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# Summary of the Stablecoin TRUST Act of 2022

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On April 6, 2022, Senator Pat Toomey released a discussion draft of the Stablecoin TRUST Act of 2022 (the “Stablecoin TRUST Act”).<sup>1</sup> The Stablecoin TRUST Act would provide three licensing options for both banks and nonbank companies (collectively referred to herein as “payment stablecoin issuers”) to issue “payment stablecoins”<sup>2</sup> under a new regulatory framework. The draft legislation follows Senator Toomey’s previously released principles for stablecoin legislation.<sup>3</sup> Below is a brief summary of the key points of the draft bill for regulating payment stablecoin issuers.

## THREE LICENSING OPTIONS

- A payment stablecoin issuer would be required to be one of the following types of licensed entities:
  - **Money Transmitting Business:** A person licensed as a “money transmitting business”<sup>4</sup> or any other person that is authorized by a state banking or similar authority to issue stablecoins.
  - **National Limited Payment Stablecoin Issuer:** A person that receives a license from the Office of the Comptroller of the Currency (“OCC”) would be permitted to issue and redeem payment stablecoins and engage in any activities incidental to such issuance or redemption, including making a market in such payment stablecoin and holding and managing the reserve assets of such payment stablecoins. However, licensees would be prohibited from engaging in any activity, such as making loans or other extensions of credit, other than such authorized activities. Entities eligible to receive the license would include: (1) national trust banks and state-chartered trusts and, presumably, (2) state-chartered business organizations (*e.g.*, corporations, limited liability companies or partnerships).
  - **Insured Depository Institution (“IDI”):** Any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.<sup>5</sup>

## OCC REGULATION OF NATIONAL LIMITED PAYMENT STABLECOIN ISSUERS

- The bill would provide the OCC with authority to license, supervise, examine and regulate national limited payment stablecoin issuers. The license would authorize the issuer to issue and redeem payment stablecoins and engage in activities incidental thereto, such as market-making in such payment stablecoin and holding and managing reserve assets of such payment stablecoins.
- National limited payment stablecoin issuers would be prohibited from engaging in any activity, such as making loans or other extensions of credit, other than the authorized activities discussed above.

- The OCC may only deny an application if it determines the activities of the applicant would be unsafe or unsound based on the following factors: (1) the financial condition and business plan; (2) the general character and fitness of management; and (3) the risks presented and the potential benefits that could be delivered to consumers.
- The Stablecoin TRUST Act would require the OCC to act within 90 days of the submission of an application, and an application would be deemed to be approved if the OCC fails to approve or deny the application before the 90-day time period.
- If the OCC denies an application, it would be required to provide a detailed written response to the applicant.
- The OCC's rulemaking authority for national limited payment stablecoin issuers would be limited to regulations that cover: (1) capital requirements, not to exceed six months of operating expenses; (2) liquidity requirements; and (3) governance and risk-management requirements tailored to the business model and risk profile of the issuers.
- If the OCC determines that a national limited payment stablecoin issuer has violated applicable law or regulation, the OCC may issue a temporary order requiring the issuer to: (1) cease and desist from any such violation; and (2) take affirmative action to prevent or remedy such violation. No other enforcement actions, such as civil money penalties, are specified.
- The OCC is authorized to supervise, examine and regulate the legal entity that issues payment stablecoins only (*i.e.*, not also the legal entity's affiliates).

#### **ACCESS TO FEDERAL RESERVE BANK SERVICES FOR NATIONAL LIMITED PAYMENT STABLECOIN ISSUERS**

- The Stablecoin TRUST Act would entitle national limited payment stablecoin issuers (but not money transmitting businesses) to a master account at one of the Federal Reserve Banks and access to Federal Reserve Bank services<sup>6</sup> and deposit accounts.<sup>7</sup> The act would not entitle national limited payment stablecoin issuers, however, to discount window access.

#### **REGULATION OF IDI PAYMENT STABLECOIN ISSUANCE**

- The Stablecoin TRUST Act would add issuance of payment stablecoins as a corporate power for national banks under a new 12 USC § 24(Twelfth).
- The Stablecoin TRUST Act would provide an option for an IDI to segregate (presumably in an operating subsidiary of the IDI) its payment stablecoin issuance and reserve asset management activities from its other activities (such as lending).
- An IDI that elects to segregate its payment stablecoin activities would be subject to the same tailored regulatory standards (which should, presumably, include tailored capital standards) as a national limited payment stablecoin issuer, and would remain subject to regulation examination and supervision by the appropriate Federal banking agency.<sup>8</sup>

#### **RESERVE ASSET REQUIREMENTS**

- The bill would require national limited payment stablecoin issuers to maintain reserve assets: (1) with a market value equal to not less than 100% of the par value of the payment stablecoins outstanding; and (2) that are cash and cash equivalents (including money market mutual funds)<sup>9</sup> or level 1 high-quality liquid assets<sup>10</sup> denominated in U.S. dollars. Presumably this standard also would apply to an IDI that segregates payment stablecoin activities in an operating subsidiary.

- The OCC, under its limited rulemaking authority to issue liquidity requirements and certain other regulations, presumably could set concentration limits within permissible reserve assets for national limited payment stablecoin issuers and IDI operating subsidiaries engaging in such limited activities.

#### **PUBLIC DISCLOSURE REQUIREMENTS**

- All payment stablecoin issuers (including money transmitting businesses) would be required to publicly disclose in a filing with the Secretary of Treasury and make available on the Treasury website:
  - Assets backing the payment stablecoin (monthly).
  - Redemption policies, including policies on whether redemption requests will be met on demand or with a time lag.
  - Attestations and audit results by a registered public accounting firm (quarterly).
  - Attestations that the actual assets backing the payment stablecoin do not materially diverge from that disclosed.
- The bill would empower the Secretary of the Treasury to promulgate regulations to develop a template for the disclosures that are clear, complete and understandable.

#### **PRIVACY PROTECTIONS**

- The Stablecoin TRUST Act would adopt certain data privacy protections for all convertible virtual currency transactions (not only those that meet the payment stablecoin definition). Specifically, the Stablecoin TRUST Act would limit the Secretary of Treasury's ability to collect or mandate the collection of nonpublic information unless it is: (1) particularly described in a search warrant granted by a judge upon a finding of probable cause that one or more of the participants to the transaction committed or is committing a crime; or (2) voluntarily provided by a customer of a financial institution, business, or other third party and held for a legitimate business purpose by the financial institution, business, or other third party.
- The Stablecoin TRUST Act also would subject national limited payment stablecoin issuers to privacy rules under Title V of the Gramm-Leach-Bliley Act.<sup>11</sup>

#### **SECURITIES LAWS**

- Payment stablecoins would be exempted from the definition of "security" for purposes of the Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940 and Investment Advisers Act of 1940.
- In addition, a "payment stablecoin issuer"<sup>12</sup> would be exempted from the definition of "investment company" under the Investment Company Act of 1940 and "investment adviser" under the Investment Advisers Act of 1940.

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<sup>1</sup> Available [here](#).

<sup>2</sup> The Stablecoin TRUST Act defines “payment stablecoin” to mean a convertible virtual currency that that—(A) is designed to maintain a stable value relative to a fiat currency or currencies; (B) is convertible directly to fiat currency by the issuer; (C) is designed to be widely used as a medium of exchange; (D) is issued by a centralized entity; (E) does not inherently pay interest to the holder; and (F) is recorded on a public distributed ledger.

<sup>3</sup> Available [here](#).

<sup>4</sup> “Money transmitting business” is defined in the Stablecoin TRUST Act by reference to 31 U.S.C. § 5330, which defines “money transmitting business” to mean any business other than the United States Postal Service which—(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers’ checks, and other similar instruments or any other person who engages as a business in the transmission of currency, funds, or value that substitutes for currency, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system; (B) is required to file reports under 31 U.S.C. § 5313; and (C) is not a depository institution (as defined in 31 U.S.C. § 5313(g)).

<sup>5</sup> 12 U.S.C. § 1813(c)(2).

<sup>6</sup> The Stablecoin TRUST Act references those services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. § 248a(b)), which are currency and coin services; check clearing and collection services; wire transfer services; automated clearinghouse services; settlement services; securities safekeeping services; Federal Reserve float; and any new services which the Federal Reserve System offers, including but not limited to payment services to effectuate the electronic transfer of funds.

<sup>7</sup> 12 U.S.C. § 342.

<sup>8</sup> The intent of the provision appears to be to (1) limit the federal banking requirements applied to the payment stablecoin issuing entity to the OCC’s requirements applicable to national limited payment stablecoin issuers and (2) make the insured institution’s federal bank regulator responsible for monitoring for compliance with the tailored requirements.

<sup>9</sup> The term “cash and cash equivalents” is defined to mean United States coins and currency as described in 31 U.S.C. § 5103, any “deposit” as defined in 12 U.S.C. § 1813 with an insured depository institution, and any “cash equivalent” as defined in 12 CFR 220.2 (securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds).

<sup>10</sup> The term “level 1 high-quality liquid asset” is defined by reference to 12 CFR 249.20(a) and is limited to (1) Federal Reserve Bank balances; (2) foreign withdrawable reserves; (3) a security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury; (4) a security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government, provided that the security is liquid and readily marketable; (5) a security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, European Community, or a multilateral development bank, that is: (i) assigned a zero percent risk weight under subpart D of Regulation Q (12 CFR part 217) as of the calculation date; (ii) liquid and readily-marketable; (iii) issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and (iv) not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or (6) a security issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity that is not assigned a zero percent risk weight under subpart D of Regulation Q (12 CFR part 217), where the sovereign entity issues the security in its own currency, the security is liquid and readily marketable, and the relevant institution holds the security in order to meet its net cash outflows in the jurisdiction of the sovereign entity, as calculated under subpart D of part 249.

<sup>11</sup> 15 U.S.C. §§ 6801 et seq.

<sup>12</sup> “Payment stablecoin issuer” is undefined in the current draft of the Stablecoin TRUST Act.