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Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7th Street, SW, Suite 1E-216  
Washington, DC 20219

Via: <https://regulations.gov/>

Docket ID OCC-2025-0372

**Notice of Proposed Rulemaking: Implementing the Guiding and Establishing National Innovation for United States Stablecoins Act ("GENIUS Act") for the Issuance of Payment Stablecoins**

Dear Sir/ Madam:

State Street Corporation ("State Street") welcomes the opportunity to comment on the Office of the Comptroller of the Currency's ("OCC") notice of proposed rulemaking ("proposed rule") implementing the requirements of the GENIUS Act for the issuance of payment stablecoins and related financial activities by entities subject to the jurisdiction of the OCC (i.e. "permitted payment stablecoin issuers" or "PPSI"). This includes requirements for the organization and operation of the custody function for payment stablecoin reserve assets, which although broadly consistent with existing industry practice, include certain structural flaws that must be addressed for the framework to operate as intended.

Headquartered in Boston, Massachusetts, State Street is a global custody bank which specializes in the provision of financial services to institutional investor clients, such as asset owners, asset managers and official sector institutions. This includes investment servicing, investment management, data and analytics, and investment research and trading. With \$54.5 trillion in assets under custody and administration and \$5.6 trillion in assets under management, State Street offers its clients the ability to hold assets and transact in more than 100 geographic markets globally.<sup>1</sup> State Street is organized as a United States (“US”) bank holding company (“BHC”), with operations conducted through several entities, primarily its wholly owned Massachusetts state-chartered insured depository institution subsidiary, State Street Bank and Trust Company. As a US BHC, State Street is subject to consolidated supervision by the Federal Reserve System.

The proposed rule deals with a number of matters of importance to the banking industry as a whole which are addressed at length in various trade association comment letters. This includes further measures to clarify the prohibition on the payment of interest or yield by PPSIs and their affiliates, and the need for more prescriptive capital requirements for PPSIs, particularly those whose activities extend beyond the issuance function to include financial activities with embedded credit, market or operational risk.

Our comments are limited to two important flaws in the design of the framework for the custody of payment stablecoin reserve assets, which left unaddressed, will undermine the ability of banks to support the development of the market. We also recommend a narrow technical adjustment to facilitate the implementation of Section 15.11(b)(6) of the proposed rule which permits the investment of PPSI reserve assets in certain securities issued by a registered investment company (“RIC”) subject to the requirements of the Investment Company Act of 1940 (“40 Act Funds”) including the appropriate treatment of exchange-traded funds (“ETF”).

## **Overview of the Custody Function**

Custody banks are hired by institutional investors, such as pension plans, mutual funds, asset managers and prospectively PPSIs to hold and administer large and diversified portfolios of investment assets. This centers on the provision of safekeeping services, designed to manage

<sup>1</sup> As of March 31, 2026.

conflicts of interest and protect investment assets from misappropriation, misuse or loss. Custody banks also provide:

- Access to trade processing and settlement systems in global markets where the client may choose to invest.
- Asset administration services, such as the processing of corporate action events, tax reclamations and the collection of maturity and income payments.
- Fund administration services, such as the calculation of fund net asset values and the processing of client subscriptions and redemptions.
- Access to deposit accounts used to facilitate day-to-day transactional activities in client investment portfolios.

The custody function is well defined in US law and regulation and is supported, in the case of banks, by extensive prudential standards designed to ensure that financial activities are conducted in a safe and sound manner. It is this prudential oversight that distinguishes our activities from those of other potential providers of custodial and safekeeping services for PPSI and that helps ensure the highest possible standards of investor protection. Assets held by custody banks (but not cash) belong to the client and are segregated at all times from the custody bank's own assets. Furthermore, custody banks do not have discretion over the disposition of client assets held in custody and act solely in accordance with proper instructions received. These practices help support the essential legal principle that assets held in custody (excluding cash) do not belong to the custodial entity and are therefore not subject to third-party claims in insolvency.

There are three core principles that define the proper organization of the custody function:

- Segregation of assets: client assets (excluding cash) must be segregated from the custodian's own assets and be distinguishable from the assets of other clients at all times.
- Separation of financial activities: safekeeping function must be separately maintained and operated from trading and other market-facing activities.
- Proper control: custodians must have control over client assets and the exclusive ability to transfer assets held for their clients based on the receipt of proper instructions.

Subpart C of the OCC's proposed rule implementing the custody requirements of Section 10 of the GENIUS Act for OCC-regulated entities broadly recognizes these principles, which we strongly endorse as necessary to achieve appropriate levels of investor protection. This includes cases where the PPSI chooses to custody its own reserve assets rather than rely on the expertise of a specialized third-party custodial entity.

### **Cash as a Deposit Liability of the Bank**

While the full segregation of client securities and other non-cash assets from the potential bankruptcy of the custody bank is a core underlying principle of the custody function, this does not extend to cash which like any other deposit becomes a balance sheet liability of the bank to its client. This reflects the well-established and well-understood role of banks as credit intermediaries, which in the case of custody banks centers on the provision of credit to facilitate the settlement of securities transactions, client redemption activity, and other day-to-day transactional needs that result from managing large pools of investment assets.

Absent the banking services provided by custody banks to their clients, all disbursement activity would need to be fully pre-funded, dramatically slowing the flow of transactional activities in the markets and creating heightened operational complexity prone to settlement delays and other bottlenecks. As a practical matter, therefore, it is impossible to hold client cash deposits in custody and the relationship that exists between a deposit account holder and the custody bank, including in the case of a PPSI, is a debtor-creditor relationship subject to normal bank insolvency proceedings.

In Subpart C of the proposed rule, the OCC makes several assertions that seems to suggest that it does not recognize the distinct treatment of cash deposits relative to the other reserve assets of a PPSI held in custody. For instance, the OCC states that the GENIUS Act's "custodial requirements (apply) not only to the custody of payment stablecoin reserves, payment stablecoins used as collateral, and the private keys used to issue payment stablecoins, but also to cash and other property of a custody customer of one of those assets". Similarly, the OCC asserts that "any interest on payment stablecoin reserve assets held in custody in a deposit account and credited to a customer would be the type of cash and other property subject to the custody requirements of the Act". As another example, the OCC proposes to define "covered assets" for which the provision of custodial or safekeeping services trigger the requirements of the Act to include "any

cash or other property of the PPSI', and then goes on to state that all covered assets "must be treat(ed)...as belonging to the customer and not as property of the covered custodian." While we recognize that cash deposits may form part of the stock of reserve assets that PPSIs must hold to ensure that stablecoins are always backed by reserves on at least a one-for-one basis, we believe that it is essential for the OCC to clearly recognize and affirm in the final rule that cash is in all cases a deposit liability of the bank and therefore cannot be held in custody in a manner that is bankruptcy remote from the assets of the bank.

While Section 15.21(d) of the proposed rule does acknowledge that insured national banks and federal savings associations subject to the jurisdiction of the OCC may hold payment stablecoin reserves in the form of cash on deposit, the proposed rule should make it clear that this treatment is not exceptional but rather consistent with long-established custody practice and legal precedent, and does not imply that cash in the normal course is held in custody in the same manner as securities or other property of the client. Furthermore, we urge the OCC to coordinate with the other banking agencies and relevant state regulators to ensure that this understanding of cash is consistently applied to PPSI reserve assets regardless of the custodian's charter type (federal or state) or responsible supervisory authority.

### **Custody and Reserve Asset Diversification Requirements**

In Subpart B, Section 2 of the proposed rule, the OCC seeks to implement the requirements of the GENIUS Act that apply to the reserve assets of PPSIs. This includes Section 4(a)(4)(A)(iii) of the Act that instructs the OCC to issue regulations implementing reserve asset diversification requirements, including deposit concentration limits at banks, that "are tailored to the business model and risk profile of the PPSI, and do not exceed standards that are sufficient to ensure the ongoing operations of the PPSI". On this basis, the OCC proposes two alternative standards. The first, Option A, would include a principles-based general requirement for the diversification of reserve assets, along with a safe harbor containing certain quantitative requirements. The second, Option B, would make the proposed quantitative requirements mandatory for all PPSIs.

When defining the scope of exposures to which the diversification limits would apply, the OCC opts for an approach that encompasses not only the direct exposures of the PPSI (as one would expect), but also the highly contingent exposures that a PPSI may have to the custodial entity or entities holding non-cash reserve assets on its behalf. This unusual approach is driven by the

OCC's concern that reliance on "a single third-party location for its reserve assets could expose the PPSI to the unnecessary risk that its reserve assets, or some portion of them, could be unavailable to meet redemption requests". Furthermore, the OCC also asserts that holding all reserve assets at one custodial entity might somehow prevent the PPSI from monetizing its assets during periods of financial stress. On this basis, the OCC proposes to mandate that a PPSI hold no more than 40% of its reserve assets at any one financial institution, "whether as deposits...at any one insured depository institution, securities custodied at any one eligible financial institution, bilateral reverse repurchase agreements with any one counterparty, or through other exposures."

While we recognize the importance of asset diversification requirements for PPSIs, including prescribed limits on the amount of deposits that can be held at any one bank, we strongly oppose the inclusion of reserve assets held in custody (i.e. the non-cash assets of the PPSI) in the calculation of exposures subject to single financial entity concentration limits. For one and as noted in our earlier observations, assets held in custody are the legal property of the client and the custodian does not have the ability to make use of or otherwise access client assets for its own purposes. This is supported by the segregation of client assets from the custody bank's own assets at all times. Second, there is a well-established body of US law and regulation that supports the fundamental principle that assets held in custody are not the property of the custodian and are therefore not subject to third-party claims in insolvency.

Thirdly, the approach envisioned by the OCC ignores the substantive body of regulations that apply to banks, including business continuity planning requirements and recovery resolution planning mandates, that are designed to ensure that custodian banks can continue to perform their asset administration functions even in a period of idiosyncratic or market stress, up to and including insolvency. Finally, there is no precedent in prudential regulation that we are aware of that requires banks to aggregate the total value of assets held in custody (excluding cash, which is an on-balance sheet liability of the bank) with other exposure amounts that result from credit or market exposures to a counterparty in order to manage risk. This includes, for example, the single counterparty credit limit metric that applies to large banks which limits exposures to any single non-global systemically important bank ("G-SIB") counterparty to 25% of a bank's Tier 1 capital and to any single G-SIB counterparty to 15% of a bank's Tier 1 capital.

As such, concerns about the ability of PPSIs to access and monetize their reserve assets when using a single custodial entity are unfounded and if implemented as proposed, would constitute a

substantial departure from the normal understanding of custodial risk as materially distinct from the credit and market risk that the PPSI otherwise faces in the normal conduct of its financial activities. We therefore recommend that the OCC both revise its characterization of the potential custody risk faced by PPSIs and eliminate from the proposed 40% single financial institution concentration limit reserve assets held by custodial entities in the form of securities or other similar property. As an alternative, the OCC may wish to introduce a qualitative standard that requires PPSIs to prudently monitor and manage concentration risk in the selection of a custody provider for its reserve assets, an approach that may be particularly well suited to instances in which custody is provided by financial entities not subject to the prudential oversight of the federal banking agencies.

### **Investment of Reserve Assets in '40 Act Funds**

In subpart B Section 2 of the proposed rule, the OCC seeks to implement the requirements of the GENIUS Act that prescribes the scope of permissible investments for stablecoin reserve assets. This includes investment funds issued by RICs under Section 8(a) of the '40 Act or other government money market fund ("MMF"), provided that the assets of the fund are "invested solely in underlying assets" that are otherwise permissible reserve assets investments. These permissible investments includes cash, bank deposits, US Treasury bills, notes or bonds with a remaining maturity of 93 days or less, money received from an overnight repurchase agreement collateralized by eligible US Treasury securities, and overcollateralized overnight reverse repurchase agreements backed by eligible US Treasury securities with certain prescribed counterparties.

As an initial matter, we recommend that the OCC preemptively clarify in the final rule that '40 Act funds structured as ETFs that otherwise meet the permissible investments standard specified in Section 15.11(b) are eligible pursuant to Section 15.11(b)(6) for use in the management of PPSI reserve assets. Absent explicit guidance on this point, we are concerned that market participants may reach divergent conclusions as to their eligibility, causing confusion and unintentionally limiting the scope of permissible PPSI reserve asset investments in practice.

Furthermore, while we recognize and support the intent of the requirement that '40 Act funds "invest solely in underlying assets described" in Section 15.11(b) (1) through (5) of the proposed rule, we note that even '40 Act funds that have specifically been designed to be compliant with the

GENIUS Act, such as the State Street Stablecoin Reserves Money Market Fund, may invest limited amounts of residual cash in a separate MMF that might not solely invest in permissible reserve assets. This is designed to permit the RIC to seamlessly manage the day-to-day operations of the fund while still meeting its fiduciary obligation to its clients. As such, the investment of residual cash in this manner is incidental to the operation of a GENIUS Act compliant fund and is not in any way intended to permit the PPSI or other responsible third party to evade the requirements of the Act.

In order to better reflect common industry practice in the asset management community and accommodate limited potential instances of exposure to assets not otherwise specified in Section 15.11(b)(1) through (5) of the proposed rule, we strongly recommend that the OCC adopt a narrow de minimus standard for the '40 Act investments of PPSI reserve assets that would permit the '40 Act fund to hold a small amount of its assets (e.g. 5%) in an otherwise non-compliant MMF. Again, our recommendation is not intended to evade the prescribed limitations on the investment of PPSI reserve assets that would in any event continue to be subject to the other requirements of the proposed rule.

## **Conclusion**

Thank you once again for the opportunity to comment on elements of the proposed rule for the implementation of the requirements of the GENIUS Act that address the organization and operation of the custody function for PPSI reserve assets. To summarize, we strongly urge the OCC to make clear in any final rule that reserve assets in the form of cash are an on-balance sheet deposit liability of the bank to its client and therefore cannot be held in custody or otherwise be subject to the custodial property requirements of the rule.

We also urge the OCC to coordinate with the other banking agencies and relevant state regulators to ensure that this well-established principle is appropriately recognized and consistently applied to PPSI reserve assets regardless of the custodial entity's charter type (federal or state) or responsible supervisory authority. Furthermore, we urge the OCC to eliminate reserve assets (other than cash) held in custody from the quantitative diversification requirements of the proposed rule in favor of a qualitative requirement for the PPSI to properly consider, monitor and manage its custody risk.

Finally, we urge the OCC to preemptively clarify that ETFs fall within the scope of “securities issued by an investment company under Section 8(a) of the ‘40 Act” that are permissible for the investment of PPSI reserve assets, and that it adopt a narrow de minimus exception that would permit otherwise GENIUS Act compliant ‘40 Act funds to hold small amounts of residual cash (e.g. 5% of the fund’s value), in an otherwise non-compliant MMF.

We look forward to collaborating further on this important initiative. Please feel free to contact me at [jjbarry@statestreet.com](mailto:jjbarry@statestreet.com) or 617-664-1254 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "JJ Barry", with a stylized flourish at the end.

Joseph J. Barry

Senior Vice President and Global Head of Public Policy