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Mid-Summer Developments in Crypto Legislation and Regulatory Guidance

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In a flurry of pre-recess activity, Congress recently made headway on two pieces of legislation with significant impacts for the digital asset industry, the Guiding and Establishing National Innovation for US Stablecoins Act (the "GENIUS Act"), which passed both chambers of Congress and was signed into law by the President on July 18, 2025, and the Digital Asset Market Clarity Act of 2025 (the "CLARITY Act"), which has thus far only passed the House but builds upon components of earlier legislative efforts in both the House and Senate. Alongside, the House also passed the Anti-CBDC Surveillance State Act, which prohibits the Federal Reserve from issuing a central bank digital currency, part of the President's directives in Executive Order 14067. Separately, the federal banking regulators released joint guidance to their respective federally chartered institutions on how to engage in safekeeping of crypto assets.

These developments include codification of many industry best practices and signals the intention of this Congress and administration to establish legal predictability and comfort for crypto and digital asset industry participants as well as their closely adjacent traditional banking and financial services partners.

The GENIUS Act

The GENIUS Act provides a comprehensive framework for issuance and regulation of payment stablecoins that permits a dual-track regime at both the federal and state levels. In keeping with its focus on the use of stablecoins as a means of payment rather than for investment purposes, the GENIUS Act expressly excludes a payment stablecoin issued by a permitted payment stablecoin issuer from the definition of "security" under the federal securities laws and a "commodity" under the federal commodities laws (discussed below).

The GENIUS Act generally defines a payment stablecoin as a digital asset (*i.e.,* any digital representation of value which is recorded on a cryptographically-secured distributed ledger) that is or designed to be used as a means of payment or settlement, and the issuer of which represents that such digital asset will maintain stable value and is obligated to convert, redeem or repurchase for a fixed monetary value by its issuer. The definition also expressly excludes bank deposits (including deposits recorded using distributed ledger technology) and national currencies.

The GENIUS Act requires payment stablecoin issuers to maintain reserves backing the issuer's payment stablecoins outstanding on at least a 1:1 basis by USD-denominated reserves such as cash or US Treasuries. These reserves may not be pledged, rehypothecated or reused by the issuer, except in limited circumstances. Generally, the reserves, the payment stablecoins, cash of each of the issuer and a customer cannot be commingled and must be kept in segregated accounts by a state or federally regulated institution. Issuers are required to publish monthly reports that include the total number of outstanding payment stablecoins issued and the amount and composition of reserves are required, along with the issuer's redemption policy. Such reports must be certified by the issuer's CEO and CFO and examined by a registered public accounting firm following publication. Issuers will be required to comply with regulations on capital requirements, liquidity standards, reserve requirements, and compliance and operational standards be issued by their respective federal or state regulator.

Notably, the GENIUS Act prohibits issuers from paying holders any form of interest or yield (cash, tokens or other consideration) for holding and use of payment stablecoin. Issuers are considered financial institutions subject to the Bank Secrecy Act (the "BSA") with responsibilities to comply with US sanctions, anti-money laundering, customer identification, due diligence and other related laws. Holders of payment stablecoins will have a priority claim to segregated reserve assets that is senior to the claim of any other creditor of the reserve custodian.

Permitted stablecoin issuers must be:

(a) insured depository institutions, generally including banks and credit unions, acting through a subsidiary as approved by their federal functional regulator;

(b) non-banks, uninsured national banks, and branches of foreign banks who receive approval from the OCC; or

(c) non-banks that apply to their state regulator and plan to issue less than $10 billion aggregate stablecoins. Potential stablecoin issuers will be able to submit applications to the relevant state or federal regulator starting one year after passage of the GENIUS Act (approximately July 2026).

Despite the January 2025 Executive Order calling for deregulation and a pause in notice-and-comment rulemaking, the GENIUS Act requires notice-and-comment rulemakings by several federal regulators, including the Federal Reserve, OCC, FDIC, NCUA, Treasury, and FinCEN, and will take effect the earlier of 18 months after its enactment (approximately January 2027), or 120 days after the primary federal payment stablecoin regulators issue any final regulations implementing the GENIUS Act.

Current Status of the CLARITY Act

This Congress' version of a market structure bill, dubbed the CLARITY Act, has advanced from the House but still may see major revision or amendment in the Senate. Many of the key concepts of the CLARITY Act were introduced during the last session of Congress as Fit21 and include: definition of the types of crypto assets that are subject to the jurisdiction of each the SEC and CFTC and enforcement of offenses such as fraud, manipulation, false disclosures or reporting, as well as offenses that could be committed by intermediaries such as front running and failure to segregate customer assets.

As passed by the House, the CLARITY Act would create three categories of digital assets:

(a) Digital Commodities: Generally, a digital commodity is defined as a digital asset that is intrinsically linked to a blockchain system, and the value of which is derived from or is reasonably expected to be derived from the use of the blockchain system. Certain financial instruments, such as securities, derivatives, and interests in pooled investment vehicles, are expressly excluded from eligibility as digital commodities. These assets would be excluded from the definition of "security" under the federal securities laws and generally be subject to the regulatory and enforcement authority of the CFTC. The CLARITY Act would also establish three new types on registered intermediaries for digital commodities: Digital Commodity Exchanges, Digital Commodity Brokers, and Digital Commodity Dealers.

(b) Digital Asset Securities: Generally, those digital assets that represent a security or security derivative. These assets would generally be subject to the regulation and enforcement authority of the SEC.

(c) Permitted Payment Stablecoins: Generally, those stablecoins that meet the definition of permitted payment stablecoin as defined under the GENIUS Act.

The CLARITY Act would also create a limited exemption from the definition of "security" under the Securities Act of 1933 for certain digital assets that involve an offering by a digital commodity issuer not to exceed $75,000,000.

The CLARITY Act would exempt six (6) specific categories of decentralized finance ("DeFi"), most of which apply to operating a blockchain network or platform to confirm and process crypto transactions,[1] from most of its provisions. This taxonomic approach is an encouraging signal for those engaged in activities related to financial products in DeFi networks that are "sufficiently decentralized" or "mature" from the reach of its application. The CLARITY Act also would likely preempt state statutes and widen the set of "financial institutions" that are subject to AML/BSA laws to include also digital asset exchanges and intermediaries.

The advancement of the CLARITY Act alongside passage of the GENIUS Act is intended to provide a more coherent regulatory framework for digital assets, including clearer distinctions between securities, commodities, and new categories such as "digital commodities." However, the CLARITY Act does not fully resolve the regulatory gap created by the GENIUS Act's exclusion of payment stablecoins from the definition of "commodity." While the CLARITY Act clarifies the treatment of many digital assets and expands CFTC jurisdiction over certain digital commodities, it leaves payment stablecoins in a unique category that is neither a security nor a commodity, and thus outside the reach of both the SEC and CFTC for market regulation and enforcement. This creates a significant gap for derivatives and secondary market activity involving payment stablecoins, as no federal agency has clear authority to oversee or police these markets for fraud or manipulation. State banking supervisors and the OCC possess little market-surveillance infrastructure, leaving the Department of Justice as the principal backstop for misconduct.

Federal Banking Regulators' Guidance on Safekeeping

In a departure from earlier-perceived discouragement of federal financial institutions serving as custodians of crypto assets, the federal financial regulators (OCC, Federal Reserve, and FDIC) have issued guidance on crypto safekeeping services including safekeeping as a fiduciary or non-fiduciary service provider. This guidance clears up questions that have long stymied development of custody as a service, specifically safekeeping, including private key management, definition of appropriate risk-based controls, the level of sophistication an institution should have before engaging in crypto-asset safekeeping, and third-party risk management of vendors in this space. These topics had previously been subject to the discretion of individual agencies and supervision staff leading to inconsistent application of principles.

Takeaways and Challenges

- Federal government agencies will be engaging in notice and comment rulemaking or issuing guidance to carry out the various implementation needs that the GENIUS Act and a potential market framework law, such as CLARITY, present. These rulemakings will presumably be exempt from the administration's strict controls on new rulemakings.
- Those wishing to apply to issue stablecoins can begin submitting applications as of approximately July 2026.
- While the House passed GENIUS Act without amendment and signed by the President, certain provisions of the CLARITY Act would amend the GENIUS Act (definition of a digital asset service provider, internal control requirements, limitations on person that may own a stablecoin issuer).
- Treasury's financial intelligence unit, FinCEN, will have to reckon with and engage in rulemaking that recognizes the pseudonymous nature of stablecoins that are received from the secondary market, as opposed to directly from the issuer, itself.
- Federally-chartered financial institutions can bank cryptocurrency-related businesses and offer custody and other safekeeping services, consistent with each institution's risk-based compliance and new product innovation procedures.
- Market participants planning to engage in digital asset activities will likely confront complex questions (analogous to those faced following the enactment and implementation of the Dodd-Frank Act) regarding which side of the new jurisdictional boundaries their activities fall under and whether they could incur new registration obligations.
- DeFi continues to be the most difficult area within crypto and digital assets for lawmakers and regulators to approach.
- Anti-money laundering and other BSA requirements for decentralized systems present new challenges in compliance.

- Digital assets held in custody not owned by that custodian will not be required to be presented as a liability on its balance sheet nor meet additional capital requirements, except where capital requirements are necessary to mitigate against inherent operational risks.
- Basel III standards for crypto assets requiring additional capital, liquidity and disclosure requirements, effective January 1, 2026, need to be thoughtfully considered by US regulators to help harmonize its approach to these issues with global regulators.

How Chapman Can Help

- Advising potential stablecoin issuers, reserve custodians, and crypto safekeepers and custodians with their plans to develop new offerings or augment existing products;
- Establishing new entities and attaining regulatory authorization where required;
- Advise digital assets participants in structuring products and transactions to achieve regulatory efficiencies whenever possible
- Submitting comments and testimony on behalf of industry participants and associations;
- Preparing for evolving regulation across agencies and geographies;
- Developing and refining crypto and digital asset custody arrangements and compliance programs.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact a member of the Compliance, Regulatory and Payments group or the Investment Management group or visit us online at chapman.com.

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1 These activities include compiling network transactions, operating a node, providing an interface to access data about a blockchain system, publishing a blockchain system that is not a decentralized finance trading protocol, providing decentralized systems for executing spot contracts in digital commodities, and maintaining wallets.