with the statutory text and impose impossible

⁴ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, art. 3(1)(15), 2023 O.J. (L 150) 40; see also European Sec. & Mkts. Auth., Q&A 2293, Proprietary Trading Under MiCA (June 6, 2025) (answer provided by the European Commission: dealing on own account “generally does not involve a client relationship,” so that proprietary trading and market making on a trading platform do not require authorization as a crypto-asset service provider).

⁵ 205 ILL. COMP. STAT. 731/1-5 (2026).

and unreasonable burdens—for example, infrastructure providers often cannot identify or determine the location of users of a blockchain.

Proposed § 1523.1 incorporates the statutory definition of a DASP, including the Section 2(7)(B) exclusions, only by cross-reference. 91 Fed. Reg. at 53,371. As a result, a reader of Part 1523 would not know that these exclusions exist without consulting the statute, and the preamble does not discuss them. To avoid any potential confusion, Treasury should restate the Section 2(7)(B) exclusions in the regulatory text of § 1523.1 and explain in the preamble that a person or activity described in Section 2(7)(B) is not a DASP for any purpose under Part 1523.

Treasury also should confirm that the exclusions are not limited to the technical architecture in existence when the Act was passed, but instead apply to all persons engaged in the functions described by the exclusions. Section 2(7)(B)(v) is illustrative: It excludes “participating in a liquidity pool or *other similar mechanism* for the provisioning of liquidity for peer-to-peer transactions.” 12 U.S.C. § 5901(7)(B)(v) (emphasis added). As Congress recognized, liquidity pools are one way to provide liquidity on decentralized platforms, but there are many other potential ways to provide liquidity. Illustrative examples include a firm supplying its own principal liquidity through a proprietary on-chain trading program, commonly called a PropAMM, and a principal submitting its own orders to an on-chain central limit order book.⁶ Additional “similar mechanism[s]” may emerge as the industry evolves and innovates further. Treasury therefore should confirm its understanding that the exclusion in Section 2(7)(B)(v) turns on the function performed—providing liquidity for peer-to-peer transactions—and not merely on whether a particular mechanism is designed like a liquidity pool.⁷

⁶ Generally speaking, a PropAMM is a smart contract through which a firm deploys its own assets and publishes firm, executable quotations against which counterparties transact directly with the firm as principal. Such programs may determine quotations using the firm’s independently developed estimate of fair value, conveyed through an oracle, together with its inventory and trading parameters, rather than solely by reference to the ratio of assets held in a liquidity pool. Execution and settlement ordinarily occur atomically on-chain. “Atomic” settlement means that the steps of a transaction, including the exchange of assets, either complete together or do not take effect, thereby reducing the risk that one counterparty transfers an asset without receiving the corresponding asset in return. An “on-chain central limit order book” is a smart-contract-based mechanism through which multiple participants submit, modify, and cancel firm orders to buy or sell specified assets at stated prices and quantities. The mechanism organizes orders by price and a predetermined priority rule and matches compatible orders under transparent, uniformly applied rules. Orders reflect participants’ independent trading decisions, and matched counterparties transact with one another as principals, with settlement occurring atomically or through another predefined on-chain settlement process. For a discussion of PropAMMs, see *generally* Solmaz, Heimbach & Milionis, *Active Liquidity On Chain: Evidence from PropAMMs Across Chains*, arXiv (Sept. 29, 2026), <https://arxiv.org/pdf/2609.38056>.

⁷ For this purpose, peer-to-peer transactions should include transactions between principals executed through self-executing software. Qualifying liquidity provision should not be disqualified because the mechanism uses oracle-informed quotations, concentrated or dynamic liquidity, an order book, or a non-constant-function pricing method.

Finally, Treasury should ensure that the Section 2(7)(B) exclusions have the effect Congress intended and are not narrowed by other provisions of Part 1523. Proposed § 1523.2(d), for example, applies to persons generally (not merely issuers or DASPs) and provides examples of activities that may constitute “participation” in an unlawful issuance, including “mak[ing] the newly issued payment stablecoin available for secondary market trading.” 91 Fed. Reg. at 53,390. That provision, discussed in more detail below, should not be read to capture conduct within the Section 2(7)(B) exclusions—such as providing liquidity for or validating a transaction on a decentralized platform. That reading effectively would render Congress’s carefully crafted exclusions a nullity. Treasury should confirm that a finding of “participation” under § 1523.2(d) cannot rest on conduct excluded by Section 2(7)(B).

II. The final rule should clearly distinguish issuers and issuances from secondary-market activity

A. Treasury should retain the proposed definition of “issue” while confirming that later secondary-market transfers are generally not issuances

The Act does not define “issue.” Proposed § 1523.1 defines “issue” as “the first transfer of a payment stablecoin by the issuer, except as required by a lawful order, whether directly or indirectly, including by crediting an account, 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 the payment stablecoin converted, redeemed, or repurchased.” 91 Fed. Reg. at 53,389. Proposed § 1523.1 also provides that “after a payment stablecoin has been converted, redeemed, repurchased, or otherwise reacquired by the issuer, the first subsequent transfer of the payment stablecoin by the issuer that otherwise satisfies this definition is considered a new issuance, whether or not the transfer is characterized as a reissuance, except as required by a lawful order.” *Id.*

For purposes of implementing Section 3 of the Act in Part 1523, the BA supports that basic construct—linking issuance to a transfer by the *issuer*.⁸ Once the issuer’s first transfer is complete,

⁸ Treasury states that this definition of issue is limited to “the purposes of part 1523” and that other contexts “may use facially similar terminology” with different definitions, *e.g.*, for purposes of prudential reserve requirements. 91 Fed. Reg. at 53,370 n. 22. The BA supports this approach for the purposes of the Proposed Rule. However, while the “first transfer” approach makes sense for Part 1523, a more encompassing definition of issue might be necessary in other contexts. For example, if the definition of issue solely focuses on the “first transfer” for purposes of reserve requirements, it could exclude stablecoins held on an issuer’s balance sheet. Such a definition could negatively affect the apparent fungibility of payment stablecoins by drawing a distinction between issuer-held stablecoins (which the issuer may nevertheless wish to use, *e.g.*, for vendor payments) and third-party-held stablecoins.

Thus, while this comment letter focuses on the definition for purposes of Part 1523, the BA also urges Treasury to consider other implications of its definition of issue, particularly in the reserve-requirements context. Treasury should coordinate with other agencies to ensure that the final definition in the Proposed Rule does not create in-

a later transfer by an independent holder is secondary-market activity, not an issuance. The Proposed Rule’s inclusion of “indirect[]” transfers from issuers makes sense given that in modern stablecoin arrangements, an issuer may use affiliates, agents, technical providers, or distribution partners to carry out operational steps in issuing a stablecoin. Treating an issuer’s transfer through those third parties as an indirect transfer can preserve the identity of the actual issuer rather than multiplying licensing obligations across every entity that performs an operational step. But the transfer still must come, directly or indirectly, from the issuer itself.

In the Proposed Rule, Treasury asks whether any types of secondary-market activity should be treated as an issuance. *Id.* at 53,373 (Question 15). Treasury should not treat any secondary-market activity as an issuance. Instead, the text of the final rule should make clear that the inquiry turns on whether the later transfer is in substance carried out *by or on behalf of the issuer* as part of *its* issuance. Transfers that are not carried out by the issuer (directly or indirectly) are not issuances under the statute, regardless of how recently the coins were minted.

The same principle should apply to routine operational movements involving issuers. Transfers among issuer-controlled wallets, movements into or out of custody or omnibus accounts, collateral postings and returns, and delivery of stablecoins to settle an independently negotiated transaction should not, without more, be treated as new issuances. Treasury should evaluate the capacity in which the issuer acts and whether a new third party has received rights from the issuer as part of an issuer-directed distribution, rather than treating the mere occurrence of an on-chain transfer as dispositive.

B. Treasury should retain the conjunctive “issuer” test

Proposed § 1523.1 defines an “issuer” as a person that: (1) is “obligated to convert, redeem, or repurchase” a payment stablecoin “for a fixed amount of monetary value”; and (2) represents that it will “maintain, or creates the reasonable expectation that [it] will maintain, a stable value relative to the value of a fixed amount of monetary value.” 91 Fed. Reg. at 53,389. Treasury asks whether both prongs should remain necessary conditions, or if instead either prong is sufficient. *Id.* at 53,374 (Question 23). The BA supports Treasury’s decision to require both prongs. The two prongs track the two elements that Congress used to define a payment stablecoin in Section 2(22)(A)(ii), and Congress joined them with the word “and,” making clear that both elements are

consistencies with the definition as used in other contexts. Specifically, Treasury—in conjunction with all other relevant regulators—should avoid adopting any conflicting or inconsistent interpretations of issue that adversely affect reserve requirement calculation, stablecoin fungibility, or other critical market activities. *See also infra* Part IX (emphasizing need for coordination across all rulemaking).

required. 12 U.S.C. § 5901(22). Application of either prong standing alone would sweep in companies that do not function as payment stablecoin issuers and to whom Congress did not intend the requirements for issuers to apply.

Treasury also asks whether there can be more than one issuer of a payment stablecoin—for example, whether a person that provides white-label branding should be deemed an issuer. 91 Fed. Reg. at 53,374 (Question 25). A company that provides branding, marketing, or technical services does not become an issuer, because that company does not carry out the statutory elements of undertaking a redemption obligation or making a representation that a stablecoin will maintain a stable value relative to a fixed amount of monetary value. Thus, those companies should be treated as issuers only if they incur their own legal obligations *and* make their own representations that satisfy the statutory elements. The final rule should apply that two-prong test to white-label and other multi-party arrangements. *See also infra* Part VIII (discussing requested technical clarifications).

For similar reasons, Treasury should avoid treating control over a technical function—such as the ability to lock, mint, wrap, burn, or release a token (including in a bridge arrangement)—as necessarily converting a third party into an issuer. The performance of these functions does not, standing alone, establish that the third party has undertaken an obligation to redeem a payment stablecoin for a fixed amount of monetary value or made a representation concerning its stable value. Indeed, the Proposed Rule contemplates that technical functions associated with issuance may be performed by someone other than the issuer, including where an issuer contracts with a third party to perform the technical work of minting. *See* 91 Fed. Reg. at 53,373–74 (Question 23). In those circumstances, the issuer retains the statutory redemption obligation and makes the stable-value representation even though a third party possesses or exercises technical authority over the stablecoin. Technical capabilities may be relevant evidence of the role a person performs, but they are not substitutes for the statutory characteristics that define an issuer.

Similarly, an independent holder or market maker that merely acquires and resells stablecoins, or that moves stablecoins as collateral, into custody, or in settlement, does not thereby become an issuer or create a new issuance. Those activities involve the holding or transfer of previously issued stablecoins and, without more, do not cause a company to undertake any redemption obligation or stable-value representation. Accordingly, they do not satisfy the statutory prerequisites for a company to be an “issuer.”

III. Treasury should ensure that the definition of “participation” in unlawful issuance under proposed § 1523.2(d) does not capture ordinary secondary-market activity

A. Treasury should emphasize and confirm the statutory “knowledge” requirement

Section 3(f) of the Act imposes criminal penalties only on persons who “knowingly participate[]” in an unlawful issuance of payment stablecoins as defined in Section 3(a). 12 U.S.C. § 5902(a), (f). A company that knows that it is trading a stablecoin, or that the stablecoin was recently minted, or that secondary trading may follow, does not thereby know that it is participating in an *unlawful* issuance. Consistent with the ordinary meaning of “knowingly” in criminal statutes, the standard requires both a person’s actual knowledge that the person is participating in an “issuance” of a payment stablecoin, and also knowledge of the facts that make the issuance unlawful (such as the fact that the issuer is not a PPSI). *See, e.g., Rehaif v. United States*, 588 U.S. 225, 232 (2019) (“Applying the word ‘knowingly’ to the defendant’s status . . . helps advance the purpose of scienter, for it helps to separate wrongful from innocent acts. . . . It is therefore the defendant’s *status*, and not his conduct alone, that makes the difference.”).⁹

Question 43 asks about the scope of the knowing-participation inquiry generally, and specifically asks whether market participants should be permitted to rely on the representation of another participant that an issuance is lawful. 91 Fed. Reg. at 53,379. Where an issuer makes a representation that an issuance is lawful, and absent knowledge of material facts to the contrary (*see also infra* Part V, discussing reliance on authoritative government information), a market participant should be able to rely on that representation without risking criminal liability.

To the extent DASPs are required to conduct additional diligence to comply with other requirements in Part 1523, those requirements should not be imported into Section 3(f), which requires knowing participation in an unlawful issuance and implicates criminal liability. Thus, the question whether a DASP may reasonably rely on an FPSI’s representation under § 1523.3(c), for example, is analytically distinct from whether a person knowingly participated in an unlawful issuance within the meaning of Section 3(f). In recognition of that distinction, Treasury should provide an express safe harbor making clear that a participant that relies on an issuer’s representation that

⁹ *See also, e.g., United States v. Elfgeeh*, 515 F.3d 100, 133 (2d Cir. 2008) (for unlicensed money transmitting under 18 U.S.C. § 1960; “the government is [also] required to prove that the defendant knew the money-transmitting business was unlicensed”); *United States v. Talebnejad*, 460 F.3d 563, 572 (4th Cir. 2006) (similar).

an issuance is lawful does not “knowingly” participate in an unlawful issuance. 12 U.S.C. § 5902(f).

B. Treasury should narrow or eliminate § 1523.2(d)(3) and tie “participation” to conduct undertaken in coordination with the issuer

In attempting to articulate the conduct necessary to trigger potential criminal liability under Section 3(f), proposed § 1523.2(d) offers three non-exhaustive examples of conduct that would constitute participation when undertaken “in connection with” an unlawful issuance: (1) incurring an obligation to convert, redeem, or repurchase the stablecoin; (2) coordinating with the issuer to facilitate key steps in the issuance, such as soliciting customers or minting the stablecoin; and (3) acting as a market maker or distributor for the newly issued stablecoin, distributing the newly issued stablecoin to purchasers, or otherwise making the newly issued stablecoin available for secondary-market trading. 91 Fed. Reg. at 53,390.

The BA appreciates Treasury’s efforts to provide clarity as to what constitutes participation and Treasury’s related requests for input from the public. *See* 91 Fed. Reg. at 53,378–79 (Questions 39–43). But proposed § 1523.2(d)(3), which refers to acting as a market maker for “newly issued” payment stablecoins, distributing newly issued stablecoins, or otherwise making them available for secondary-market trading, would obscure rather than clarify the line. *See id.* at 53,390. Indeed, the BA’s members cannot determine, from the Proposed Rule, what conduct would and would not constitute “participation” in an unlawful issuance. That uncertainty is untenable for a provision carrying criminal penalties.

The Proposed Rule does not define “market maker,” “distributor,” or when a stablecoin is “newly issued.” And those labels fail to distinguish a company that directly assists an issuer’s unlawful distribution from a company that independently trades stablecoins that happen to have been minted recently. For example, the phrase “market maker” can encompass materially different functions. A firm might quote two-sided prices independently on an exchange, supply liquidity through an on-chain protocol, manage inventory by minting and redeeming stablecoins with an issuer, or agree with an issuer to place an initial allocation with purchasers. Those activities should not be treated identically. Moreover, payment stablecoins are issued continuously and are fungible. Units of the same stablecoin are commingled in omnibus accounts, exchange wallets, liquidity pools, smart contracts, and firms’ general inventories, and market participants ordinarily cannot determine whether a particular stablecoin was minted yesterday, circulated for months, or was redeemed and reissued. The fact that a stablecoin was “newly issued” therefore cannot serve as an administrable basis for distinguishing participation in an unlawful issuance from ordinary secondary-market trading, and neither token age nor temporal proximity to an

issuance should create a presumption of participation in an unlawful issuance or impose a duty on secondary-market participants to reconstruct the transaction history of particular stablecoins.

The Proposed Rule’s preamble suggests an important limiting principle, explaining that the examples in the Proposed Rule are intended to capture persons providing “substantial assistance” to unlawful issuance and, for paragraph (d)(3), assistance provided “at or around the point of issuance.” *Id.* at 53,378. Treasury further explains that it generally does not intend paragraph (d)(3) to capture secondary-market trading that lacks a close temporal nexus to initial issuance. *Id.* Those explanations are helpful, but Treasury should go further and acknowledge that timing and labels such as “market maker” and “distributor” cannot provide an administrable boundary in fungible, continuously issued stablecoin markets, and clarify in regulatory text that timing and a company’s status as a market maker or distributor cannot create any presumption of participation in an unlawful issuance.

In addition, to give effect to Congress’s choice of the word “participate,” Treasury should ensure that the phrase applies not merely to conduct that might constitute “substantial assistance,” but also that the conduct was provided in coordination with the issuer.¹⁰ Three scenarios illustrate the distinction and highlight why a relationship with the issuer matters. *First*, a firm might quote two-sided markets in a stablecoin on an exchange or on-chain, with no arrangement with the issuer, no placement compensation, and no distribution obligation. That is independent liquidity provision, not participation in an issuance. *Second*, a firm might have direct mint-and-redeem access with an issuer, which the firm uses to manage its own inventory, but without undertaking any placement role. That is inventory management, not participation in an issuance. *Third*, a firm might agree with an issuer to place an allocation of newly issued stablecoins with purchasers in exchange for placement-based compensation. That *would* be the kind of coordinated distribution that the second example in proposed § 1523.2(d) already describes and could constitute “participation” in an issuance. For the company to be subject to liability for that participation, the issuance would still have to be unlawful and the firm would have to have knowledge of the facts giving rise to an unlawful issuance.

¹⁰ A related term in criminal law, aiding and abetting, requires a relational component. See *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 490, 500 (2023) (noting, in aiding-and-abetting context, that “criminal law thus requires that a defendant in some sort *associate himself* with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed,” and that relationships “[at] arm’s length, passive, and largely indifferent” would not suffice (quotation marks omitted, emphasis added)). And the statutory meaning of “participation” should be construed even more narrowly than aiding and abetting. See, e.g., *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (interpreting “participate” in provision of RICO, 18 U.S.C. § 1962(c), and rejecting argument that “participate” is a synonym for “aid and abet” because “aid and abet comprehends *all assistance* rendered by words, acts, encouragement, support, or presence. . . . [while] participate appears to have a narrower meaning . . . [namely,] to take part in.” (quotation marks and citations omitted, emphasis added)).

Put differently, participation should turn not only on a third party's involvement in stablecoin transactions, but on the third party's relationship to the issuer itself. To reflect that distinction, Treasury should revise proposed § 1523.2(d), including by modifying or eliminating the example provided at § 1523.2(d)(3). Instead of simply acting as a "market maker" for a newly issued stablecoin or "distribut[ing]" a newly issued stablecoin, a secondary-market participant must be providing some affirmative, substantial assistance to—and in coordination with—the issuer, such as an issuer-directed distribution agreement or coordinated arrangement to assist the issuance or initial distribution. Treasury should similarly confirm that ordinary mint-and-redeem access does not, without more, establish such an arrangement.

Finally, because the above examples are non-exhaustive, Treasury should also codify a safe harbor for independent secondary-market activity. A company does not participate in an issuance merely by receiving, holding, quoting, purchasing, selling, transferring, or redeeming payment stablecoins for its own account, including units obtained directly through ordinary mint-and-redeem access, where the company has no issuer-directed placement or distribution obligations and does not otherwise knowingly provide affirmative, substantial assistance directed toward an unlawful issuance. This protection should apply regardless of token age, fungibility, commingling, or the time elapsed since issuance. Coordination with the issuer to perform a technical or operational step may be relevant to the participation inquiry, but the issuer's indirect-issuance mechanism does not, by itself, establish knowing participation by each intermediary.

C. Treasury should not impose requirements under the "participation" provision in Section 3(f) that are inconsistent with the transition period that Congress provided for DASPs under Section 3(b)

The final rule should also respect the distinct timing Congress chose for different Section 3 prohibitions. Section 3(b)(1)'s broad restriction on a DASP offering or selling payment stablecoins not issued by a PPSI (or qualifying FPSI under Section 18) does not apply until July 18, 2028. 12 U.S.C. § 5902(b)(1); 91 Fed. Reg. at 53,368–69. Section 3(b)(2), by contrast, becomes applicable on the Act's effective date and specifically addresses foreign-issued payment stablecoins whose issuers lack the technological capability to comply, or will not comply, with lawful orders and reciprocal arrangements. 12 U.S.C. § 5902(b)(2).

Proposed § 1523.2(d)(3) should not be interpreted to use Section 3(f)'s prohibition on participation in an unlawful issuance as a substitute for the later-effective Section 3(b)(1) restriction. As explained above, ordinary secondary-market listing, quoting, or liquidity activity should not become participation in an unlawful issuance solely because the payment stablecoin is "newly issued" or the actor is called a market maker. Otherwise, the participation provision could impose

a de facto restriction on secondary-market conduct that Congress chose to regulate through Section 3(b)(1) beginning in July 2028.

IV. Treasury should ensure that the final rule applies only to stablecoin products that fall within the Act’s text

A. Stable-value assets that are not within the statutory definition of a “payment stablecoin” should be excluded

Proposed § 1523.1 appropriately cross-references the Act’s definition of “payment stablecoin.” 91 Fed. Reg. at 53,371. Under that definition, a digital asset is not a payment stablecoin unless: (1) it “is, or is designed to be, used as a means of payment or settlement”; and (2) the issuer: (a) “is obligated to convert, redeem, or repurchase [it] for a fixed amount of monetary value,” and (b) “represents that such issuer will maintain, or create[s] the reasonable expectation that it will maintain, a stable value relative to the value of a fixed amount of monetary value.” 12 U.S.C. § 5901(22)(A). The statutory definition therefore does not sweep in every digital asset designed to maintain a relatively stable price.

In its prior comment letter in response to Treasury’s ANPRM, the BA urged Treasury to state expressly that stable-value digital assets that do not satisfy the statutory definition fall outside the purview of the GENIUS Act and Part 1523. *See* BA ANPRM Letter at 2–4, 7–9. Certain synthetic or algorithmic stable-value assets, for example, may use overcollateralization, automated trading, or protocol-level supply adjustments to seek price stability without an issuer that undertakes the statutory fixed-value redemption obligation and stable-value representation. As a matter of plain meaning, digital assets like these fall outside the scope of Section 3 and Treasury’s Proposed Rule. But the BA renews its request that Treasury confirm that the final rule conforms with the plain language of the Act and is inapplicable to assets that do not fall within the statutory definition of a payment stablecoin. Without that clarity, market participants will continue to ask whether companies that issue, trade, or build software for such assets face exposure under the Act or Part 1523.

Finally, Treasury should emphasize that whether a particular asset is within the statutory and regulatory definition of a payment stablecoin depends on its actual legal and economic characteristics, not merely whether it is labeled as “synthetic” or “algorithmic.”

B. The final rule should not substantially expand the definition of “monetary value” beyond the definition set forth in the Act

The Act defines “monetary value” by reference to national currencies and deposits as defined in Section 3 of the Federal Deposit Insurance Act. 12 U.S.C. § 5901(17). Question 5 asks whether

Treasury should go further and treat other forms of value as the “functional equivalent” of those enumerated forms of monetary value for purposes of the payment-stablecoin definition. 91 Fed. Reg. at 53,371. Treasury should not adopt an open-ended, “functional equivalent” addition to the statutory definition of monetary value.

An open-ended “functional equivalent” test would replace a clearly defined phrase with a potentially ambiguous inquiry into economic similarity, both reintroducing the uncertainty that Congress’s precise definition was designed to eliminate and also potentially applying Treasury’s rules to digital assets that Congress did not intend to regulate as payment stablecoins. The resulting uncertainty could blur the line between payment stablecoins and other tokenized assets and cause economically similar instruments to receive different treatment depending on uncertain judgments about convertibility, liquidity, or market practice.

If Treasury concludes that a particular form of value should be treated as functionally equivalent to monetary value, it should identify that form of value expressly and explain the objective legal and economic characteristics that justify that treatment. For example, a stablecoin backed entirely by deposits (often referred to as a “deposit token”) should be considered a “payment stablecoin,” and issuers of such deposit tokens should not be allowed to circumvent the GENIUS Act. See 12 U.S.C. § 5901(17). To the extent Treasury identifies other comparable equivalents of monetary value, explicit application of the GENIUS Act to those forms of monetary value may be appropriate. A discrete, enumerated approach would address concrete cases and give issuers, DASPs, developers, and other market participants notice of Treasury’s view. In all events, the analysis should be grounded in the statutory definition of a payment stablecoin, not merely in a digital asset’s label, reserve composition, or economic resemblance to another product.

V. Treasury should allow DASPs to rely on authoritative government information when dealing with FPSIs, consistent with Congress’s intent

Proposed § 1523.3(b) would make it unlawful for a DASP to offer or sell a payment stablecoin issued by an FPSI “unless the foreign payment stablecoin issuer has the technological capability to comply with, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18 of the Act.” 91 Fed. Reg. at 53,390. Proposed § 1523.3(c) would permit the DASP to “rely on a representation by a foreign payment stablecoin issuer” to that effect, but only if the DASP “conducts reasonable due diligence regarding the representation” and is not one that “knows, has reason to know, or should know that the representation is false or that the foreign payment stablecoin issuer does not have the technological capability to comply, or will not comply.” *Id.* The preamble states that the diligence requirement “is intended to go beyond merely confirming that no prohibition on secondary trading is in effect” under Section 8, and that a DASP “should consider all reasonably available sources of information regarding the

foreign payment stablecoin issuer.” *Id.* at 53,382. The text of the GENIUS Act does not support that framework.

Nothing in the GENIUS Act contemplates that a DASP will be required to independently investigate a registered FPSI’s systems and future intentions. Section 3(b)(2) makes it unlawful for a DASP to offer or sell an FPSI’s payment stablecoin unless the FPSI can and will comply with lawful orders. 12 U.S.C. § 5902(b)(2); *id.* § 5902(f) (imposing penalties only for violation of subsection (a)). But the statutory mechanisms for compliance with Section 3(b)(2) are set out comprehensively in Sections 8 and 18 of the Act. 12 U.S.C. § 5907; 12 U.S.C. § 5916.

Section 18(c)(1)(A) provides that “[a] foreign payment stablecoin issuer may offer or sell payment stablecoins using a digital asset service provider if the foreign payment stablecoin issuer is registered with the Comptroller.” 12 U.S.C. § 5916(c)(1)(A). The registration process requires the Comptroller to consider, among other things, “whether the foreign payment stablecoin issuer will provide adequate information to the Comptroller . . . [to] determine compliance with this Act” and “whether the foreign payment stablecoin issuer presents illicit finance risks to the United States,” which easily encompasses an FPSI’s ability and willingness to comply with lawful orders. *Id.* § 5916(c)(1)(C).¹¹ The Comptroller may rescind, and the Secretary may revoke, a registration for noncompliance or illicit-finance risk, in each case with publication in the Federal Register. *See id.* § 5916(c)(3). Official lists of both registered FPSIs and comparable countries must be made available to the public. *Id.* §§ 5916(b)(5), (c)(1)(F). Thus, Congress anticipated that federal regulators would affirmatively “whitelist” FPSIs, and that DASPs and the broader public could rely on the government’s publicly available lists to comply with their own obligations with respect to FPSIs.

Section 8 similarly places the primary responsibility of diligence on the government. As the Proposed Rule acknowledges, Section 8 “authorizes the Secretary to designate any foreign payment stablecoin issuer as noncompliant with the requirement that the foreign payment stablecoin issuer has the technological capability to comply and complies with the terms of any lawful order.” 91 Fed. Reg. at 53,382; *see* 12 U.S.C. § 5907(a). If the FPSI does not come into compliance within 30 days of notice, the Secretary must “publish the determination of noncompliance in the Federal Register” and “issue a notification in the Federal Register prohibiting digital asset service providers from facilitating secondary trading” of that issuer’s stablecoins, effective 30 days after publication. 12 U.S.C. § 5907(b)(1)–(2). And indeed, although the Act gives no specific consequence

¹¹ Similarly, Congress provided that Treasury “may make a determination as to whether a foreign country has a regulatory and supervisory regime that is comparable to the requirements established under this chapter.” *Id.* § 5916(b)(1).

for a DASP's violation of Section 3(b)(2), it *does* impose a penalty for knowingly violating a published Section 8 secondary-trading prohibition. *See id.* § 5907(b)(4)(A).

Thus, instead of adopting its proposed due-diligence framework, Treasury should revise proposed § 1523.3(b)–(c) to provide that a DASP satisfies Section 3(b)(2) with respect to an FPSI-issued payment stablecoin where: (1) the FPSI appears on the Comptroller's list of approved registrations under Section 18(c)(1)(F); and (2) no Section 8 secondary-trading prohibition, Section 18(b)(4) rescission, or Section 18(c)(3) rescission or revocation is in effect with respect to the FPSI. To the extent Treasury retains the concept of “reasonable due diligence” in § 1523.3(c)(1), it should expressly state that confirming those two facts on the statutorily designated OCC and Treasury public registries constitutes reasonable due diligence, unless the DASP has actual knowledge that the FPSI lacks the technological capability to comply, or will not comply, with a lawful order or reciprocal arrangement. And to facilitate compliance, Treasury should (in coordination with the Comptroller and other relevant regulators) consolidate this authoritative information into a single, public, machine-readable list identifying PPSIs, registered FPSIs, comparable jurisdictions, effective Section 8 prohibitions, and the effective date of each status change.¹²

Even if the Act could be construed to impose an additional due-diligence requirement on DASPs, such an approach would be unworkable for a large class of DASPs. Treasury's proposed standard is unbounded and would impose an extra-statutory obligation to “consider all reasonably available sources of information,” going “beyond” confirming registration under Section 18 and the absence of a Section 8 prohibition. 91 Fed. Reg. at 53,382. That gives a DASP no way to know when it has done enough. Further, many companies that may be considered DASPs cannot obtain the representation or conduct any additional diligence that the Proposed Rule would require: The Proposed Rule assumes a direct relationship between the DASP and the FPSI, but a regional exchange listing a stablecoin, for example, ordinarily has no contractual right to obtain a representation from the stablecoin's issuer and no means to compel one. The problem would be compounded by an overbroad interpretation of the statutory definition of a DASP to include companies that are not service providers.¹³

Finally, in all events, Treasury should replace the “knows, has reason to know, or should know” formulation in proposed § 1523.3(c) with an actual-knowledge standard. *See id.* at 53,390. The standard in the Proposed Rule could be construed as a negligence standard, which would be in-

¹² To the extent legally available, Treasury should also provide protection for transactions entered into before the effective date of a status change and permit orderly closeout, transfer, redemption, or return of existing positions during an expressly defined wind-down period.

¹³ This reasoning also underscores why Treasury should avoid adopting an overbroad definition of DASP. *See supra* Part I.

consistent with the only standard Congress prescribed for DASP liability in this area—the “knowingly” standard in Section 8(b)(4)(A)—and with the way the Act elsewhere treats knowledge. See 12 U.S.C. § 5907(b)(4)(A); *supra* Section III.A. Further, a “should know” standard imposes a similarly undefined diligence obligation that would risk DASPs avoiding foreign-issued stablecoins—a result that would fragment liquidity and disadvantage compliant FPSIs without any corresponding benefit to U.S. users.

VI. Treasury should ensure that the final rule contains workable geographic standards for the issuance, offer, and sale of payment stablecoins

A. Treasury should retain its proposed approach to assessing whether an issuance occurs “in the United States”

Treasury’s proposal would determine whether an issuance occurs “in the United States” principally by reference to the location of the issuer and the person to whom the payment stablecoin is issued. Proposed § 1523.2(c) provides a path for a foreign issuer to be deemed not to issue in the United States where, among other things, the issuer reasonably believes that each recipient is outside the United States; maintains reasonably designed policies, procedures, and controls; and does not target U.S. persons. 91 Fed. Reg. at 53,377–78. The BA supports retaining that basic framework, subject to the clarifications discussed *infra* Section VI.B.

Treasury describes two alternative approaches for determining when an issuance unlawfully occurs in the United States. *First*, Treasury asks whether any issuance by a person other than a PPSI or qualifying FPSI to a person located in the United States should be *per se* unlawful, regardless of whether the issuer knew or should have known the recipient’s location, with knowledge relevant only to whether criminal penalties attach. 91 Fed. Reg. at 53,379–80 (Question 44). *Second*, Treasury asks whether it should adopt a broader offshore-transaction framework modeled on Regulation S, under which a foreign issuer generally would not be deemed to issue in the United States if the issuance occurs in an offshore transaction with no directed selling efforts in the United States. *Id.* at 53,380 (Question 45). Treasury should not adopt either alternative.

A *per se* standard would render an issuance unlawful even for foreign issuers that have implemented reasonable controls to exclude U.S. persons and have no knowledge that a recipient is located in the United States. Indeed, a *per se* standard could reduce the regulatory incentive to implement more robust controls: Unlike the Proposed Rule, under which reasonable controls can provide a basis for treating an issuance as occurring outside the United States, a *per se* rule would

render an issuance unlawful whenever a U.S. person successfully circumvented those controls, regardless of how reasonably they were designed or implemented.¹⁴

A Regulation S-style framework would also be ill-advised. That approach would import a body of securities-law doctrine that, as Treasury notes elsewhere, Congress declined to apply to payment stablecoins. *See* 91 Fed. Reg. at 53,369–70 & n.18. A framework based on Regulation S would also shift the practical burden of policing U.S. distribution from issuers to DASPs and other downstream intermediaries, including by requiring them to monitor or restrict subsequent transfers of payment stablecoins that otherwise are designed to circulate freely among market participants.

B. Treasury should replace the “reasonably believes” standard with one that accounts for DeFi arrangements and other permissionless protocols

Proposed § 1523.2(c) sets forth circumstances in which a foreign issuer will be deemed not to issue a payment stablecoin in the United States, including where the issuer “reasonably believes” the recipient is outside the United States and maintains reasonably designed policies, procedures, and controls to avoid U.S. activity. 91 Fed. Reg. at 53,389–90. Similarly, proposed § 1523.3(e) sets forth circumstances in which a DASP will be deemed not to offer, sell, or otherwise make a payment stablecoin available in the United States, including where the DASP reasonably believes the person to whom it makes the stablecoin available is outside the United States and maintains reasonably designed policies, procedures, and controls to avoid U.S. activity. *Id.* at 53,390. Treasury asks whether those controls should include customer identification, account-opening information, geographic access restrictions, device- or network-location checks, contractual representations, transaction monitoring, and other measures; whether the proposed standards pose operational challenges; and whether additional situations should be excluded. *Id.* at 53,375 (Questions 26–29), 53,378 (Question 38), 53,383–84 (Questions 56–63). Conversely, proposed § 1523.3(d) offers five non-exhaustive examples of conduct constituting an offer or sale to a U.S. person, including “responding to an unsolicited inquiry from a person located in the United States by indicating a willingness to sell.” 91 Fed. Reg. at 53,390.

The Proposed Rule’s standards presuppose that a company has information from which it can form a reasonable belief about a counterparty’s location. That may be true in an account-based relationship, where information such as a customer’s address, account-opening information, contractual representations, or device or network location may be available. But such information may not exist in permissionless environments or automated payment and settlement

¹⁴ *See* U.S. Dep’t of the Treasury, Regulatory Impact Analysis: Proposed GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale (Aug. 24, 2026), Docket No. TREAS-DO-2026-0496-0002, at 10 (hereinafter “RIA”) (forecasting that “[b]roader coverage of potentially evasive conduct” under a per se rule could be offset by “risk of pushing compliant activity offshore”).

flows—particularly before a transaction settles—where the participant may interact only with a wallet address and receive no information identifying or locating the person controlling that wallet. Indeed, many of the concepts in Treasury’s questions fit account-based intermediaries better than permissionless protocols and on-chain venues where a wallet address may not reveal the counterparty’s identity or location. Congress, understanding the limited counterparty data available in these marketplaces, expressly carved out DeFi participants from the definition of DASP in Section 2(7)(B) of the Act. See 12 U.S.C. § 5901(7)(B); *supra* Part I. Those same considerations counsel against imposing technologically infeasible compliance obligations on DASPs and issuers when they operate in the DeFi space.

For example, a company that supplies liquidity to a mechanism through which principals transact directly, quotes markets on a decentralized venue, or settles a payment through a smart contract may have no information about the identity or location of the wallets that transact with it and no technical means to gate their access. Requiring such a company to form a “reasonable belief” about each counterparty’s location would effectively require it to geolocate anonymous wallets—something it cannot do—or to withdraw from those venues altogether. Neither result serves the Act’s issuer-focused purposes, and imposing that requirement would move liquidity to venues and firms outside Treasury’s reach.

Instead, Treasury should use a standard based on actual knowledge and information reasonably obtained in the ordinary course of a transaction. If a company lacks actual knowledge or ordinary-course information indicating a U.S. counterparty, and has not otherwise purposefully targeted persons in the United States through advertising, solicitation, or similar conduct, the company should not be required to create a new identification or geolocation program solely to satisfy Part 1523.

Specifically, Treasury should confirm that Part 1523 does not impose an affirmative obligation to obtain identity or location information that a participant would not otherwise possess in the ordinary course. Thus, a market participant should not be required to identify or geolocate an otherwise unidentified wallet merely because a permissionless protocol permits that wallet to transact, or to look through an intermediary, protocol, omnibus account, or unaffiliated venue to determine the location of persons with whom the participant has no direct relationship. Where identity and location information is not reasonably available, the participant should not lose the benefit of the proposed geographic framework merely because an unknown counterparty ultimately proves to be located in the United States.¹⁵ Importantly, that approach would *not* protect a company that possesses contrary information or deliberately structures its operations around

¹⁵ The same standard should govern the U.S.-nexus element of participation under § 1523.2(d), so that the three provisions do not produce inconsistent answers for the same transaction.

known U.S. activity; it would simply make the standard workable for transactions and business models in which no identity or location information is generated in the first place.

Treasury should reconsider the examples in proposed § 1523.3(d) for similar reasons. Proposed § 1523.3(d)'s reference to "responding to an unsolicited inquiry" could be read to encompass transactions executed automatically by a permissionless protocol when a user initiates a transaction against liquidity previously supplied by another person. 91 Fed. Reg. at 53,390. That reading would treat the automated execution of a transaction as though the liquidity provider itself had received and responded to an inquiry from the user, even where the provider does not know the user's identity or location and takes no action in response to the transaction request. In the final rule, Treasury should revise or delete that example to make clear that "responding to an unsolicited inquiry" addresses a human or business response to an identified U.S. person, not the automated execution of a transaction initiated by an unidentified counterparty. Absent these changes, the Proposed Rule could potentially reach offshore firms supplying liquidity in stablecoins that are lawful in their home jurisdictions, on venues with no purposeful U.S. touchpoint, simply because a U.S. person might transact against them—inviting conflicting foreign regulation, fragmenting global liquidity, and disadvantaging the U.S.-based firms that are more likely to comply.

C. Treasury should otherwise retain its proposed location framework rather than adopt a *per se* or Regulation S-style alternative

As with issuance, Treasury describes two alternative approaches for DASP offers and sales under proposed § 1523.3: a *per se* approach under which any offer or sale of a noncompliant stablecoin to a U.S. person would be unlawful regardless of the DASP's knowledge or controls, and an offshore-transaction framework modeled on Regulation S, pursuant to which a DASP would be deemed not to offer or sell in the United States if the transaction is an offshore transaction with no directed selling efforts. 91 Fed. Reg. at 53,384–85 (Questions 64–70).

For largely the reasons explained above, *see supra* Section VI.A, neither alternative would be an appropriate regulation for payment stablecoins. A Regulation S-style framework is built around the concepts of "directed selling efforts" and "offshore transactions," which were developed for offerings of securities by issuers and their distributors. 91 Fed. Reg. at 53,384–85. Applied to DASPs, that framework would require each DASP to police the offering conduct of the issuer and of other DASPs, and would shift to secondary-market intermediaries a burden that Congress placed on issuers and on Treasury.

In the Proposed Rule, Treasury correctly recognizes that its proposed approach provides greater administrability and certainty than the alternatives. *See id.* at 53,376–77. The BA agrees, subject

to the revisions to the “reasonably believes” standard and the proposed § 1523.3(d) examples described above in Section VI.B. The changes the BA proposed in the preceding section would make the Proposed Rule’s framework more administrable for permissionless activity without abandoning Treasury’s core approach of focusing on the location of relevant parties, available information, and purposeful U.S.-directed conduct.

VII. Treasury should revise its analysis of the compliance costs the Proposed Rule will impose on DASPs

Treasury concludes that the Proposed Rule’s benefits substantially exceed its costs and requests comment on its regulatory impact analysis. 91 Fed. Reg. at 53,388–89 (Questions 81–87). Treasury has separately published an RIA. The BA appreciates Treasury’s effort to quantify effects of the Proposed Rule, but several assumptions materially understate the Proposed Rule’s costs as proposed. The RIA estimates, for example, that approximately 50 to 100 DASPs will operate in the U.S. market and that due diligence under proposed § 1523.3 will require approximately 40 to 80 hours per DASP per year. RIA at 14–15. At an assumed fully loaded labor cost of approximately \$150 per hour, Treasury calculates a midpoint of \$675,000 and rounds total annual DASP compliance costs to approximately \$1 million. *Id.*

If Treasury adopts an overly broad definition of a DASP, then the affected population would include thousands of companies. Such a reading of the DASP definition would also require a recalculation of costs and benefits and a new round of notice and comment. The easiest way for Treasury to avoid this problem would be to confirm in the final rule that the DASP definition encompasses the narrower group of service providers that Congress intended to subject to the statute. *See supra* Part I.

The 40-to-80-hour assumption also does not capture the full set of tasks the Proposed Rule would impose on DASPs. If Treasury adopts the Proposed Rule without the changes recommended above, DASPs may need to build and maintain procedures for identifying foreign-issuer status, obtaining or evaluating issuer representations, monitoring changes in registration and comparability status, tracking Section 8 notices, assessing counterparty locations, implementing geolocation or access controls, documenting their diligence, conducting legal reviews, and adapting controls across different venues and technical architectures. Those tasks can entail initial systems design, ongoing monitoring, recordkeeping, training, and legal and compliance governance, not merely a modest annual review.

The final RIA should separately identify costs attributable to Treasury’s Section 3 implementation choices. An open-ended obligation for every DASP to investigate an FPSI’s technological systems, for example, is a cost that could be avoided through a framework that allows DASPs to rely on

publicly available, official lists. Likewise, a requirement to infer counterparty geography for transactions on a permissionless protocol or trace fungible stablecoins to determine whether they are “newly issued” would create additional, massive costs directly attributable to the Proposed Rule that could be easily avoided. Treasury should evaluate those alternatives using realistic affected-entity counts and implementation burdens. The analysis should also assess how uncertainty changes market behavior: fragmentation across venues and jurisdictions, migration of liquidity offshore, wider spreads, reduced interoperability, and reduced investment in U.S. trading infrastructure, engineering, risk management, and employment. Treasury should evaluate these effects alongside the direct compliance costs and the benefits of clear boundaries for independent trading and liquidity provision.

Treasury should also revisit its preliminary conclusion that the Proposed Rule contains no information collections within the meaning of the Paperwork Reduction Act. The proposed reliance, diligence, policy, procedure, control, representation, and monitoring concepts may require regulated entities to obtain, maintain, or document information. Treasury should identify and analyze any recordkeeping or information-gathering requirements that the final rule in fact imposes, including the time and costs associated with conducting and documenting due diligence, obtaining and evaluating representations, and developing, maintaining, and periodically updating required policies, procedures, and controls. *See* 91 Fed. Reg. at 53,389 (Question 87). An authoritative government-list approach would reduce those costs and improve consistency at the same time.

In sum, should Treasury decline to adopt the BA’s positions in this comment letter, Treasury should reanalyze the economic impact of the final rule and acknowledge the substantially higher compliance costs that the Proposed Rule would impose on the industry.

VIII. Treasury should clarify how several common technical arrangements will be regulated by the final rule

Several technical arrangements discussed in the proposal illustrate why regulatory status should turn on legal obligations and actual functional control rather than the mere presence of on-chain transactions or the facilitation of a user-directed cross-chain transfer. Treasury asks, for example, when bridge activity, wrapped representations, chain migrations, and related transfers should constitute a new issuance or make an intermediary an issuer. *See* 91 Fed. Reg. at 53,373–74 (Questions 16, 19–21). The final rule should make clear that a bridge or wrapper does not automatically create a new issuer or issuance simply because tokens are locked, minted, burned, or represented on another network. Treasury should also confirm that a market participant does not fit the definition of a DASP solely by facilitating cross-chain messages or token bridging, whether by operation or development. DASP status must be assessed separately based on the

services actually provided and the control exerted over user assets. If a wrapped or bridged instrument independently satisfies the statutory payment-stablecoin definition, it can be analyzed on its own legal and economic terms. Where the instrument is redeemable solely for the underlying digital asset, the instrument should be viewed as a technological representation of that asset, rather than a separately issued payment stablecoin.

The same principle should apply to bounded software safety controls. Treasury should clarify that the existence of bounded software safety controls does not, standing alone, establish custody or participation in an issuance. Modern smart contracts and payment infrastructure may include emergency pauses, circuit breakers, sanctions or law-enforcement holds, and similar functions. Where a function can only suspend or resume execution and cannot itself initiate, sign, or effect a transfer of a user's assets, exercise of that function should not, standing alone, cause the operator to be treated as a DASP on the basis that it acts as a digital asset custodian or to be treated as participating in an issuance under § 1523.2(d). Questions 77 and 80 give Treasury a direct vehicle to confirm that such limited negative control, without the ability affirmatively to transfer or dispose of a user's assets, is insufficient by itself to establish custody or participation in issuance. *See id.* at 53,387.

Treasury should address such common arrangements in the text of the final rule and the final rule's preamble, and, where useful, in additional interpretations in Appendix A.

IX. Treasury should coordinate with regulators across related GENIUS Act rulemaking to ensure that all final rules are streamlined and harmonized

It is crucial that Treasury coordinate with other federal payment stablecoin regulators to ensure that final rules are compatible, streamlined, and internally consistent. Part 1523 will be one piece of the framework for payment stablecoins, and compliance with it depends on rules that have not yet been finalized. Whether a person is a PPSI, for example, turns on licensing rules that the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Reserve Board have proposed but not adopted, and on Treasury's proposed principles for "substantially similar" State regimes.¹⁶ Similarly, whether a DASP may rely on the Section 18 registry and Section 8 notices discussed in Part V depends on the OCC's registration rule and on a Section 18(b) comparability framework that Treasury has not yet proposed.

¹⁶ *See, e.g.*, 91 Fed. Reg. 10,202 (Mar. 2, 2026) (OCC); 90 Fed. Reg. 59,409 (Dec. 19, 2025) (FDIC), 91 Fed. Reg. 18,534 (Apr. 10, 2026) (FDIC); 91 Fed. Reg. 6,531 (Feb. 12, 2026) (NCUA); 91 Fed. Reg. 61,346, 61,580 (Sept. 29, 2026) (Federal Reserve Board); 91 Fed. Reg. 16,844 (Apr. 3, 2026) (Treasury).

The Proposed Rule, however, does not specify an effective date or compliance date for Part 1523. See 91 Fed. Reg. at 53,368. In light of the interrelated regulations discussed above, a staggered or uncoordinated set of effective dates would force DASPs and issuers to build compliance programs in a shifting and inconsistent environment, incurring costs with no corresponding benefit to the Act's objectives. Treasury therefore should coordinate with other agencies and ensure that the effective date for Part 1523 is no earlier than the latest effective date for any related rules implementing the Act.

More broadly, beyond the discrete areas identified in this letter where coordination with other regulators and reference to other rules may be particularly helpful, *see, e.g., supra* Part II & n.8 (definition of issue), Treasury should coordinate across all aspects of payment stablecoin regulation and ensure that final rules cohere and further Congress's goal of a safe and innovative payment stablecoin marketplace.

Conclusion

We appreciate the opportunity to comment on the Proposed Rule. The BA welcomes the opportunity to meet with Treasury and its staff to address any questions regarding this comment letter.

Respectfully submitted,

/s/ Ashok Pinto

Ashok Pinto

Executive Vice President

Legal and Government Relations