REGULATING CENTRALIZED STABLECOINS: COMPARING MICAR AND THE GENIUS ACT

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Abstract

The stablecoin market has exploded from niche trading instruments to a $250 billion sector, yet this growth has occurred largely in a regulatory vacuum that favors issuers over consumers. This Essay conducts the first analysis of how the European Union's Markets in Crypto-Assets Regulation ("MiCAR") and the recently enacted U.S. Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act") address the governance of stablecoins from a private law perspective.

Through our extensive study of major stablecoin issuers Circle and Tether, we identify four critical private law deficiencies: wildly asymmetrical terms of service, ambiguous customer rights in digital assets, tenuous redemption systems, and perilous standing for coin holders in issuer bankruptcy. We also show that, despite the availability of straightforward private ordering solutions, market leaders have failed to adopt adequate protections for their customers.

Our comparative analysis reveals that while both MiCAR and the GENIUS Act represent substantial regulatory advances, they employ markedly different approaches. MiCAR emphasizes comprehensive conduct obligations and strict liability regimes, while the GENIUS Act focuses on operational requirements and unprecedented bankruptcy protections. The success of these regulatory interventions will ultimately depend on how effectively they remedy the private law shortcomings we identified, the content of future agency rulemaking, and the interaction of these new rules with the evolving dynamics of the stablecoin market.

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INTRODUCTION

In June 2025, the stablecoin giant Circle's initial public offering on the New York Stock Exchange saw shares surge 45% on the first day of trading, with investors clamoring for a stake in the stablecoin sector.[1] This landmark event underscored just how far stablecoins have come from their origins as niche trading instruments to becoming a $250 billion market.[2] Yet this explosive growth has occurred largely in a regulatory vacuum, with stablecoin holders

[1] *See* Circle Internet Group, Inc., Circle Announces Pricing of Upsized Initial Public Offering, BUSINESS WIRE (June 4, 2025), https://investor.circle.com/news/news-details/2025/Circle-Announces-Pricing-of-Upsized-Initial-Public-Offering/default.aspx; Steve Gelsi, Circle's Stock Is Having Another Big Day: What the Blockbuster IPO Has Meant for Other Cryptocurrency Plays, Morningstar/MarketWatch (June 6, 2025), https://www.marketwatch.com/story/circles-stock-is-having-another-big-day-what-the-blockbuster-ipo-has-meant-for-other-cryptocurrency-plays-7813878d (visited July 29, 2025).

[2] Morgan Stanley, Stablecoins Could Change How Money Moves, Morgan Stanley (June 13, 2024), https://www.morganstanley.com/insights/articles/stablecoins-change-how-money-moves (visited July 29, 2025).

operating under contractual frameworks that systematically favor issuers and leave consumers exposed to significant risks.[3]

The regulatory response has finally arrived: the European Union ("EU") has enacted extensive stablecoin rules within the 2023 Markets in Crypto-Assets Regulation ("MiCAR"),[4] while the United States has just enacted (signed into law as recently as July 18, 2025[5]) federal legislation through the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act").[6] This Essay conducts the first preliminary analysis of how these two major regulatory frameworks approach the governance of centralized stablecoins from a private law perspective.[7]

At their core, stablecoins are digital assets engineered to maintain a stable value relative to a reference asset or basket of assets (commonly referred to as the "peg").[8] The most prominent stablecoins, Tether's USDT and Circle's USDC, are dollar-pegged in that they maintain a 1:1 relationship with the U.S.

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[3] *See generally* Brookings Institution, What Are Stablecoins, and How Are They Regulated?, by Jack Spira & David Wessel, The Hutchins Center Explains (June 6, 2025, updated) (visited July 29, 2025); Christopher J. Waller, Reflections on a Maturing Stablecoin Market, speech at A Very Stable Conference, San Francisco, California (Feb. 12, 2025), Federal Reserve Board, https://www.federalreserve.gov/newsevents/speech/waller20250212a.htm (visited July 29, 2025).

[4] Markets in Crypto-Assets Regulation (MiCAR / MiCA) Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets ("MiCA" or "MiCAR"), L 150, 9 June 2023, at 40–205, in force and applicable as of 30 December 2024.

[5] White House, Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law (July 18, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/ (visited July 29, 2025).

[6] Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025, S. 1582, 119th Cong. (enacted July 18, 2025) ("GENIUS Act").

[7] Both MiCAR and the GENIUS Act primarily contemplate stablecoins with identifiable issuers—what this Essay terms "centralized stablecoins"—when establishing their regulatory frameworks. While both regulatory regimes acknowledge the existence of "decentralized stablecoins" that operate without traditional corporate issuers through automated protocols, neither law attempts to directly regulate these types of coins. Instead, MiCAR and the GENIUS Act instruct certain administrative agencies to study and monitor algorithmic stablecoins and decentralized systems for possible future legislation. Given this legislative focus on issuer-based models, this Essay concentrates its comparative analysis on *centralized stablecoins*. This approach is further justified by the need to compare like regulatory frameworks: while MiCAR encompasses broader digital asset exchanges and service providers, the GENIUS Act addresses only stablecoins. To ensure a meaningful one-to-one comparison of how these two jurisdictions approach similar regulatory challenges, we limit our analysis to the stablecoin-specific provisions that both laws prioritize—namely, those governing centralized stablecoin issuers and their relationships with holders.

[8] *See* Kara Bruce, Christopher K. Odinet, & Andrea Tosato, The Private Law of Stablecoins, 54 ARIZ. ST. L.J. 1073, 1090 (2022).

dollar.[9] The mechanisms used to achieve this price stability vary considerably across stablecoins, with some relying on traditional reserve-backed models where issuers hold assets and commit to mint and redeem coins at predetermined rates.[10] Still other stablecoins use algorithmic approaches that adjust coin supply based on market conditions and yet others use dual-coin structures designed to absorb volatility through the trading of secondary tokens.[11]

These structural differences have important implications for the business models stablecoin issuers pursue. Revenue strategies range from charging transaction fees for minting and redemption to actively trading the stablecoin itself.[12] They also include using reserve assets as investment capital, as well as pursuing loss-leader strategies that channel users into an issuer's broader ecosystems of products and services.[13] The shift in U.S. monetary policy since 2022, which raised interest rates from near zero to over 4%,[14] has particularly transformed the economics of reserve-backed stablecoins like Tether and Circle, allowing some to generate substantial profits simply by holding short-term Treasury securities.[15]

The expanding use cases for stablecoins underscore their growing economic significance. Beyond their original use as trading instruments for other types of digital assets, stablecoins now serve as the preferred settlement medium in decentralized finance (so-called "DeFi") protocols, facilitate approximately $6.3 trillion in annually cross-border payments, and, albeit still relatively small, are increasingly used for both institutional and retail payment applications.[16]

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[9] *See id.* at 1093-94. We note that some stablecoins are pegged to precious metals like gold, but they are far smaller in market volume. *Id.* at 1094.

[10] *Id.* at 1094-98 (describing the various methods used to maintain the peg).

[11] *Id.*

[12] *Id.* at 1098-99.

[13] *Id.*

[14] *Has the Transmission of U.S. Monetary Policy Changed Since 2022?*, IMF Working Paper No. 129, 2024 (International Monetary Fund, June 21, 2024), https://doi.org/10.5089/9798400281051.001.A001 (visited July 29, 2025) ("As inflation reached its highest level since the mid-1980s, in March 2022 the Federal Reserve made the first of a series of interest rate hikes. In the next 19 months, the federal funds rate increased from zero to over five percent.").

[15] Nate Wolf, *Stablecoins Are on the Rise. Bond Investors Should Pay Attention*, Barron's (July 12, 2025), https://www.barrons.com/articles/stablecoins-risk-treasury-yields-demand-109f49bf (visited July 29, 2025); Bradley Peak, *Tether Made $5.2B in 2024: Here's How Stablecoins Make Money*, Cointelegraph (July 2, 2025), https://cointelegraph.com/explained/tether-made-52b-in-2024-heres-how-stablecoins-make-money (visited July 29, 2025).

[16] See Bruce, Odinet, & Tosato, *supra* note 8, at 1106-07; see also RebelFi, Cross-Border Payments Are Broken: How DeFi Infrastructure Can Fix Banking's $150B Problem, Medium

This growth trajectory has attracted the attention of major financial institutions and, as is the topic of this Essay, has prompted regulatory responses on both sides of the Atlantic.[17]

More specifically, the parallel enactments of the EU's MiCAR and the US' GENIUS Act presents an opportunity to examine how these different and economically important jurisdictions approach the fundamental challenges posed by stablecoin innovation.[18] However, the success of these public law interventions critically depends on how well they address the fundamental private law deficiencies that have developed largely unchecked in the current stablecoin market.[19]

Part I of this Essay draws upon our extensive study (both in past[20] and in forthcoming work[21]) into the corporate/transactional structures and their contractual terms of service of the major stablecoin issuers Circle and Tether to identify four critical pressure points.[22] First, we identify the wildly asymmetrical provisions in issuer terms of service that systematically favor issuers over stablecoin holders, creating a lopsided allocation of risk and limiting (or eliminating) consumer recourse.[23] Second, we analyze the ambiguous and often tenuous nature of the rights of stablecoin holders in their digital assets, revealing gaps between what these firms say in their marketing on the one hand and legal

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(July 2, 2025), https://medium.com/@rebelfi/cross-border-payments-are-broken-how-defi-infrastructure-can-fix-bankings-150b-problem-3356e949fe09 (visited July 29, 2025); Lucy Ingham, Callum Tyndall, Arinola Lawal & Daniel Webber, The State of Stablecoins in Cross-Border Payments: The 2025 Industry Primer, FXC Intelligence (July 17, 2025), https://www.fxcintel.com/research/reports/ct-state-of-stablecoins-cross-border-payments-2025 (visited July 29, 2025).

[17] Barclays Private Bank, Stablecoins: The New Generation of Financial Infrastructure (July 2025), https://privatebank.barclays.com/insights/stablecoins-the-new-generation-of-financial-infrastructure-07-2025/ (visited July 29, 2025); MacKenzie Sigalos & Jordan Smith, *Stablecoin Adoption Accelerates as Visa, Mastercard, Circle, and JPMorgan Expand Collaborations*, CNBC (June 28, 2025), https://www.cnbc.com/2025/06/28/stablecoin-visa-mastercard-circle-jpmorgan.html (visited July 29, 2025); Rosalia Mazza, B*ig Banks Consider Joint Stablecoin to Counter Growing Crypto Competition*, FinTech Weekly (May 26, 2025), https://www.fintechweekly.com/magazine/articles/big-banks-consider-joint-stablecoin-crypto-competition (visited July 29, 2025); *see also supra* notes 4 and 6 and accompanying citations.

[18] *See supra* notes 4 and 6.

[19] See *infra* Part I and accompanying discussion.

[20] *See generally* Bruce, Odinet, & Tosato, *supra* note 8 (conducting the first comprehensive private law analysis of stablecoins).

[21] *See* Christopher K. Odinet & Andrea Tosato, *Digital Commercial Law: Private Law in a World of Tokens, Platforms, and Automation* (forthcoming 2026 Oxford University Press) (manuscript on file with authors).

[22] *See infra* Part I.

[23] *See infra* Part I.

reality on the other.[24] Third, we interrogate the redemption mechanisms that form the backbone of these stablecoins, documenting how surprisingly aggressive contractual limitations seem to undermine the very stability these instruments promise to provide.[25] Finally, we look to stablecoin holders' highly precarious position in the event of Circle or Tether's insolvency, where unclear priority rights and inadequate asset segregation expose consumers to potentially devastating losses.[26] With that foundation laid, Part II proffers a series of private ordering solutions that these stablecoin issuers could adopt with relative ease in order to address these pressure points, ranging from special purpose vehicles to incorporation under bespoke charters. To date, neither Circle nor Tether have chosen to adopt any of these ameliorative structures.[27] Lastly, against the backdrop of our identified private law deficiencies and issuer inaction, in Part III we undertake a comparative analysis of how MiCAR and the GENIUS Act attempt to address these four fundamental problems through regulatory intervention.[28] By examining the convergences (and divergences) in these two major pieces of legislation, we aim to assess their effectiveness in remedying the identified shortcomings and to highlight the broader challenges facing policymakers and regulators as they continue to navigate (and regulate) the stablecoin landscape.[29]

I. PRIVATE LAW DEFICIENCIES IN CENTRALIZED STABLECOINS

Drawing upon our extensive study of the corporate structures and contractual frameworks governing USDT (Tether) and CUSDC (Circle), the following identifies four critical pressure points that systematically disadvantage stablecoin holders and ultimately undermine the promise of stablecoins. We observe that these deficiencies reveal a troubling disconnect between the public-facing representations that stablecoin issuers make and what the law actually provides.

A. Asymmetrical Terms of Service

First, the contracts used by both Tether and Circle establish profoundly lopsided relationships.[30] They systematically favor the issuers while exposing

[24] *See infra* Part I.
[25] *See infra* Part I.
[26] *See infra* Part I.
[27] *See infra* Part II.
[28] *See infra* Part III.
[29] *See infra* Part III.
[30] As of this writing, the Tether legal documents we studied were last updated on January 27, 2025, which entailed a British Virgin Islands choice of law clause. See Tether, Legal, Tether

stablecoin holders to extensive risks with little to no recourse. Both companies use comprehensive shields through layers of disclaimers, liability releases, and risk-shifting clauses while simultaneously granting themselves sweeping discretionary powers.

We observed that Tether's approach is particularly aggressive. Its Terms of Service establish that clients "irrevocably agree and acknowledge" that Tether assumes no liability for losses across seventeen enumerated categories, ranging from user breaches to government seizures to forks in the blockchain.[31] The company also reserves extraordinary unilateral powers to modify, suspend, or terminate services without notice at its "sole discretion,"[32] while clients must provide extensive ongoing warranties regarding their compliance with anti-money laundering laws, legal capacity, and account protection.[33] Any breach (whether intentional or inadvertent) provides Tether with grounds to freeze assets and terminate accounts.[34]

Circle's web of contracts, while we think less draconian, achieves similar results.[35] The company disclaims all liability for indirect, special, or consequential damages, while requiring users to indemnify Circle from any claims, including attorneys' fees and regulatory penalties.[36] Circle reserves the right to "change,

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Terms of Service (last updated Jan. 27, 2025), https://tether.to/en/legal/ (last visited July 30, 2025) [hereinafter Tether ToS]. Also, Tether organizes its legal and policy documentation across six separate agreements: user terms, privacy policy, anti-spam guidelines, law enforcement cooperation procedures, cookie policy, and risk disclosure statement [hereinafter Tether Risk Disclosure Statement]. Additionally, the company provides supporting details through its Knowledge Base resources and Relevant Information Document. See Tether International, S.A. de C.V., Relevant Information Document, (Jan. 27, 2025), https://tether.to/public/Relevant_Information_Document_-_Tether_International,_S.A._de_C.V..pdf (last visited July 31, 2025) [hereinafter Tether RID]. As for Circle, the user agreement we studied was last updated on July 1, 2024, which contained a Delaware choice of law clause. *See* Circle Internet Financial, LLC, Legal & Privacy, Circle Mint Account User Agreement, Circle (last updated July 1, 2024), https://www.circle.com/legal/user-agreement (last visited July 30, 2025) [hereinafter Circle ToS]. Circle uses a similar approach to Tether in that it compartmentalizes its contractual framework across multiple interconnected agreements. *See id.* This includes specific terms just for the USDC stablecoin [hereinafter Circle USDC Terms].

[31] Tether ToS, *supra* note 30, at ¶ ¶15, 12 ("Tether makes no representations, warranties, covenants or guarantees to you of any kind and, to the extent permitted by applicable Laws, Tether expressly disclaims all representations, warranties, covenants or guarantees, express, implied or statutory, with respect to the Site and the Services. The Site and the Services are offered strictly on an as-is, where-is basis . . .").

[32] Tether ToS, *supra* note 30, at ¶ 2.

[33] Tether ToS, *supra* note 30, at ¶¶ 8, 11.

[34] Tether ToS, *supra* note 30, at ¶¶ 2, 16.

[35] *See generally* Circle ToS, *supra* note 30.

[36] *See* Circle ToS, *supra* note 30, at §§ 22, 23.

suspend, or discontinue any aspect of the Services at any time . . . without notice and without liability."[37] Relatedly, it maintains broad authority to block addresses, freeze assets, and terminate accounts based on its "sole discretion."[38]

Most strikingly, both Tether and Circle explicitly disclaim any fiduciary or similar duties, while operating what are effectively custodial services for billions of dollars in user assets.[39] The sum result are contractual relationships where stablecoin holders bear all operational, regulatory, and market risks while surrendering traditional legal remedies through mandatory arbitration clauses and comprehensive liability waivers.[40]

B. Ambiguous Rights in Digital Assets

Second, we note that the nature of Tether and Circle stablecoin holders' rights in their digital assets reveals fundamental ambiguities that create significant vulnerabilities, particularly for USDT and USDC held in issuer-hosted wallets. Moreover, these uncertainties are compounded by systematic discrepancies between marketing representations and the reality of the contracts to which coin holders agree.

For tokens held in Tether's platform embedded digital wallets, the company explicitly disclaims that it is providing any kind of custodial service, stating that deposited digital assets are "not segregated assets held in your name or for your benefit but reflected only in the books and records of Tether."[41] This language, combined with provisions allowing commingling of user deposits,[42] strongly suggests a debtor-creditor relationship rather than a bailment. In practical terms, this means that customers have contractual claims rather than property rights in their deposited stablecoins.[43]

Circle's framework presents even more contradictory guidance as to the rights of holders in their stablecoins. On the one hand, the company states that users "own the Digital Currencies held in [their] Hosted Wallet"[44] and that "title to all of your Supported Digital Currency will remain with you at all times."[45] At

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[37] *See* Circle ToS, *supra* note 30, at § 16.

[38] *See* Circle ToS, *supra* note 30, at § 19.

[39] *See* Tether ToS, *supra* note 30, at ¶ 14; see also Circle ToS, supra note 30, at § 3.

[40] For the mandatory, binding arbitration provisions and class action waivers, see Tether ToS, supra note 30, at ¶ 7; see also Circle ToS, supra note 30, at § 26.

[41] *See* Tether ToS, *supra* note 30, at ¶ 11.17.

[42] Tether Risk Disclosure Statement, supra note 30, at ¶ 11.

[43] For a more in-depth discussion of the bankruptcy implications, see Bruce, Odinet, & Tosato, *supra* note 8, at 1123-44.

[44] See Circle ToS, *supra* note 30, at § 2.4.

[45] See Circle ToS, *supra* note 30, at § 4.

the same time, however, it simultaneously disclaims being a trust company, fiduciary, or qualified custodian.[46] Perhaps most tellingly, Circle states that "in the event of a Circle bankruptcy we make no representations or warranties as to whether all Supported Digital Currencies held in your Hosted Wallet will be successfully returned to you."[47]

Collectively, these inconsistencies create material uncertainty about whether stablecoins held in Tether and Circle hosted wallets would be protected from the creditors of the issuer should it enter bankruptcy proceedings.

C. Tenuous Redemption Systems

Third, and perhaps most fundamentally, the redemption mechanisms that form the cornerstone of Tether and Circle's stablecoin stability contain extensive limitations that undermine their reliability. Both Tether and Circle market their stablecoins as offering seamless redemption. Tether emphasizes "unparalleled liquidity" while Circle promises tokens are "always redeemable 1:1 for U.S. dollars." In our study, however, we observed that the contractual realities reveal far more restrictive arrangements.

For both issuers, direct redemption is available only to a small subset of pre-approved institutional customers: 882 accounts for Tether and 1,834 for Circle, both as of early 2025. In practical terms, this means that the many more millions of secondary market holders (i.e., those without pre-approved accounts) have no direct redemption rights whatsoever. This means that these holders (which are the vast majority of USDT and USDC holders) must systemically depend on intermediary firms (like exchange companies), whose own liquidity and operational capacity may become constrained during market stress.

Moreover, even for those eligible account holders, redemption rights are subject to extensive discretionary limitations. Tether reserves the right to delay redemptions "if such delay is necessitated by the illiquidity or unavailability or loss of any Reserves," while Circle can "decline to process any redemption without prior notice" and suspend services in its "sole discretion." These provisions function as contractual escape hatches at precisely the moment when the stability mechanism of redemption is most critical.

Our study also revealed that the legal characterization of redemption rights further undermines their reliability. Tethers characterizes redemption as both "a personal, restricted, non-exclusive, non-transferable, non-sublicensable,

[46] See Circle ToS, *supra* note 30, at § 3.
[47] See Circle ToS, *supra* note 30, at § 4.

revocable, limited licence"[48] and "a contractual right personal to [the customer],"[49] thereby creating legal ambiguity about the fundamental nature of these rights while establishing broad grounds for restriction and revocation. Circle's framework, on the other hand, contains internally contradictory provisions. The company simultaneously treats redemption as a non-transferable license,[50] an automatically assigned contract right,[51] and an inherent attribute of the USDC token itself.[52]

D. Perilous Position in Bankruptcy

Fourth and lastly, the position of stablecoin holders in the event of issuer insolvency presents perhaps the most severe vulnerability we encountered in the entire Circle and Tether architectures. Despite holding what they believe to be claims against reserve assets backing their stablecoins, the legal structures for both USDT and USDC provide the most minimal levels of protection in bankruptcy proceedings.

Our analysis of both issuer's contracts suggests that stablecoin holders (even those few with pre-approved accounts directly with the issuers) likely have only unsecured creditor claims, rather than proprietary claims to the reserve assets. Tether explicitly grants itself "sole discretion" over reserve assets and their composition,[53] while characterizing redemption rights as contractual obligations rather than property interests.[54] The company's Risk Disclosure Statement warns that reserves "could be subject to unexpected diminution in value" and are not protected by any insurance.[55]

Circle's structure appears more sophisticated, with reserves held in segregated accounts described as being maintained "on behalf of, and for the benefit of, Users."[56] However, the legal reality is more complex. We discovered that approximately 90% of USDC reserves are held in the Circle Reserve Fund, which is managed by BlackRock.[57] Under this management structure, Circle (not

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[48] *See* Tether ToS, *supra* note 30, at ¶ 2.

[49] *See* Tether ToS, *supra* note 30, at ¶ 4.1.

[50] *See* Circle ToS, *supra* note 30, at § 33; see also See Circle USDC Terms, *supra* note 30, at § 12.

[51] *See* Circle USDC Terms, *supra* note 30, at §§ 2, 13, 27.

[52] *See* Circle USDC Terms, *supra* note 30, at § 2.

[53] *See* Tether RID, *supra* note 30, at ¶ 3.

[54] *See* Tether ToS, *supra* note 30, at ¶ 4.1.

[55] Tether Risk Disclosure Statement, *supra* note 30, at ¶¶ 4, 4.5

[56] *See* Circle USDC Terms, *supra* note 30, at § 1.

[57] Circle Internet Group, Inc., Form S-1 Registration Statement 23 (SEC Accession No. 0001193125-25-070481), filed Apr. 1, 2025, available at

individual USDC holders) appears to be the only person permitted to purchase fund shares.[58] This, combined with Circle's disclaimers of trust, fiduciary, and qualified custodian status,[59] calls into question whether customers retain only contractual claims against Circle rather than direct property rights in the underlying assets.

For secondary market holders of USDC and USDT, the insolvency risk is even more acute. These holders, who comprise the vast majority of stablecoin holders, have no direct relationship with issuers and therefore likely have no standing to file claims in bankruptcy proceedings.[60] Therefore, it seems to us that they would be entirely dependent on whatever recovery their intermediary platforms might achieve as unsecured creditors, creating multiple layers of credit risk.

This analysis reveals a troubling paradox: while Tether and Circle benefit from widespread circulation and network effects generated by millions of holders, they bear minimal legal obligations to the vast majority of their customers. The result is a systematic socialization of benefits to issuers while privatizing risks to holders. We offer that this dynamic demands solutions—via either private ordering or regulation—in order to ensure the sustainable development of the stablecoin market. We address each of these in turn in the following Parts II and III.

II. PRIVATE ORDERING SOLUTIONS AND ISSUER DISINTEREST

The private law deficiencies identified in the prior discussion are not inevitable features of stablecoins. Rather, they represent the design choices of issuers like Tether and Circle, driven in large part by market incentives. In this Part II we demonstrate that superior private ordering is possible within the confines of established law. The solutions we offer could address each private law vulnerability that we identified. The contractual and structural problems plaguing centralized stablecoins admit relatively straightforward solutions, which can be achieved through amendments to terms of service and

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https://www.sec.gov/Archives/edgar/data/1876042/000119312525070481/d737521ds1.htm (last visited July 31, 2025).

[58] BlackRock Funds, Circle Reserve Fund, Prospectus (Aug. 28, 2024), at 11, https://www.blackrock.com/cash (on file with the U.S. Securities and Exchange Commission) ("Shares are only available for purchase by Circle Internet Financial, LLC and Circle Internet Financial Europe SAS.").

[59] *See* Circle ToS, *supra* note 30, at § 3.

[60] For the definition of a "claim" in bankruptcy, see 11 USC § 101(5); see also see Bruce, Odinet, & Tosato, *supra* note 8, at 1120-21 (discussing bankruptcy basics in the context of the financial failure of an asset-backed stablecoin).

accompanying legal restructuring. Doing so is all within the sole power of the issuers. However, the persistent failure of market leaders to adopt these solutions, despite their availability, suggests a market failure that may justify regulatory intervention.

A. Expanding Contractual Privity

First, the limitation in the number of direct contractual relationships to only small cadres of institutional customers could be addressed through graduated tiers of access. Stablecoin issuers could implement differentiated onboarding tracks for various customer categories.

They could also simply adopt inclusive models like those used by investment platforms like Robinhood. Such an expansion that allows all holders to have direct privity with their issuer would provide millions of current secondary market holders with direct contractual relationships and corresponding legal protections.

B. Rebalancing Contractual Terms

Second, the extreme asymmetries in current terms of service could be remedied through just a modest recalibration. At a minimum, issuers could eliminate provisions granting themselves unlimited discretion to suspend services without notice. They could also implement graduated response mechanisms during periods of operational stress, rather than shutting down customer services completely.

More ambitiously, a more balanced drafting of the contracts could impose mutual obligations between customer and issuer. These could include mandatory disclosures about asset reserves, the giving of advance notice for material modifications to the various terms of services and related agreement, and the imposition of standards for liability based on gross negligence (rather than the current blanket disclaimers of any and all liability).

C. Strengthening Redemption Rights

Third, rather than characterizing redemption as an incoherent amalgam of revocable licenses and personal rights, issuers could establish it as a clear contractual duty. In other words, they could provide in their contracts that each stablecoin entails an enforceable claim to receive one dollar, exercisable by any holder who completes reasonable verification requirements. While operational limitations may be necessary, redemption thresholds and processing delays should be designed only to preserve the core stability function. The ability to

suspend an account (and redemption) should be governed by transparent criteria and defined timelines for resolution.

D. Creating Proprietary Rights in Reserves

Lastly, although we admit that the absence of property rights for stablecoin holders in reserve assets presents greater complexity, we think this issue remains addressable through several established mechanisms.[61] For example, issuers could establish reserves in bankruptcy-remote special purpose vehicles with independent trustees managing the reserve assets for the benefit of token holders.[62]

For stablecoins backed by gold or other commodifies, tokens could be structured as electronic warehouse receipts under UCC Article 7.[63] In doing so, this would create negotiable documents of title that embody proprietary claims. Issuers could also adopt specialized corporate forms like limited purpose trust companies that impose fiduciary obligations and regulatory oversight that supports the custodial treatment of reserves.

Finally, the UCC Article 8 framework offers an opt-in mechanism whereby issuers could treat reserves as "financial assets"[64] in "securities accounts."[65] Doing so grants customers property entitlements[66] that protect their rights in the reserves from creditors of the issuer.[67]

III. REGULATORY RESPONSES AND COMPARISON

To date, market forces have not driven centralized stablecoin issuers like Tether and Circle to adopt adequate private law protections for their coin holders. This final portion of our Essay examines how MiCAR and the GENIUS Act attempt to address the four critical vulnerabilities we identified in Part I. While both laws certainly represent significant regulatory advances, they use markedly different approaches and achieve varying degrees of success in addressing our private law deficiencies.[68]

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[61] *See* Bruce, Odinet, & Tosato, *supra* note 8, at 1149-59.

[62] Bruce, Odinet, & Tosato, *supra* note 8, at 1149-50.

[63] Bruce, Odinet, & Tosato, *supra* note 8, at 1151-54 (explaining the steps to accomplishing this transactional structure).

[64] U.C.C. § 8-102(9).

[65] U.C.C. § 8-501(a).

[66] U.C.C. § 8-102(17).

[67] U.C.C. § 8-503. For additional provisions on the rights and nature of a securities entitlement, see U.C.C. § 8-501-11.

[68] *See infra* Part III and accompanying discussion.

A. Regulatory Architectures

The two laws adopt distinct categorical approaches to stablecoin regulation. **MiCAR** creates two separate digital assets categories: asset-referenced tokens (ARTs) and e-money tokens (EMTs).[69] ARTs are digital assets that reference assets other than a single official currency.[70] This category includes stablecoins pegged to commodities or a basket of currencies. EMTs are digital assets that reference only a single fiat currency.[71] This category encompasses stablecoins that are pegged to a single fiat currency.

In turn, the **GENIUS Act** establishes a unified category of stablecoins called "payment stablecoins."[72] These are digital assets that are "designed to maintain stable value relative to a reference asset and are readily redeemable for fiat currency."[73] With this legislation, the focus is on functional redeemability,[74] rather than MiCAR's focus on the nature of the reference asset.

B. Addressing Asymmetrical Contracts

Both MiCAR and the GENIUS Act attempt to tackle the power imbalances between issuers and holders of stablecoins. However, they are quite different in the comprehensiveness and the ambitiousness with which they do so. **MiCAR** directly deals with contractual asymmetries in a number of ways. First, it imposes on fundamental conduct obligations on issuers of ARTs, requiring them to act in a manner that is honest, fair, and professional and to communicate in a manner that is fair, clear, and that does not mislead.[75]

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[69] *See* MiCAR, *supra* note 4, arts. 3(1)(6), (7).

[70] *Id.* art. 3(1)(6).

[71] *Id.* art. 3(1)(7)

[72] GENIUS Act § 2(22)(A), S. 1582, 119th Cong. (2025).

[73] *Id.* at § 22(A)(i).

[74] *See id.* § 2(22)(A)(ii)

[75] MiCAR, *supra* note 4, arts. 27(1), 53(1). For issuers of EMTs, the obligation to act honestly, professionally, and fairly comes from the imposition of special standards of conduct by EU member states who, under the Electronic Money Directive, authorize these issuers to operate. See id. at art. 48(1) (requiring issuer of e-money tokens to be "authorized as a credit institution or an electronic money institution…"); see also Directive 2009/110/EC of the European Parliament and of the Council of 16 Sept. 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, art. 3(1), 2009 O.J. (L 267) 7 (EC) (requiring that those seeking authorization as an electronic money institution to follow the requirements in Article 5 of the Payment Services Directive); see Directive 2007/64/EC of the European Parliament and of the Council of 13 Nov. 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, art. 5, 2007 O.J. (L 319) 1 (EC) ("For

Complementing these duties, MiCAR establishes a strict liability regime for any misleading information that might be contained in any white papers, making both ART and EMT issuers liable for any stablecoin holder losses due to incomplete or misleading disclosures.[76] Any contractual provision attempting to exclude or limit this liability is "deprived of legal effect."[77] As a result, this provision in MiCAR invalidates any kind of comprehensive liability disclaimers/shield that currently characterize the issuer terms of service we studied in Part I. Lastly, the regulation confirms that existing EU consumer protection legislation, including the Unfair Terms Directive, continues to apply alongside MiCAR's more specific provisions.[78]

The **GENIUS Act**, on the other hand, is more restrained when it comes to policing contract terms. The law focuses instead on primarily operational requirements. The Act prohibits any kind of deceptive marketing that might suggest, to a reasonable person, that the federal government backs an issuer's stablecoins,[79] and it also preserves existing federal and state consumer protection laws that might otherwise apply.[80] However, the GENIUS Act does not impose any kind of affirmative fiduciary or similar duties on issuers, nor does it demand any kind of principles-based standards of conduct comparable to MiCAR. Instead, the GENIUS Act delegates broad rulemaking authority to various

authorisation as a payment institution, an application shall be submitted to the competent authorities of the home Member State. . ."). As part of their standards of conduct requirements, Member States of the EU have generally required that authorized electronic payment institutions act professionally, fairly, and honestly, in the best interests of their customers, or some variation thereof. See, e.g., Consumer Protection Code 2012, § 2.1 (Central Bank of Ireland 2012) (rev. 2015), available at https://www.centralbank.ie/regulation/consumer-protection/consumer-protection-code (A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it . . . acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market"); see also Code monétaire et financier [C. mon. fin.], art. L519-4-1 (Fr.), available at https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032297612/2016-07-01 ("Les intermédiaires en opérations de banque et en services de paiement doivent se comporter d'une manière honnête, équitable, transparente et professionnelle en tenant compte des droits et des intérêts des clients, y compris des clients potentiels" (Intermediaries in banking transactions and payment services must conduct themselves in an honest, fair, transparent, and professional manner, taking into account the rights and interests of clients, including potential clients) (translation added)).

[76] *Id.* arts. 26(1), 52(1)

[77] *Id.* arts. 26(2), 52(2).

[78] *Id.* recital (29)

[79] GENIUS Act § 4(a)(9), S. 1582, 119th Cong. (2025).

[80] *Id.* § 6(c).

federal and state agencies, which potentially allows for the development more robust holder protections in the future.[81]

C. Expanding Direct Legal Relationships

Neither **MiCAR** nor the **GENIUS Act** mandates direct contractual relationships between issuers and every one of their stablecoin holders. Instead, both laws create statutory rights and obligations that establish direct legal connections between holders and issuers, regardless of whether they have any contractual privity. In effect, MiCAR and the GENIUS Act extend protections to secondary market stablecoin holders who currently lack any direct relationship with their applicable issuers.

Operationally, MiCAR accomplishes this through its comprehensive regulatory duties and liability regimes that apply to all holders of regulated tokens.[82] The GENIUS Act achieves similar results by defining payment stablecoins in terms of issuer obligations and by establishing statutory rights that run with token ownership, rather than depending on contractual relationships.[83]

D. Strengthening Redemption Rights

Both laws substantially reinforce redemption right, although here again they do so through different legal structures, perhaps reflecting distinct regulatory philosophies. **MiCAR** makes redemption an unconditional statutory right that cannot be contractually limited except in very narrow regulatory circumstances. For ARTs, holders have "a right of redemption at all times against the issuers."[84] EMTs must be redeemable "at any moment and at par value."[85] Both provisions explicitly prohibit redemption fees.[86] Moreover, temporary suspensions of redemption are only allowed with regulatory approval and only when justified by financial stability concerns and "having regard to the interests of the holders."[87]

The **GENIUS Act** takes a different approach to redemption through definitional maneuvers in the statute. This is done by defining *payment stablecoins* as digital assets where "the issuer of which is obligated to convert, redeem, or

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[81] *See id.* § 13(a) (requiring each primary federal payment stablecoin regulator, the Secretary of the Treasury, and each State payment stablecoin regulator to promulgate regulations within one year of the passage of the GENIUS Act).

[82] *See supra* Part III.B and accompany discussion.

[83] *See generally* GENIUS Act § 2(22)(A)(ii)(I).

[84] MiCAR, *supra* note 4, art. 39(1).

[85] *Id.* art. 49(4).

[86] *Id.* arts. 39(3) (ARTs), 49(6) (EMTs).

[87] *Id.* arts. 46(4))(ARTs), 55 (applying the ART rule to EMTs by reference).

repurchase for a fixed amount of monetary value."[88] In our view, this language appears to create (albeit imprecisely and inelegantly) a form of "tokenization" whereby the digital asset (the stablecoin) both evidences and embodies the issuer's obligation to respect redemption.[89] We do, however, note a fairly significant hole in the statute's construction in this regard: the GENIUS Act does not explicitly address whether this obligation runs in favor of the owner of the stablecoin or of a person in control of it.[90] As all first year students in Property Law well know, these can of course be very different people, just as one can be the owner of tangible personal property yet someone else may have possession of it.[91]

Lastly, the GENIUS Act operationalizes these rights by requiring issuers to establish "clear and conspicuous procedures for timely redemption"[92] with disclosed fees and advance notice for any changes to the terms for redemption.[93] Critically, the US law removes issuers' unilateral ability to suspend redemptions, although it does allow certain designated regulators to elaborate on what might be permissible discretionary limitations on redemptions.[94]

E. Creating Proprietary Interests in Reserves

Lastly, both laws address the absence of property rights for the stablecoin holders when it comes to the reserve assets. However, here again they address this issue through quite different mechanisms. **MiCAR** creates a fairly comprehensive set of reserve management requirements. This includes a mandatory segregation duty for the reserve assets (no commingling of reserves with assets of the issuer).[95] More specifically, reserves must be kept legally

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[88] GENIUS Act § 2(22)(A)(ii)(I).

[89] For a more comprehensive discussion of tokenization, see Juliet M. Moringiello & Christopher K. Odinet, *The Property Law of Tokens*, 74 FLA. L. REV. 607 (2022); Christopher K. Odinet & Andrea Tosato, *The Intersection of NFTs and Structured Finance*, 103 B.U. L. REV. 1005 (2023); Andrea Tosato, Diane Lourdes Dick, & Christopher K. Odinet, *Debt Tokens*, 173 U. PA. L. REV. 1103 (2025).

[90] GENIUS Act § 2(22)(A)(ii)(I).

[91] *See* Sheldon F. Kurtz, Herbert Hovenkamp, Carol Necole Brown, & Christopher K. Odinet, *Cases and Materials on American Property Law* § 1.4 (2019). To this point, we think that the latter interpretation (favoring the controller over the owner) would align with UCC Article 12's framework for controllable electronic records. *See* U.C.C. § 12-104(e).

[92] GENIUS Act § 4(a)(1)(B)(i).

[93] *Id.* § 4(a)(1)(B)(ii).

[94] *Id.* § 4(a)(1)(B)(i).

[95] MiCAR, *supra* note 4, art. 36(3), 54 (requiring EMT issuers to comply with Article 7(1) of Directive 2009/110/EC). *See* Directive 2009/110, of the European Parliament and of the Council of 16 Sept. 2009, 2009 O.J. (L 267) 7 (EU) (requiring "safeguarding" of funds received in exchange for electronic money under Article 9(1) and (2) of Directive 2007/64/EC). *See* Directive 2007/64, of the European Parliament and of the Council of 13 Nov. 2007, 2007 O.J. (L 319) 1 (EU) (prohibiting commingling and requiring insulation from the issuer's insolvency).

separate from the issuer's estate.[96] MiCAR also requires that reserves be kept in custody with certain authorized kinds of institutions and requires that the investment of reserves be limited to invest highly liquid, low-risk assets.[97] However, MiCAR stops short of granting direct proprietary rights. Instead, it creates quasi-proprietary protection through operational segregation. In the case of an issuer's insolvency, stablecoin holders would indeed likely remain unsecured creditors with claims against a segregated asset pool, but they would face no competition from the issuer's other creditors when it comes to the distribution of those assets.

The **GENIUS Act**, on the other hand, adopts a characteristically American approach by directly amending the Bankruptcy Code to create what we view as unprecedented levels of protection for the stablecoin holders. The new law requires that payment stablecoin reserves be segregated from the custodian's own assets and separately accounted for (though omnibus accounts holding multiple issuers' reserves are permitted),[98] it imposes a number of investment requirements for the reserve assets,[99] and grants stablecoin holders priority over the creditors of any custodians.[100] Most significantly, the law expressly excludes reserves from the bankruptcy estate entirely, thereby creating complete bankruptcy remoteness in law.[101]

Additionally, the GENIUS Act also establishes a comprehensive priority scheme that ensures that all stablecoin holders have standing in bankruptcy proceedings, regardless of the kind (or absence) of contractual arrangements with or related to the issuer.[102] More extraordinarily, the law grants stablecoin holders priority, on a pro rata basis, over all other claims with respect to reserves themselves and also a super-priority for any reserve shortfalls with respect to the issuer's entire estate.[103] This means that their claims rank ahead of even the administrative expenses necessary to operate the bankruptcy proceeding.[104] We,

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[96] *Id.* arts. 36(2), 54 (and applicable provisions of referred EU directives contained therein).

[97] *Id.* arts. 37(3), 38(1), 54.

[98] GENIUS Act § 10(c) (although the GENIUS Act does allow for omnibus accounts that hold multiple issuers' reserves, accompanied by operational requirements).

[99] *Id.* § 4(a)(1)(A)(i)-(viii) (allowing for the reserves to be invested in a mix of low-risk assets).

[100] *Id.* § 10(c).

[101] *Id.* § 11(e) (amending 11 U.S.C. § 541(b) of the Bankruptcy Code to exclude "required payment stablecoin reserves" from bankruptcy estate property).

[102] *Id.* § 11(a)(2) (deeming payment stablecoin holders to hold claims notwithstanding other bankruptcy law definitions, including the definition of a "claim").

[103] *Id.* § 11(a)(1), (d).

[104] *Id.* § 11(d) (amending 11 U.S.C. § 507 to grant payment stablecoin holders "first priority over any other claim, including over any expenses and claims that have priority" under existing bankruptcy priority rules).

as well as others,[105] observe that although the GENIUS Act certainly offer protections to stablecoin holders that would completely insulate stablecoin holders from their issuer's insolvency, they may be overly aggressive. The subordination of administrative expenses to shortfall claims of stablecoin holders claims risks creating administratively insolvent debtors. This, in turn, could make a bankruptcy reorganization unfeasible, ironically harming the very holders the GENIUS Act seeks to protect.

CONCLUSION

In sum, we find that while both MiCAR and the GENIUS Act represent substantial improvements over current market conditions, they reveal different regulatory philosophies and a number of potential challenges when it comes to implementation. They both make a number of noteworthy advances when it comes to addressing the private law deficiencies found in our study and that so heavily characterize the stablecoin market. Of course, the ultimate success of both MiCAR and the GENIUS Act will depend not only on their formal provisions but also on the laws' interaction with both existing legal structures and the evolving dynamics of the stablecoin market.

[105] *See* Adam Levitin, Forcing Bank Deposits to Subsidize Stablecoins: the GENIUS Act, Credit Slips, May 7, 2025, https://www.creditslips.org/creditslips/2025/05/the-genius-acts-insolvency-provisions-crypto-investors-come-ahead-of-bank-depositors.html; *see also* Penelope Christophorou, Stacie Hartman, Michael Luskin, Edwin Smith, & David Wake, The Proposed GENIUS Act Raises Concerns Over Insolvency Provisions, Morgan Lewis & Bockius LLP LawFlash (July 2, 2025), https://www.morganlewis.com/pubs/2025/07/the-proposed-genius-act-raises-concerns-over-insolvency-provisions.