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VIA ELECTRONIC TRANSMISSION

James P. Sheesley
Assistant Executive Secretary
Attention: Comments–RIN 3064–AG21
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: *GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions, 91 Fed. Reg. 18,534 (Apr. 10, 2026), RIN 3064–AG21*

Dear Mr. Sheesley:

I. Summary

We respectfully submit this letter to discuss four principal issues. *First*, the rebuttable presumption extending the yield prohibition to "related third parties" should be narrowed because the statute does not authorize it. *Second*, non-custodial software interfaces that facilitate user access to independent DeFi protocols are outside the scope of the proposed rule, consistent with the GENIUS Act's self-custodial software carve-out. *Third*, the FDIC's permissive approach to multi-brand issuance, its discretionary approach to consequences for reserve and capital shortfalls, and several other points where the FDIC has departed from the OCC's more prescriptive proposal reflect sound policy judgment and should be maintained. *Fourth*, the proposed rule should be revised in several technical respects to avoid unnecessary constraints on cross-chain stablecoin representations and ledger and smart contract architecture.

II. Background

Consensys is a leading software company building tools and infrastructure that powers the Ethereum network, the largest programmable blockchain in the world. Ethereum, in short, is the most credibly neutral and censorship-resistant computer in the world, as it is operated by a decentralized community of self-selecting contributors and participants who value security, privacy, and open access. We firmly believe it is a foundation for a more secure, open and programmable economy where consumers face fewer toll takers and enjoy more freedom and autonomy. Consensys's flagship offering is MetaMask, the world's most widely used self-custodial cryptocurrency wallet with over 100 million users worldwide.

Consensys is not an exchange and is not the issuer of a blockchain token. We participate in the stablecoin ecosystem through MetaMask USD ("mUSD"), a wallet-native stablecoin issued by Bridge Ventures LLC (a Stripe company), with Consensys serving as a distribution partner and brand licensor. We are filing this comment on the FDIC's proposed rule[1] implementing the substantive requirements applicable to FDIC-supervised permitted payment stablecoin issuers ("FDIC PPSIs") under the GENIUS Act.[2] We have separately commented on the OCC's parallel proposed rule[3] and on the Treasury Department's proposed rule on substantial similarity for state regulatory regimes.

III. The Rebuttable Presumption Extending the Yield Prohibition to Distribution Partners Should Be Narrowed

Section 4(a)(11) of the GENIUS Act prohibits a PPSI from paying the *holder* of a payment stablecoin any form of interest or yield *solely in connection with* the holding, use, or retention of the stablecoin.[4] The statute speaks to the issuer's payment relationship with the holder. The FDIC's proposed rule extends the prohibition through a rebuttable presumption that captures any "related third party" of the issuer that makes a payment in connection with stablecoin holding.[5] The proposed presumption, which mirrors the OCC's parallel formulation, exceeds the scope of the statute, is exceptionally difficult for legitimate distribution partners to rebut in practice, and would in effect foreclose distribution arrangements that Congress did not intend to prohibit.

A. The Statute Does Not Reach Independent Distributors

The GENIUS Act's yield prohibition is directed at the issuer and is calibrated to the issuer's relationship with the stablecoin holder. The statutory text identifies who is prohibited from paying (the issuer), who may not receive the payment (the holder), and the condition that makes the payment prohibited (the payment is solely in connection with holding). Independent distribution partners that receive commercial fees from an issuer for distribution services and which, in turn, provide incentives to stablecoin users and holders do not satisfy those three conditions.

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[1] Notice of Proposed Rulemaking, GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions, 91 Fed. Reg. 18,534 (Apr. 10, 2026) (the "FDIC NPRM").

[2] Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (2025) (the "GENIUS Act"), codified at 12 U.S.C. §§ 5901–5912.

[3] Office of the Comptroller of the Currency, 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, Notice of Proposed Rulemaking, 91 Fed. Reg. 10,202 (Mar. 2, 2026) (the "OCC NPRM").

[4] 12 U.S.C. § 5903(a)(11) ("A permitted payment stablecoin issuer may not pay the holder of any payment stablecoin issued by the permitted payment stablecoin issuer any form of interest or yield ... solely in connection with the holding, use, or retention of such payment stablecoin.").

[5] FDIC NPRM, Proposed § 350.3(b)(4)(i); *see also* OCC NPRM, Proposed § 15.11(b)(4)(i) (substantively identical formulation).

The structure of Section 4 of the GENIUS Act reinforces the textual reading. Congress addressed third-party commercial relationships through specific, narrower provisions of Section 4 rather than through the yield prohibition. Section 4(a)(7) addresses tying restrictions. Section 4(a)(8) governs affiliate transactions. Section 4(h)(1) delegates anti-evasion authority to the primary federal payment stablecoin regulators.[6] Each of those provisions reaches third-party conduct that could be used to circumvent the Act's substantive requirements. The yield prohibition in Section 4(a)(11), by contrast, is directed exclusively at the issuer. Where Congress wanted to extend a substantive requirement to third parties, it did so expressly. The proposed rebuttable presumption, which extends the yield prohibition to any "related third party" without regard to whether the relationship presents an evasion risk, conflates the anti-evasion delegation in Section 4(h)(1) with a substantive extension of Section 4(a)(11). The anti-evasion authority Congress provided is properly exercised by targeting genuine evasion, namely the use of a nominal third party as a conduit for payments the issuer is itself prohibited from making. It is not properly exercised by extending the substantive prohibition to commonplace commercial relationships.

The legislative record further supports this textual reading. During Senate consideration of the GENIUS Act, Senator Warren and Senator Hickenlooper offered amendments that would have extended the yield prohibition to third parties. Both amendments were considered, and neither was adopted.[7] The proposed rebuttable presumption seeks to accomplish through regulation what Congress declined to do through legislation. That is the kind of agency action the Supreme Court has repeatedly held to be impermissible.[8]

B. The Policy Record Supports a Narrower Reading

The empirical case for an expansive presumption is weak. The White House Council of Economic Advisers analyzed the welfare consequences of extending the yield prohibition to third parties and concluded that the extension imposes net costs on stablecoin holders without measurable benefit to bank funding or systemic stability.[9] The CEA finding is consistent with the broader policy literature, which has not identified an evidence-based justification for the prophylactic extension that the proposed rule would adopt.

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[6] GENIUS Act §§ 4(a)(7) (tying restrictions), 4(a)(8) (affiliate transactions), 4(h)(1) (anti-evasion authority delegated to primary federal payment stablecoin regulators), 12 U.S.C. §§ 5903(a)(7), 5903(a)(8), 5903(h)(1).

[7] *See*, *e.g.*, 171 Cong. Rec. S2914-2916 (daily ed. June 10, 2025) (statements of Sen. Warren and Sen. Hickenlooper offering amendments to extend the yield prohibition to third parties; both amendments were considered and not adopted). The Warren and Hickenlooper amendments were defeated on the merits, and that legislative history is dispositive evidence that Congress considered, and rejected, the position the proposed rebuttable presumption now seeks to advance through regulatory means. *See also Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 326 (2014) (an agency "has no power to tailor legislation to bureaucratic policy goals by rewriting unambiguous statutory terms").

[8] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."). The post-Chevron framework requires the agency to identify the best reading of the statute, not merely a permissible reading.

[9] White House Council of Economic Advisers, Economic Effects of Restrictions on Payment Stablecoin Yield (Apr. 2025) (analyzing welfare costs of extending the yield prohibition to third parties).

C. The Presumption Is Very Difficult to Rebut in Practice

The proposed presumption may be overcome only by clear and convincing evidence.[10] That standard, applied to the question of whether a payment is "solely in connection with" stablecoin holding, will be very difficult to meet for any distribution arrangement in which the distribution partner's compensation is calculated by reference to volume, balance, or duration metrics common in commercial distribution agreements. A distribution partner faces an uphill task proving that its fee bears no connection to holding when the fee is calculated by reference to a metric that includes a holding component as one of multiple variables. The clear-and-convincing standard, combined with the broad statutory predicate ("in connection with"), risks converting the rebuttable presumption into a near-categorical prohibition in practice. That is the compliance burden the proposed rule creates without acknowledging.

D. Brand Licensing Is Not Agency

The proposed rule's definition of "related third party" includes any person "that the issuer issues payment stablecoins on behalf of or under the branding of (*i.e.*, persons that have entered a white-label relationship with the issuer)."[11] Read literally, that definition would convert every brand licensor in a co-branded or white-label stablecoin distribution arrangement into a "related third party" of the issuer, on the basis of the brand license alone. That reading is inconsistent with the statute, with the federal banking agencies' longstanding treatment of brand licensing in regulated financial products. The "or under the branding of" leg of the definition should be deleted or, at minimum, clarified so that branding alone does not trigger the rebuttable presumption.

Brand licensing does not convey regulatory responsibility from the licensee to the licensor. A brand license is a grant of limited rights to use a trademark, governed by federal trademark law. The licensor's obligation under that grant is to influence the quality of the goods or services sold under the mark, so that the mark continues to identify a consistent source. The licensee bears every other legal obligation associated with producing, selling, and standing behind the underlying product. That allocation, namely quality control to the licensor and operational and regulatory responsibility to the licensee, is the foundational structure of brand licensing under the Lanham Act, and it has been the consistent rule across federal regulatory regimes for decades.[12] Disney licenses its marks for use on toys; the toy manufacturer, not

[10] FDIC NPRM, Proposed § 350.3(b)(4)(ii) (rebuttable presumption may be overcome by clear and convincing evidence).

[11] FDIC NPRM, Proposed § 350.3(b)(4)(i); *see also* OCC NPRM, Proposed § 15.10(c)(4) (parallel formulation, including "(i.e., persons that have entered a white-label relationship with the issuer)").

[12] Lanham Act, 15 U.S.C. § 1055 (use of a mark by a related company inures to the benefit of the registrant where the registrant controls the nature and quality of the goods or services); 15 U.S.C. § 1127 (defining "related company" by reference to control over the nature and quality of the goods or services in connection with which the mark is used). The licensor's statutory obligation runs to quality control over the goods or services bearing the mark; it does not extend to operational or legal responsibility for the licensee's underlying business. *See* Restatement (Third) of Unfair Competition § 33 (Am. L. Inst. 1995) (describing the licensor's quality-control obligation as a condition of maintaining the mark, distinct from the licensee's responsibility for its own business operations).

Disney, is responsible for compliance with the Consumer Product Safety Act. The NFL licenses its marks for use on apparel; the apparel maker, not the NFL, is responsible for compliance with the Federal Trade Commission's textile labeling rules. Marriott licenses its marks to franchisee hotel owners; the hotel owner, not Marriott, is responsible for compliance with state lodging, health, and safety laws. In each case, the brand owner may set the quality and presentation standards that protect the mark, and the licensee accepts and discharges the regulatory obligations that attach to the underlying business. The legal character of that allocation is the same whether the licensed product is a toy, a jersey, a hotel stay, or a payment stablecoin. Reading the FDIC's "related third party" definition to convert the brand licensor into a regulatorily responsible party for the licensee's stablecoin issuance reverses this settled allocation, with no basis in the statute the FDIC is implementing.

The federal banking agencies have recognized this well-established branding framework in the context of regulated financial products for decades. Co-branded credit cards, including those bearing the marks of airlines, technology companies, and major retailers, are issued by banks under arrangements in which the brand owner provides distribution, customer experience, and rewards programs while the bank bears full regulatory responsibility for the credit product. The OCC, the FDIC, and the CFPB have supervised these arrangements continuously and have never treated the brand owner as the credit issuer.[13] Co-branded debit cards work the same way. Institutional money market fund share classes, marketed under the brand of a distributor but issued by the fund sponsor, work the same way. Private-label retail products, namely consumer credit products bearing a retailer's brand but underwritten by a bank, work the same way. In each case, the brand owner earns commercial fees for distribution services, the regulated entity bears the regulatory obligations, and the agencies have not extended the regulatory obligations to the brand owner on the basis of the branding relationship alone. The FDIC's proposed rule offers no reason to depart from this consistent regulatory practice in the payment stablecoin context.

The statutory text reinforces this reading. The GENIUS Act's yield prohibition applies to the "permitted payment stablecoin issuer."[14] The term "issuer" is defined by reference to who creates and bears responsibility for the payment stablecoin, namely the entity that has obtained authorization to issue payment stablecoins under the Act. The statute does not define "issuer" to include persons whose brand appears on the stablecoin. The "or under the branding of" language in the proposed rule's definition of "related third party" is the FDIC's regulatory extension; it

[13] *See*, *e.g.*, Office of the Comptroller of the Currency, Comptroller's Handbook: Credit Card Lending § 4 (2024) (describing co-branded credit card arrangements in which the OCC-regulated bank issues the credit product and bears full regulatory accountability, while the brand partner provides distribution and customer experience and earns commercial fees); Office of the Comptroller of the Currency, Comptroller's Handbook: Retail Lending § 5 (2017) (private-label credit programs); Consumer Financial Protection Bureau, Supervisory Highlights, Issue 30 (Summer 2023) (treating the issuing bank, not the retail brand partner, as the responsible regulated entity in private-label credit programs).

[14] 12 U.S.C. § 5903(a)(11) (the prohibition applies to a "permitted payment stablecoin issuer"); 12 U.S.C. § 5901(11) (defining "permitted payment stablecoin issuer" by reference to authorization to issue payment stablecoins).

does not appear in the statutory text. A rebuttable presumption triggered by branding alone reads new conditions into the definition of "issuer" that Congress did not write.

E. Conditions That Define a Genuinely Independent Distributor

If the FDIC declines to narrow the rule to track the statutory text which limits issuers, it should still recognize the validity of commonplace commercial relationships. To accomplish that, we propose a four-condition standard defining when a distribution partner is not acting on the issuer's behalf and is therefore outside the scope of the rebuttable presumption. A distributor meeting these conditions is not routing a prohibited payment as a conduit. The distributor is an independent commercial actor exercising its own judgment, with its own resources, to achieve its own commercial objectives. The FDIC's anti-evasion concern is fully served by reaching genuine evasion, and is not advanced by reaching beyond it to partners who satisfy the following conditions.

First, the distributor is not an affiliate of the issuer within the meaning of Regulation W or Regulation O, each of which uses ownership and control thresholds rather than commercial relationship to define attribution.[15] *Second*, the issuer does not fund, direct, or coordinate the distributor's user-facing yield or benefit offering. The distributor makes that decision independently, bears the economic cost from its own revenues, and does not share with the issuer any revenues arising from the user-facing offering. *Third*, the issuer has no contractual right to require, prohibit, or condition the distributor's user-facing yield or benefit offering. *Fourth*, the distributor does not represent to holders, or otherwise market, that any user-facing offering is derived from the stablecoin's reserve earnings or constitutes a return on holding the stablecoin as an investment.

In short, the focus should be on whether the third party is the issuer's agent for purposes of distributing yield. These four conditions are the elements that the common law of agency has long used to determine whether one party is acting on behalf of another. The Restatement (Third) of Agency defines an agency relationship by reference to the principal's right of control, the agent's manifestation of consent to act on the principal's behalf, and the principal's manifestation of assent to the relationship.[16] A distributor that operates outside the issuer's control, makes its own commercial decisions with its own revenues, has no contractual obligation to act on the issuer's behalf, and does not represent itself as acting for the issuer is not an agent under any settled legal framework. The conditions also reflect the federal banking agencies' established approach to commercial partnerships, namely a risk-based framework grounded in supervisory oversight, contractual governance, and disclosure rather than categorical prohibition. The

[15] 12 C.F.R. Part 215 (Regulation O); 12 C.F.R. Part 223 (Regulation W); 12 C.F.R. Part 217 (Regulation Q). Each of these regimes uses ownership and control thresholds, not commercial relationship status, to define the relevant attribution relationship.

[16] Restatement (Third) of Agency § 1.01 (Am. L. Inst. 2006) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.").

Interagency Guidance on Third-Party Relationships, issued jointly by the FDIC, the Federal Reserve, and the OCC, is the most recent expression of that approach.[17] The four-condition standard isolates the cases in which a distributor's user-facing offering can fairly be characterized as the issuer's payment by reference to the same elements the agencies have applied to commercial partnerships for decades.

F. Commercial Distribution Fees Are Consideration for Services Rendered

Setting the four-condition standard alongside the underlying commercial economics confirms the result. A commercial distribution fee paid by an issuer to a distribution partner is consideration for services. Distribution partners provide brand identity, customer acquisition, technical integration, user support, and ongoing operational maintenance. Each of those services has economic value to the issuer, and the issuer compensates the distributor for that value through the distribution fee. The economic and legal character of the fee is the same as the fee a national bank pays a private-label retail partner for distributing co-branded credit products, the fee a money market fund sponsor pays a distributor for marketing fund shares, or the fee a payments network pays a merchant acquirer for processing card transactions. In each of those contexts, the recipient's compensation is calibrated to commercial metrics, including volume, balance, and activity-based measures, that bear an attenuated relationship to the underlying regulated product. None of those arrangements has been treated as a payment of yield or interest under the regulatory regime applicable to the underlying product.

The same analysis applies to commercial distribution fees paid by payment stablecoin issuers. A fee that compensates a distribution partner for distribution services performed is not a payment to the holder for the holder's holdings, and a regulatory framework that conflates the two collapses a structural distinction that financial regulation has maintained for decades.

III. Non-Custodial Software Interfaces Are Outside the Scope of the Proposed Rule

The final rule should confirm that non-custodial software interfaces that facilitate user access to independent decentralized finance ("DeFi") protocols are not paying yield on behalf of an issuer when the user, acting independently, deploys stablecoins into a DeFi protocol and earns protocol-native rewards. The GENIUS Act expressly carves out self-custodial software interfaces from the digital asset service provider definition,[18] and a substantial body of authority

[17] Interagency Guidance on Third-Party Relationships: Risk Management, 88 Fed. Reg. 37,920 (June 9, 2023) (jointly issued by the Board of Governors of the Federal Reserve System, the FDIC, and the OCC, establishing a risk-based supervisory framework for banking organizations' relationships with third parties, including with respect to product distribution and customer-facing partnerships).

[18] *See* GENIUS Act § 2(7)(B) ("digital asset service provider" does not include self-custodial software interfaces); FinCEN, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001 (May 9, 2019) (non-custodial wallet software is not money transmission); Regulation (EU) 2023/1114 ("MiCA"), recital 83 (excluding non-custodial wallet software from the MiCA framework); Financial Action Task Force, Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (Oct. 2021), at 76 (software developers not VASPs); UK HM Treasury, Future Financial Services Regulatory Regime for Cryptoassets § 8.13 (Feb. 2023).

from FinCEN, federal courts, and international regulatory regimes confirms that non-custodial wallet software is not a regulated intermediary.[19] Nothing in the GENIUS Act's yield prohibition disturbs that established framework.

The MetaMask Earn feature illustrates the point. A MetaMask user holding mUSD may elect to deposit the mUSD into a lending market on Aave or Morpho, where the user earns lending yield generated by independent third-party borrowers paying interest on collateralized loans. Consensys does not hold the deposited mUSD; Consensys does not direct the user's transaction; Consensys does not control the lending market; and the issuer (Bridge) is not involved in the user's lending decision. The yield the user earns is the yield the lending market generates, paid by independent counterparties in a transaction the user initiates. Treating a non-custodial software interface as a yield conduit for the issuer in this scenario would extend the proposed rule to participants the statute does not reach and would impose compliance obligations the statute does not authorize. We believe these points are noncontroversial, but ensuring the final rule states this framework explicitly would make certain the market understands this important distinction.

IV. The FDIC's Permissive Approach to Multi-Brand Issuance Should Be Maintained

The FDIC's proposed rule expressly permits a single PPSI to issue more than one brand of payment stablecoin, subject to reserve segregation and protections for holders of different brands.[20] The OCC's parallel proposal does not include comparable authorization and solicits comment on whether to prohibit multi-brand issuance.[21] The FDIC's approach is correct as a matter of statutory interpretation, supervisory practice, and market design. Multi-brand issuance reduces capital and compliance redundancy across distribution channels, supports product innovation by allowing distribution partners to differentiate user experiences, and reflects long-standing practice in the regulated banking and payments industries.

The FDIC's framework for multi-brand issuance is structurally similar to the supervisory framework applicable to multi-branch banking. Insured depository institutions have operated under multiple brand names for decades, subject to consumer-protection disclosures, without compromising deposit insurance coverage, supervisory integrity, or reserve adequacy.[22] The same supervisory principles apply with equal force to multi-brand stablecoin issuance, where each brand has dedicated reserves, holder-level disclosures identify the brand and the issuer, and the underlying compliance framework governs the issuer regardless of brand.

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[19] *SEC v. Coinbase, Inc.*, No. 1:23-cv-04738-KPF, 2024 WL 1304037 (S.D.N.Y. Mar. 27, 2024) (MetaMask software does not "negotiate terms, make investment recommendations, arrange financing, hold customer funds, process trade documentation, or conduct independent asset valuations").

[20] FDIC NPRM, Proposed § 350.4(c); *see also* id. at 18,541.

[21] OCC NPRM, at 10,213 (requesting comment on whether to prohibit multi-brand issuance) (Q172).

[22] FDIC, FIL-46-98, Multi-Branch Banking (May 22, 1998) (insured depository institutions may operate under multiple brand names, subject to consumer-protection disclosures, without compromising deposit insurance coverage or supervisory integrity).

On the specific questions raised in the FDIC NPRM concerning multi-brand issuance, we offer the following. Reserve segregation by brand,[23] achieved through accounting separation and identifiable reserve records, is sufficient to protect holders of each brand. Physical segregation of reserves across different custodians is not necessary and would impose operational costs without commensurate holder benefit. With respect to the permissibility of using excess reserves across brands,[24] the FDIC should permit cross-brand use of excess reserves subject to the requirement that no individual brand fall below its minimum reserve coverage as a result of cross-brand utilization. Cross-brand flexibility for excess reserves is consistent with the GENIUS Act's one-to-one reserve requirement, which is calibrated at the level of the obligation rather than at the level of the brand, and is operationally efficient for issuers managing reserves across multiple brands.

The FDIC's permissive treatment of multi-brand issuance is also consistent with the cross-regulator coordination obligation imposed on the federal banking agencies.[25] The OCC has not foreclosed multi-brand issuance and has solicited comment on the question. Consensys urges both agencies to reach a consistent permissive position, for which the FDIC NPRM provides a sound model.

V. The FDIC's Discretionary Approach to Reserve, Redemption, and Capital Shortfall Consequences Should Be Maintained

The FDIC's proposed rule uses agency discretion to address three categories of compliance failure: reserve shortfall,[26] significant redemption requests,[27] and capital or backstop shortfall.[28] In each case, the FDIC has solicited comment on whether to replace its discretionary approach with mandatory consequences modeled on the OCC's parallel proposal, which prescribes a 15-business-day mandatory liquidation timeline for reserve shortfalls, an automatic seven-calendar-day extension of redemption periods upon redemption demand exceeding 10% of outstanding issuance value, and mandatory issuance prohibition and liquidation upon capital shortfall over two consecutive quarters.[29] The FDIC should retain its discretionary approach in each case.

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[23] FDIC NPRM, Proposed § 350.4(c)(2) (segregation of reserves attributable to each brand).

[24] FDIC NPRM, at 18,541 (soliciting comment on permissibility of using excess reserves across brands).

[25] 12 U.S.C. § 4806 (FDIC, FRB, OCC, and NCUA shall coordinate to ensure that regulatory standards established under the federal banking laws are administered consistently and without undue burden).

[26] FDIC NPRM, Proposed § 350.4(i); FDIC NPRM, at 18,544 (Q56).

[27] FDIC NPRM, Proposed § 350.5(c).

[28] FDIC NPRM, Proposed § 350.9(c); FDIC NPRM, at 18,551 (Q54).

[29] *Compare* OCC NPRM, Proposed § 15.11(g)(3) (mandatory 15-business-day liquidation upon reserve shortfall); *id.* § 15.12(c) (automatic seven-calendar-day extension upon redemption demand exceeding 10% of outstanding issuance value); *id.* § 15.41(c) (mandatory issuance prohibition and liquidation upon capital shortfall over two consecutive quarters).

The case for agency discretion in this domain is straightforward. Reserve shortfalls, significant redemption demands, and capital shortfalls can arise from a range of underlying causes, including transient market dislocations, operational incidents, valuation methodology changes, and reserve composition shifts. The appropriate supervisory response will depend on the cause of the shortfall, the issuer's remediation plan, the broader market context, and the interests of stablecoin holders. A mandatory liquidation regime, by contrast, treats every shortfall identically and produces predictable cliff-edge dynamics. Once a mandatory liquidation timeline is triggered, the issuer and its holders are committed to an irreversible path, even if the underlying shortfall is curable on a short timeframe and the consequences of mandatory liquidation are worse for holders than measured remediation. The FDIC's discretionary approach permits the agency to weigh these considerations in real time. That is the supervisory discretion the agency should preserve.

The mandatory regimes proposed by the OCC also create gaming and arbitrage dynamics that a discretionary regime does not. A mandatory seven-day redemption extension triggered at a specific threshold creates incentives for sophisticated holders to monitor redemption volumes and act on the threshold; a discretionary extension permits the supervisor to respond to actual redemption pressure without inviting threshold-based strategic behavior. The FDIC's discretionary approach is the more durable supervisory design, and we encourage the FDIC to maintain it in the final rule. Consensys recognizes the FDIC's interest in supervisory predictability and would support a final rule that articulates non-binding supervisory expectations (for example, a presumption in favor of orderly liquidation absent a credible remediation plan) without converting those expectations into mandatory consequences.

VI. Definitions of Distributed Ledger and Smart Contract

The FDIC has solicited comment on the proposed definition of "distributed ledger" and on whether the final rule should define "smart contract."[30] On distributed ledger, the proposed definition introduces a categorical distinction between "public" and "permissioned" ledger types in a manner that could be read to give regulatory weight to the distinction.[31] That distinction is not the correct one for regulatory purposes. The relevant supervisory questions concern the functional properties of the ledger, including auditability, settlement finality, access controls, resilience, governance, finality, recoverability, and supervisory visibility. A public ledger with strong supervisory visibility and operational resilience may be more appropriate for a given use case than a permissioned ledger with weaker properties on those dimensions, or vice versa. The final rule should define distributed ledger by reference to functional properties rather than by reference to permissioning model.

[30] FDIC NPRM, at 18,537 (Qs 4, 5).

[31] FDIC NPRM, Proposed § 350.1(b)(7) (proposed definition of distributed ledger). The proposed definition references "public" and "permissioned" categorizations in a manner that could be read to give regulatory weight to that distinction.

On smart contract, we recommend that the FDIC adopt a functional definition along the following lines, namely a software program deployed to a distributed ledger that is a collection of code dictating the program's functions as well as program data, otherwise called its "state", of of which resides at a specific account address. The definition should not be tied to a specific blockchain, virtual machine, programming language, or permissioning model. A definition tied to any of these elements would create regulatory dependencies on technical implementation choices that evolve rapidly, and would invite arbitrage between technically equivalent contract architectures that fall on different sides of an implementation-specific line.

VII. Cross-Chain Stablecoin Representations

The FDIC has solicited comment on whether payment stablecoins locked in a smart contract for purposes of wrapping the stablecoin for use on an unsupported blockchain should be exempted from Subpart B of the proposed rule.[32] The framework Consensys recommends distinguishes among four categories of cross-chain representation, with regulatory treatment following the legal character of the holder's claim and the structural risk profile of the representation, not the use of a smart contract or Layer 2 network.

First, a native tokenized representation, where the issuer affirmatively issues the stablecoin on a second chain backed by reserves segregated and managed in the manner the GENIUS Act requires, is itself a payment stablecoin and should be regulated as such. Second, a wrapped representation, where a non-affiliate third party locks the underlying stablecoin in a smart contract and mints a wrapped token representing a claim on the locked stablecoin, gives the holder a claim on the third-party wrapping protocol, not on the issuer. The wrapped token is not the issuer's stablecoin, and the relevant regulatory question concerns the operator of the wrapping protocol, not the issuer. Third, a bridge receipt, where a non-affiliate third party bridge operator takes custody of the underlying stablecoin and issues a receipt that the receipt-holder can present to the bridge operator for redemption, gives the holder a claim on the bridge operator and is a custodial relationship subject to the bridge operator's regulatory regime. Fourth, a synthetic claim, where a contract gives the holder a derivative claim referencing the underlying stablecoin's price without any backing in the underlying stablecoin itself, is a derivative product and is regulated under the derivatives regulatory framework.

Each of these four representations involves different legal claims, different issuer obligations, different custody and control structures, and different redemption mechanics. The regulatory treatment of each should follow those underlying features. The final rule should not adopt a blanket exemption from Subpart B based solely on the use of a smart contract, nor should it apply Subpart B uniformly to all cross-chain representations regardless of their legal structure.

[32] FDIC NPRM, at 18,558 (Q121).

VIII. Cross-Regulatory Coordination

The FDIC's proposed rule, the OCC's parallel proposed rule, and the Treasury Department's proposed rule on substantial similarity[33] together establish the federal regulatory framework that will govern PPSIs across the bank-subsidiary, federal qualified, and state qualified pathways. The cross-regulator coordination obligation imposed on the federal banking agencies[34] applies with particular force in this context, where the consistency or inconsistency of the OCC and FDIC implementations will determine whether the GENIUS Act produces a coherent regulatory regime or fragmented agency-specific regimes that drive market participants to one supervisor based on rule arbitrage.

Consensys urges the FDIC, in coordinating with the OCC on a consistent final framework, to adopt the more permissive approach on each substantive question on which the two proposals diverge. The agencies should converge upward, not downward, on the question of what is permitted. On multi-brand issuance and other issues, the FDIC's approach is the better one and should serve as the model for the consistent final framework. We also note that the Treasury Department's proposed rule on substantial similarity for state regulatory regimes anchors on the OCC's framework, which raises the additional concern that any OCC overbreadth in the final OCC rule would propagate across the state pathway. We have addressed this concern in our separate comment to Treasury.

IX. Recommendations

Consensys respectfully submits the following recommendations.

First, the FDIC should narrow the rebuttable presumption in Proposed § 350.3(b)(4)(i) to track the statutory yield prohibition in GENIUS Act § 4(a)(11). In the alternative, the FDIC should adopt the four-condition standard described in Section II.E as an explicit ceiling on the scope of the presumption.

Second, the FDIC should delete the "or under the branding of" leg of the "related third party" definition in Proposed § 350.3(b)(4)(i), or at minimum clarify that branding alone does not trigger the rebuttable presumption absent the elements of the four-condition standard described in Section II.E.

Third, the FDIC should confirm that non-custodial software interfaces that facilitate user access to independent DeFi protocols are not paying yield on behalf of an issuer when a user, acting independently, deploys stablecoins into a DeFi protocol and earns protocol-native rewards.

[33] Notice of Proposed Rulemaking, GENIUS Act Broad-Based Principles for Determining Whether a State-Level Regulatory Regime is Substantially Similar to the Federal Regulatory Framework, 91 Fed. Reg. 16,844 (Apr. 3, 2026). Consensys is filing a separate comment to the Treasury Department on this rulemaking.

Fourth, the FDIC should maintain its permissive approach to multi-brand issuance in Proposed § 350.4(c) and should clarify in the final rule that excess reserves may be used across brands subject to the requirement that no individual brand fall below its minimum reserve coverage.

Fifth, the FDIC should maintain its discretionary approach to consequences for reserve, redemption, and capital shortfalls in Proposed §§ 350.4(i), 350.5(c), and 350.9(c), and should not adopt the mandatory consequences proposed by the OCC for parallel scenarios.

Sixth, the FDIC should adopt functional, technology-neutral definitions of distributed ledger and smart contract, in each case avoiding regulatory weight on the public/permissioned distinction or on specific chain, virtual machine, or programming language choices.

Seventh, the FDIC should address cross-chain stablecoin representations by reference to the legal claim, issuer obligation, custody and control structure, and redemption mechanics of each representation, rather than by reference to the technological mechanism.

Eighth, the FDIC should coordinate with the OCC on a consistent final framework, converging upward on the permissive positions described in this comment.

X. Conclusion

We appreciate the FDIC's earnest engagement with the GENIUS Act implementation, and we recognize the substantial work the agency has done to develop a workable framework on an accelerated statutory timeline. We view this letter as the start of a conversation. The points raised here reflect Consensys's experience as a distribution partner for a payment stablecoin and as the developer of self-custodial software used by tens of millions of people, and we offer them in the spirit of productive engagement on the questions the proposed rule raises. We welcome the opportunity to discuss any of these points further with the FDIC staff.

Respectfully submitted,

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