

THE MONEYNESSESS OF STABLECOINS

YALE LAW JOURNAL (forthcoming)

Christopher K. Odinet,[†] *Andrea Tosato*,[‡] & *Yesha Yadav*^{‡‡}

Abstract

Money is omnipresent. Yet defining its fundamental character proves surprisingly difficult. Functional descriptions tell us what money does, not what money is, and they certainly do not explain how something becomes money in the first place. These questions rarely surface in everyday commerce, but they become unavoidable when a new instrument emerges claiming to be money. Stablecoins present precisely this challenge: dollar-pegged digital assets projected to reach \$4 trillion in issuance by 2030 and promising to transform the global payment system.

To determine how effectively stablecoins can serve as money, this Article develops an original framework for “moneyness,” a concept that captures the degree to which an instrument’s legal and institutional architecture enables it to perform monetary functions. To be sure, economists have long theorized moneyness by distilling the attributes that allow diverse assets to function as money within market economies. Financial regulation scholars have advanced this understanding by demonstrating that moneyness is fundamentally a legal phenomenon. They have shown that safety and information insensitivity that characterize reliable money can be achieved only through public law interventions, including deposit insurance, central bank liquidity facilities, prudential supervision, and resolution frameworks. We build on this work to identify a critical yet undertheorized dimension of moneyness: an instrument’s capacity to operate effectively within the domain of private law. The degree to which something functions as money, we argue, depends not only on public protections but also on the measure in which an instrument can ground an enforceable claim, settle obligations, and circulate freely among holders. To that end, we identify four constitutive elements of moneyness: the legal nature and substance of the claim, its safety, its discharge capacity, and its negotiability.

[†] Professor of Law & Mosbacher Research Fellow, Texas A&M University School of Law.

[‡] Professor of Law, Southern Methodist University Dedman School of Law.

^{‡‡} Milton R. Underwood Chair, Associate Dean, and Professor of Law, Vanderbilt University Law School. The Authors thank Blaine Kaplani, Matthew Norton, and Laxmi Rana, (all Texas A&M Law) for their helpful research assistance. All errors belong to the Authors alone.

We begin our analysis by deconstructing the architecture of stablecoins, drawing on the contractual and regulatory frameworks of the two dominant issuers, Tether and Circle, to reveal a significant disconnect between the aspiration to create effective monetary instruments and the legal architecture underlying them. We then apply our framework to assess the moneyness of stablecoins before and after the enactment of the GENIUS Act, the first comprehensive federal stablecoin legislation. We observe that the Act brings genuine improvements yet fails to resolve critical deficiencies (and indeed, it introduces new ones).

Should policymakers seek to enhance the moneyness of stablecoins, we counsel for the adoption of five targeted reforms: Federal Reserve master account access for qualifying issuers, industry-funded insurance for claimholders, a secured interest regime to replace the Act’s flawed bankruptcy provisions, finality rules establishing when stablecoin transfers conclusively discharge obligations, and express tokenization of the stablecoin redemption right. Underlying these proposals is a broader insight: successful financial regulation demands careful attention to the private law foundations that structure the transactions and the claims it seeks to govern.

Table of Contents

INTRODUCTION.....	3
I. MAKING MONEY(NESS)	8
<i>A. Money as Economic and Legal Promise</i>	9
<i>B. Safety and the Architecture of Confidence</i>	12
<i>C. Discharge Capacity and Negotiability</i>	19
<i>D. The Framework of Moneyness</i>	23
II. ARCHITECTURE AND ANALYSIS OF CENTRALIZED STABLECOINS	27
<i>A. Centralized Stablecoins in Theory</i>	27
<i>B. Centralized Stablecoins in Practice</i>	29
1. Issuer Design and Corporate Structure.....	30
2. Stabilization Mechanisms and Reserve Management.....	32
3. Business Models and Incentive Structures.....	33
<i>C. Deconstructing the Private Law Frameworks</i>	34
1. Gatekeeping and Direct Claims	35
2. Asymmetric Terms of Service.....	37
3. Conditional and Revocable Redemption Rights.....	38
4. Property Rights and Bankruptcy Treatment.....	40
<i>D. The GENIUS Act’s Public Law Intervention</i>	42
1. Enhanced Redemption Framework.....	42
2. Reserve Requirements and Custody	43
3. Bankruptcy Protections	45
III: ASSESSING THE MONEYNES OF STABLECOINS	46

<i>A. The Heterogeneity of Stablecoins</i>	46
<i>B. Nature and Substance of the Claim</i>	48
<i>C. Safety</i>	52
1. Along Regulatory Dimensions	52
2. Along Insolvency Dimensions	56
<i>D. Discharge Capacity</i>	60
<i>E. Negotiability</i>	63
IV: IMPROVING THE MONEYNES OF STABLECOINS	65
<i>A. Master Account Access for Stablecoin Issuers</i>	66
<i>B. Private Insurance</i>	68
<i>C. Better Insolvency Rules</i>	69
<i>D. Finality</i>	70
<i>E. Clarification of Redemption Rights</i>	71
CONCLUSION	71

INTRODUCTION

Money is a fact of life. We earn it, spend it, save it, and worry about it. Yet for all its omnipresence, money remains strangely elusive when we try to pin down exactly what it is. Ask a child, and she might describe money as something she saves in her piggy bank to buy something bigger later. An economist might define money by reciting the seminal textbook triad: a medium of exchange, a unit of account, a store of value.¹ But these functional definitions, while serviceable, obscure a deeper puzzle. They tell us what money *does*, not what money *is*. And they certainly do not explain how something *becomes* money in the first place. This Article develops a legal framework for addressing what makes something money and applies it to a modern monetary innovation—stablecoins: digital assets designed to maintain a stable price relative to a reference asset such as the U.S. dollar.

We take money for granted precisely because it works. The dollar bill passes from hand to hand without interrogation. The direct deposit lands in our bank account, and we trust that it will be there tomorrow. The Venmo payment arrives, and we spend it without a second thought. But these seemingly seamless operations depend on a sophisticated architecture of law and regulation that most people never see, or rarely consider, until something goes wrong: a bank fails, a payment is reversed, or a provider freezes an account.² What makes that piece of paper in your wallet categorically different from any other piece of paper? What legal rules and regulatory protections must operate in the background to transform a digital ledger entry at your bank, or a balance in your Venmo wallet, into something you can confidently treat as yours? These

¹ See *infra* Part I.D.

² See *infra* Part I.

questions of institutional design rarely surface in everyday commerce. But they become unavoidable when a new instrument arrives on the scene claiming to be money.

To be sure, new forms of money do not emerge often. For most of American history, transformations in the monetary system have arrived in discrete waves: the shift from commodity money to paper currency, the creation of the Federal Reserve, the rise of bank deposits as the dominant medium of exchange. Yet we are now living through another such juncture. Stablecoins, digital assets that combine the technological efficiency of public blockchain networks with the price stability that volatile cryptocurrencies like Bitcoin conspicuously lack, have emerged as a serious contender for a place within the monetary hierarchy.³ From approximately \$1 billion in circulation in 2019, stablecoin issuance is projected to reach up to \$4 trillion by 2030.⁴ Major payment providers including PayPal, Visa, and Western Union, along with leading financial institutions such as Fidelity and Citi, are actively incorporating or seeking to introduce stablecoins into their product portfolios. If these projections hold, stablecoins will fundamentally reshape the architecture of the payment system and alter the landscape of private money in ways not seen in generations.⁵

Lawmakers and the White House have taken notice. Motivated in part by the prospect that dollar-denominated stablecoins could reinforce the dollar's global preeminence by generating sustained demand for US treasuries, Congress in July 2025 enacted the GENIUS Act, the first comprehensive federal legislation creating a permission structure for stablecoin issuance and growth in the United States.⁶ The statute represents a significant step toward bringing stablecoins within a coherent regulatory perimeter.⁷ Yet legislative action, however welcome, does not automatically produce viable private money. As this Article demonstrates, the GENIUS Act, despite its ambitions, lacks certain fundamental legal and institutional aspects necessary to transform stablecoins into the kind of reliable, informationally-insensitive monetary instruments that a functioning payment system requires. To explain why, and to identify what remains to be done, we must first understand what makes something money.⁸

This Article provides that understanding through the concept of *moneyiness*. It offers a rigorous legal and regulatory account of what makes

³ Kara Bruce, Christopher K. Odinet, & Andrea Tosato, *The Private Law of Stablecoins*, 54 ARIZ. ST. L.J. 1073, 1084–1108 (2022) [hereinafter Bruce, Odinet & Tosato, *Private Law of Stablecoins*]; Christopher K. Odinet & Andrea Tosato, *Regulating Centralized Stablecoins: Comparing MiCAR and the GENIUS Act*, NOTRE DAME L.R. REFLECTION (2026) forthcoming, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5383158 [hereinafter Odinet & Tosato, *Regulating Centralized Stablecoins*].

⁴ *Stablecoins 2030: Web3 to Wall Street*, CITIGROUP (Sept. 25, 2025), <https://www.citigroup.com/global/insights/stablecoins-2030>.

⁵ See *infra* Part II.A.

⁶ Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (GENIUS Act), 12 U.S.C. §§ 5901–5916.

⁷ See *infra* Part II.D.

⁸ See *infra* Part III.

something money, conducts an analysis of current stablecoin market practices, and marshals both to assess the legal architecture governing stablecoins before and after the enactment of the GENIUS Act. To that end, this Article makes four principal contributions.

First, we develop an original theoretical framework to understand the concept of money.⁹ This idea is not new. Economists and legal scholars have long invoked money to describe the degree to which an instrument reliably performs monetary functions, distilling attributes such as liquidity and nominal value stability.¹⁰ Financial regulation scholars have gone further, demonstrating that money is fundamentally a legal phenomenon. They have shown that safety and information insensitivity are its constitutive attributes, actively constructed through public law interventions including federally provided deposit insurance, prudential supervision, lender-of-last-resort facilities, and resolution regimes. This is a crucial insight, and our framework incorporates it. But safety, however essential, does not exhaust what makes an instrument function as money. We theorize that monetary instruments also depend on a precise private law infrastructure to function successfully in everyday transactions. This scaffolding, for example, ensures that tendering an instrument irrevocably discharges the underlying debt, that a claim passes to transferees free of prior defenses or competing claims, and that a holder's legal entitlement is clearly defined and enforceable. In other words, we contend that the intensity of money depends on the interaction of public law protections and private law rights.¹¹ From this analysis, we identify four legal elements that constitute money: the nature and substance of the claim; its safety; its discharge capacity; and its negotiability.¹² Where an instrument's legal architecture is deficient in any of these elements, its capacity to function as money is likewise undermined.¹³

Second, we conduct an original analysis of the corporate structures, reserve management practices, and contractual frameworks of the dominant stablecoin issuers, Tether and Circle.¹⁴ Together, these issuers command around 90% of global stablecoin market supply.¹⁵ Drawing upon primary sources, we deconstruct the private law architecture that governs these tokens. Our analysis reveals a significant gap between the aspiration to deliver effective monetary instruments and the contractual frameworks that govern them.¹⁶ For example, even though these issuers promise to redeem each token for one dollar and to maintain sufficient reserves to honor that commitment, redemption is in practice markedly constricted, both as to who may claim it and on what terms.

⁹ See *infra* Part I.

¹⁰ See *infra* Part I.

¹¹ See *infra* Part I.

¹² See *infra* Part I.

¹³ See *infra* Part I & III.

¹⁴ See *infra* Part I; see also Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3.

¹⁵ *Stablecoin Market Cap Analysis*, STABLECOIN.COM (Jan. 19, 2026), [https://stablecoin.com/market-cap/\(showing USDT and USDC together make up about 94.4% of total stablecoin market capitalization\)](https://stablecoin.com/market-cap/(showing_USDT_and_USDC_together_make_up_about_94.4%_of_total_stablecoin_market_capitalization)).

¹⁶ See *infra* Part II.

Direct contractual relationships bind issuers only to a small cohort of institutional users, leaving millions who acquire tokens on secondary markets without privity and, consequently, without any direct redemption rights against the issuer.¹⁷ Further, terms of service transfer critical risks to holders while insulating issuers from liability.¹⁸ Redemption, even where contractually available, operates as a conditional, revocable privilege rather than a guaranteed right.¹⁹ And lastly, holders have no proprietary interest in the reserves that back their tokens.²⁰ Our analysis demonstrates how these private law arrangements create frictions that undermine the core attributes money requires: the soundness of the claim, its safety, its capacity to discharge obligations, and its negotiability.

Third, we apply our framework to assess the moneyness of stablecoins, under both current market practices and the GENIUS Act’s regulatory regime.²¹ The Act offers genuine improvements,²² yet significant deficiencies persist along three dimensions.²³ Safety remains compromised. Issuers are required to entrust safekeeping of their reserves to third-party custodians such as commercial banks, rather than having an option to hold them in an account with the Federal Reserve. This reliance exposes both issuers and token holders to the credit and operational risk of custodian failure—a vulnerability that neither can fully monitor nor control.²⁴ The GENIUS Act’s bankruptcy provisions compound these vulnerabilities: they are internally contradictory and operationally incoherent, casting doubt on how an issuer’s insolvency would unfold and whether reorganization remains viable.²⁵ Prudent holders must therefore assess the soundness of both the issuer and its reserve custodians before accepting payment, a burden that is incompatible with money’s basic function as an instrument accepted at face value.²⁶ Discharge capacity (the ability of an instrument to extinguish the payor’s obligation to the payee) also continues to be markedly deficient, lacking the finality rules that support many common monetary instruments.²⁷ Neither the GENIUS Act nor any other source of law establish when a peer-to-peer stablecoin transfer extinguishes the payor’s debt.²⁸ The problem is even more acute when transactions flow through intermediaries, where no framework specifies their obligations or allocates the risk of their failure.²⁹ Alongside these uncertainties there is also persistent ambiguity about the redemption right underpinning stablecoins: the GENIUS Act does not state

¹⁷ See *infra* Part II.

¹⁸ See *infra* Part II.

¹⁹ See *infra* Part II.

²⁰ See *infra* Part II.

²¹ See *infra* Part III.

²² See *infra* Part II.D.

²³ See *infra* Part III.

²⁴ See *infra* Part III.

²⁵ See *infra* Part III.

²⁶ See *infra* Part III.

²⁷ See *infra* Part III.

²⁸ See *infra* Part III.

²⁹ See *infra* Part III.

whether the issuers' obligation is statutory or contractual, to whom it runs, and whether the right is embedded in the token.³⁰

Fourth, we propose five targeted interventions that we believe would enhance the moneyness of stablecoins.³¹ Three concern safety: providing qualifying issuers a path to limited Federal Reserve master accounts in order to eliminate custodian credit risk, creating an industry-funded insurance mechanism to reduce the need for holder due diligence, and replacing the Act's flawed bankruptcy provisions with a secured interest regime that provides holders with clear priority in reserve assets.³² One addresses discharge capacity. We propose finality rules that specify when a stablecoin transfer conclusively extinguishes the underlying debt, for both direct and intermediated transactions.³³ Finally, the last resolves the ambiguity surrounding redemption: expressly providing that this right is inextricably enshrined in the token such that control of the digital asset carries with it the entitlement to demand redemption.³⁴ This list is not exhaustive, and each proposal entails tradeoffs warranting fuller treatment than we provide here. Our aim is to specify the legal architecture that greater moneyness requires, leaving detailed design for future work.³⁵

Collectively, these contributions point toward a broader insight that extends well beyond stablecoins. A recurring theme of this Article is the importance of wedding public law with private law understanding and analysis.³⁶ Too often, financial regulation proceeds without adequate attention to the rights and duties upon which regulated financial instruments rest. Policymakers focus on prudential requirements, disclosure obligations, and licensing regimes while overlooking the contractual relationships, property rights, and transfer mechanisms that define the money claim. This Article demonstrates the costs of such neglect.³⁷ For instance, the GENIUS Act's bankruptcy provisions fail precisely because Congress attempted to retrofit special protections onto a claim whose fundamental legal nature was not fully considered and understood.³⁸ A more coherent approach would have determined how stablecoins function, what novel capabilities they possess, and what rights holders actually have, then allowed bankruptcy treatment to flow as a logical consequence of these findings.³⁹ The lesson generalizes: As financial markets continue to evolve, the instruments they produce will demand regulatory responses that integrate public oversight with the private law architecture governing the claims those

³⁰ See *infra* Part III.

³¹ See *infra* Part IV.

³² See *infra* Part IV.

³³ See *infra* Part IV.

³⁴ See *infra* Part IV.

³⁵ See *infra* Part IV.

³⁶ See *infra* Part III.

³⁷ See *infra* Part III.

³⁸ See *infra* Part III & IV.

³⁹ See *infra* Part IV.

instruments represent. This Article offers one such response in the context of stablecoins, but more work remains to be done.

The Article proceeds as follows. Part I develops the theoretical framework for a legal conception of money, examining money's promissory nature, the distinction between public and private money claim issuers, and the four elements that constitute an instrument's capacity to function as money: (i) nature and substance of the money claim; (ii) its safety; (iii) capacity to discharge debts; and (iv) negotiability. Part II turns to stablecoins, analyzing the theoretical promise of these instruments against the contractual measures implemented by Tether and Circle to deliver on these goals. This Part also examines the GENIUS Act's regulatory interventions to outline their key priorities in shaping the regulatory perimeter for stablecoins. Part III applies the money framework to assess the public and private law operation of stablecoins, revealing deficiencies across safety, discharge capacity, and the legal nature of the redemption claim. Part IV synthesizes these findings and sets out five targeted reforms to realize the potential of stablecoins as private money for a digitizing financial future.

I. MAKING MONEY(NESS)

Modern economies rely on a broad array of monetary instruments to serve as mediums of exchange, units of account, and stores of value—attributes that, to varying degrees, express the classic definition of money. These instruments, ranging from physical currency to commercial bank deposits, money market fund shares and digital wallet balances, diverge considerably in how effectively they perform these functions.⁴⁰ This Part develops a theoretical framework for assessing these differences.

Economists and legal scholars have often invoked the concept of *money* to describe the degree to which an instrument reliably performs monetary functions.⁴¹ Money, we contend, is not just an inherent economic characteristic but a legally constructed attribute, the intensity of which depends on the interaction of public law protections and private law rights. To develop this framework, we first examine money's promissory nature and the distinction between public and private money claim issuers. We then analyze how public

⁴⁰ In the United States, the Federal Reserve's official monetary aggregates (M1 and M2) capture physical currency, demand deposits, and savings accounts. Scholars have long recognized, however, that the functional monetary system extends further—encompassing commercial paper, repurchase agreements, and Treasury bills, all treated as "cash equivalents" in financial markets. See Heather Ford & Mary-Frances Styczynski, *An Update to Measuring the U.S. Monetary Aggregates*, FEDERAL RESERVE (Nov. 12, 2024), <https://www.federalreserve.gov/econres/notes/feds-notes/an-update-to-measuring-the-u-s-monetary-aggregates-20241112.html>; see also Morgan Ricks, *Money as Infrastructure*, 2018 COLUM. BUS. L. REV. 757, 762–63 (2019); Dan Awrey, *Bad Money*, 106 CORNELL L. REV. 1, 33–39 (2020) [hereinafter Awrey, *Bad Money*]; Anna Gelpern & Erik F. Gerding, *Inside Safe Assets*, 33 YALE J. ON REGUL. 363, 363–64 (2016).

⁴¹ See *infra* Part I.D.

law constructs varying degrees of safety for private money claims. And finally, we demonstrate why even highly safe assets may fail to function as money when they lack other essential legal qualities.

From this analysis, we identify four legally significant elements that constitute money: (1) the nature and substance of the claim; (2) safety; (3) capacity to discharge debts; and (4) negotiability.

A. Money as Economic and Legal Promise

Core Definitions. The conventional definition of money looks to three characteristic features: money represents (i) a unit of account, (ii) a store of value, and (iii) a medium of exchange.⁴² These functions are interdependent. An instrument that fails as a store of value will not be accepted in exchange; one that is not widely accepted provides neither a useful unit of account nor a reliable store of value; and one that lacks standardized units cannot price transactions consistently.⁴³

In earlier eras, when money took the form of *commodities* such as gold and silver, these functions appeared to derive from inherent value.⁴⁴ Yet commodity money required substantial institutional support to function: mints and assay offices to authenticate content, legal systems to establish equivalences among coins of varying origin and purity, and sovereign authority to maintain confidence in the monetary unit.⁴⁵ Without such infrastructure, commodity money was vulnerable to counterfeiting, debasement, and the collapse of transactional confidence.⁴⁶ Even money with apparent intrinsic worth, in other words, depended on legal architecture to perform monetary functions reliably.⁴⁷

Fiat money makes this dependence explicit. Paper currency lacks inherent value, yet fiat money dominates modern economies precisely because legal and institutional design supplies what material composition lacks.⁴⁸ The unit of account is established by statute; the store of value depends on central bank governance of monetary policy; and the medium of exchange function is supported by legal tender designation and payment system infrastructure.⁴⁹ Fiat

⁴² See WILLIAM STANLEY JEVONS, MONEY AND THE MECHANISM OF EXCHANGE 13–17 (1875); FREDERIC S. MISHKIN, THE ECONOMICS OF MONEY, BANKING, AND FINANCIAL MARKETS 95–99 (11th ed. 2016).

⁴³ See CHARLES PROCTOR, MANN ON THE LEGAL ASPECT OF MONEY 8–11 (7th ed. 2012).

⁴⁴ CHRISTINE DESAN, MAKING MONEY: COIN, CURRENCY, AND THE COMING OF CAPITALISM 20–25 (2014).

⁴⁵ See *id.* 56–60.

⁴⁶ See *id.* at 63–66.

⁴⁷ See *id.* at 46.

⁴⁸ See GEORG FRIEDRICH KNAPP, THE STATE THEORY OF MONEY 1–2 (H.M. Lucas & J. Bonar trans., 1924); see also L. RANDALL WRAY, MODERN MONEY THEORY: A PRIMER ON MACROECONOMICS FOR SOVEREIGN MONETARY SYSTEMS 44–47 (2d ed. 2015).

⁴⁹ See 31 U.S.C. § 5103.

money thus reveals what commodity money obscured: the capacity of any instrument to function as money depends not on material composition but on the credibility of the commitment behind it.

This insight carries a critical implication. If money derives its capacity to function from legal and institutional commitments rather than intrinsic properties, then money is fundamentally promissory in nature: it represents an undertaking by an issuer that the instrument will be honored.⁵⁰ The quality of that undertaking, and therefore the quality of the money, depends on the identity and capacity of the issuer. This observation frames the distinction between public and private money that follows.

Public Promises vs Private Promises: Public money consists of liabilities issued by the sovereign monetary authority. In the United States, this encompasses two forms: currency (Federal Reserve notes and Treasury coins) and central bank reserves (digital balances held by eligible institutions at the Federal Reserve).⁵¹ Both forms derive their monetary status from public law. Federal Reserve notes are authorized by statute, designated legal tender by Congress, and issued pursuant to the Federal Reserve Act.⁵² Central bank reserves are book-entry claims created under the same statutory framework, through which final settlement of interbank payments occurs.⁵³

The legal nature of public money is *sui generis*. A Federal Reserve note is formally a liability of the central bank and an obligation of the United States government, yet it requires no performance beyond acceptance of the note itself.⁵⁴ Cash embodies the value it represents. In other words, the instrument constitutes money, rather than evidencing a right to receive it.⁵⁵ Owning or holding currency does not establish a contractual relationship with the Federal Reserve, nor does it subject the holder to counterparty risk in the traditional commercial sense. The instrument *is* the asset, and its value is intrinsic to the statutory scheme that created it. The holder's entitlement flows from this statutory designation, not from privity. This public law foundation distinguishes public money from all forms of private money.

Private money, by contrast, consists of monetary claims issued by non-state, private institutions. The legal character of these claims differs fundamentally from public money. Where public money intrinsically embodies value, private money claims evidence a contractual right to receive it. Within this

⁵⁰ See Ricks, *supra* note 40, at 765–68; Perry Mehrling, *The Inherent Hierarchy of Money*, in, SOCIAL FAIRNESS AND ECONOMICS: ECONOMIC ESSAYS IN THE SPIRITS OF DUNCAN FOLEY 394, 394–97 (Lance Taylor et al. eds., 2013).

⁵¹ See Mehrling, *supra* note 50, at 395.

⁵² See 12 U.S.C. § 411.

⁵³ See 12 U.S.C. § 342; 12 C.F.R. pt. 210, subpt. B (1990).

⁵⁴ See 12 U.S.C. § 411.

⁵⁵ See PROCTOR, *supra* note 43, at 11–14; Joseph H. Sommer, *Where Is a Bank Account?*, 57 MD. L. REV. 1, 12–14 (1998).

category, however, important distinctions exist between *bank*-issued and *non-bank*-issued claims.

Bank deposits constitute the most significant form of private money. When a depositor places funds with a commercial bank, the depositor becomes a creditor and the bank a debtor. The deposit is a contractual debt claim representing an unsecured personal right to receive a determinate monetary sum.⁵⁶ Privity is essential: only parties to the account agreement, or those they authorize, may assert the claim against the bank.⁵⁷ The existence and scope of the depositor's entitlement are defined by contract, albeit one that operates within a standardized framework of statutory and regulatory requirements that homogenizes deposit claims across institutions.⁵⁸

Non-bank payment claims share this contractual foundation but differ sharply in their lack of standardization. A balance held with a digital wallet provider, such as Cash App, or PayPal, or Western Union, likewise constitutes a personal contractual claim arising from the provider's terms of service, and privity is required to assert it.⁵⁹ However, because non-bank providers operate outside the comprehensive statutory framework governing bank deposits, the nature of the claim is heterogeneous. Fundamental questions, including whether funds are held in trust for the customer or as a general debt of the provider, vary by applicable state law and provider-specific terms.⁶⁰ Furthermore, the enforceability of these claims is often curtailed through mandatory arbitration clauses and class action waivers, distancing holders from the regulatory protections and standardized remedies available to bank depositors.⁶¹

Critically, private money claims, both bank and non-bank issued, exist within an interconnected hierarchy, each layer promising convertibility to the layer above.⁶² At the base are claims against non-bank issuers which promise convertibility into bank deposits. In turn, bank deposits promise convertibility into central bank money. At the apex sits public money, the ultimate settlement asset against which all private claims are measured. The value of any private money claim is thus derivative: it depends on confidence that the chain of convertibility will hold, terminating in public money. This hierarchical structure explains why disruptions at one point can cascade through the system, impairing claims that appear unrelated.

⁵⁶ *Foley v. Hill* (1848) 2 H.L. Cas. 28, 36, 9 Eng. Rep. 1002, 1005 (H.L.); *See, e.g.*, *FDIC v. Phila. Gear Corp.*, 476 U.S. 426, 436 (1986).

⁵⁷ *See Sommer, supra* note 55, at 18–22.

⁵⁸ *See Truth in Savings Act*, 12 U.S.C. §§ 4301–4313; Regulation E, 12 C.F.R. pt. 1005 (2011); U.C.C. arts. 3, 4 (A.L.I. & Unif. L. Comm'n 2022).

⁵⁹ *See Awrey, supra* note 40, at 8–15.

⁶⁰ *See id.* at 42–45.

⁶¹ *See id.* at 55–57. By contrast, bank account agreements operate within regulatory constraints that limit such discretionary authority. *See, e.g.*, 12 C.F.R. § 1005.11 (2018).

⁶² *See Mehrling, supra* note 50, at 395–97; Katarina Pistor, *A Legal Theory of Finance*, 41 J. COMP. ECON. 317–319 (2013) (suggesting that financial assets are legally constructed and that finance is inherently hierarchical); Katarina Pistor, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* 201–202 (2019) [hereinafter Pistor, *Code of Capital*]

Private money claims vastly exceed public money in circulation. According to a 2022 Treasury Department report, public money comprised \$2.2 trillion in currency and approximately \$3 trillion in central bank reserves, while private money claims exceeded \$19 trillion.⁶³ Most economic transactions now occur through private money instruments rather than public money.⁶⁴ This predominance means that the legal architecture governing private money claims determines whether the monetary system functions reliably.

Thus, money is fundamentally promissory, with public money constituting a sovereign undertaking and private money representing contractual obligations. For any monetary instrument to perform its functions reliably, holders must be confident that the promise will be honored. The following section examines how law sustains this confidence for private money claims.

B. Safety and the Architecture of Confidence

For any instrument to function reliably as money, holders must be confident that the underlying promise will be honored, regardless of whether it is the sovereign undertaking behind public money or the contractual obligation of a private issuer. This confidence is what we mean by *safety*.⁶⁵

Safety encompasses two interconnected inquiries. The first concerns ongoing performance: whether the issuer is likely to remain able to honor its undertakings throughout the period the holder expects to hold the instrument. The second concerns recovery upon failure: should the issuer nonetheless become unable to perform, what priority will the holder’s claim receive and what

⁶³ U.S. DEPT OF THE TREASURY, THE FUTURE OF MONEY AND PAYMENTS 3–4 (2022), <https://home.treasury.gov/system/files/136/Future-of-Money-and-Payments.pdf>; *Federal Reserve Balance Sheet: Factors Affecting Reserve Balances - H.4.1*, FED. RSRV. (Dec. 29, 2022), <https://www.federalreserve.gov/releases/h41/20251229/>.

⁶⁴ See *Federal Reserve Payments Study*, FED. RSRV. 1–3 (2022), <https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm>.

⁶⁵ The analysis in this Section draws on a substantial body of scholarship theorizing how law constructs the safety of private monetary claims. See generally Awrey, *Bad Money*, *supra* note 40, (arguing that regulatory frameworks transform otherwise risky private monetary liabilities into “good money”); DAN AWREY, BEYOND BANKS: RESILIENCY, INNOVATION, AND THE CASE FOR A PAYMENTS CHARTER (2024) [hereinafter Awrey, *Beyond Banks*] (developing this analysis at book length); Ricks, *Money as Infrastructure*, 2018 COLUM. BUS. L. REV. 757, 758-66 (2018) (developing the “money paradigm” under which banking regulation is understood as governing the creation and management of the money supply); Morgan Ricks, THE MONEY PROBLEM: RETHINKING FINANCIAL REGULATION (2016) (developing this thesis at book length); Kathryn Judge, *Information Gaps and Shadow Banking*, 103 VA. L. REV. 411, 431-34 (2017) [hereinafter Judge, *Information Gaps*] (analyzing the impact of banking regulation, including chartering, supervisory examination, deposit insurance, and resolution authority, on the safety of bank deposits); Kathryn Judge, *Guarantor of Last Resort*, 97 TEX. L. REV. 707, 718-19 (2019) [hereinafter Judge, *Guarantor*] (arguing that government guarantees restore the information-insensitive nature of money claims during crises); Gelpern & Gerding, *supra* note 40, at 364 (arguing that the law constructs and maintains safe asset fictions).

proportion of value can the holder expect to recover?⁶⁶ The greater the uncertainty surrounding either inquiry, the less effectively the instrument functions as money. Holders facing such uncertainty must either discount the instrument's face value to reflect expected losses or else engage in ongoing due diligence as to the issuer's creditworthiness. Neither response is compatible with money's function as a medium of exchange accepted at par without investigation.

Public money represents a promise with essentially zero credit risk. Federal Reserve notes are statutory obligations of the United States, and central bank reserves are book-entry liabilities of the Federal Reserve itself.⁶⁷ Because the United States issues fiat money denominated in its own currency, its capacity to honor such obligations is not subject to the constraints that bind private obligors or sovereigns borrowing in foreign currencies.⁶⁸ Holders of public money accordingly need not inquire into issuer solvency or assess recovery prospects—indeed, redemption of a Federal Reserve note simply yields another Federal Reserve note.⁶⁹ This negligible credit risk enables currency and reserves to pass from holder to holder without any creditworthiness investigation.

Private money presents a fundamentally different problem. Because private money claims run against non-state issuers, they inherently carry credit risk: the possibility that the issuer will be unable or unwilling to honor the claim.⁷⁰ The safety of private money is therefore not inherent but must be

⁶⁶ See Bengt Holmstrom, *Understanding the Role of Debt in the Financial System* 5, 15 (Bank for Int'l Settlements, Working Paper No. 479, 2015); See Gelpern & Gerding, *supra* note 40, at 378–82 (2016); See Awrey, *supra* note 40, at 18–22.

⁶⁷ See 12 U.S.C. § 411 (2024). Central bank reserves are book-entry liabilities of the Federal Reserve Banks representing claims of identical legal character to currency but in electronic rather than physical form. See *Federal Reserve Liabilities*, FED. RSRV. https://www.federalreserve.gov/monetarypolicy/bst_frliabilities.htm (last updated Nov. 2021).

⁶⁸ See Gelpern & Gerding, *supra* note 40, at 371–74.

⁶⁹ Section 16 of the Federal Reserve Act states that Federal Reserve notes shall be redeemed in “lawful money.” The circularity emerges because Federal Reserve notes are themselves lawful money. In *Milam v. U.S.*, an individual sought to require the Federal Reserve Board to redeem a \$50 Federal Reserve note in gold or silver. See 524 F.2d 629 (9th Cir. 1974). The court disagreed, holding that one who presents such a note for redemption in lawful money is likely to receive in exchange lawful money in the form of yet another Federal Reserve note. See *id.*

⁷⁰ See Awrey, *supra* note 40, at 25–39; *Beyond Banks*, *supra* note 65, at chs. 4–5 (extending this analysis to non-bank payment providers and stablecoins); Dan Awrey, *Money and Federalism*, 75 DUKE L.J. 171 (2025), at 175–77 (developing the concept of “monetary heterogeneity” to describe variance in safety across monetary instruments); Pistor, *Code of Capital*, *supra* note 65, at 5, 77, 107 (arguing that private monetary instruments are “coded in law” and identifying “convertibility,” the ability to convert private credit claims into state money on demand, as the legal attribute that makes private debt function as safe money); Judge, *Information Gaps*, *supra* note 65, at 413, 418–19 (distinguishing “money claims” from “equity claims” and arguing that each requires a fundamentally different regulatory architecture: banking regulation supporting information insensitivity, securities regulation facilitating information production); Gelpern & Gerding, *supra* note 40, at 405 (describing safe assets as products of legal intervention “to reduce risks, attract buyers with risk-free labels, and ratify assumptions about safety with guarantees”);

constructed through law. The legal architecture governing private money claims determines both the likelihood that issuers will remain solvent and the treatment holders will receive if issuers fail. Critically, this architecture varies dramatically across issuer types, producing a gradient of safety that ranges from near-equivalence with public money to substantial uncertainty.

Bank deposits occupy the apex of this gradient. As described above, a bank deposit is formally an unsecured contractual claim. The depositor is a general creditor of the bank. Yet an interlocking system of legal protections transforms this formally precarious status into one of substantial safety.

The first layer is deposit insurance. Federal law guarantees deposit accounts up to \$250,000 per deposit account type per insured institution, converting what would otherwise be an unsecured claim into one backed by the public balance sheet.⁷¹ For the vast majority of retail depositors, this guarantee eliminates credit risk entirely. Even if the bank fails, the Federal Deposit Insurance Corporation (FDIC) will make the depositor whole up to the insurance limit. Recent practice suggests even broader de facto protection. When Silicon Valley Bank and Signature Bank failed in March 2023, regulators invoked the specter of systemic risk to protect all depositors regardless of account size, reinforcing expectations that uninsured deposits at significant institutions may receive similar treatment in future failures.⁷²

The second layer is access to central bank liquidity. Banks facing temporary liquidity shortfalls may borrow from the Federal Reserve’s discount window and other emergency lending facilities, enabling them to meet withdrawal demands even when private funding markets are stressed.⁷³ This

Morgan Ricks, *A Regulatory Design for Monetary Stability*, 65 VAND. L. REV. 1289, 1294–1303 (2012).

⁷¹ 12 U.S.C. § 1821(a)(1) (2024). For scholarly treatment of deposit insurance as a mechanism for constructing monetary safety, see Awrey, *Bad Money*, supra note 40, at 28 (observing that the FDIC effectively steps into the shoes of a failed bank, honoring its commitment to return depositors’ money on demand); Awrey, *Money and Federalism*, supra note 40, at 200 (noting that deposit insurance completely eliminates depositors’ exposure to changes in the creditworthiness of their banks); Ricks, *Safety First? The Deceptive Allure of Full Reserve Banking*, 83 U. CHI. L. REV. ONLINE 113, 120 (2016) (observing that deposit insurance meant “the bulk of the US money supply went from private to sovereign,” inaugurating “an unprecedented seventy-five-year period of panic-free conditions”); Judge, *Information Gaps*, supra note 65, at 433 (observing that deposit insurance significantly curtails the downside risks to which most money claimants are exposed and makes them less likely to run); Judge, *Guarantor*, supra note 65, at 728-29 (documenting how the FDIC’s Temporary Liquidity Guarantee Program expanded deposit insurance during the 2007-09 crisis to cover more than \$800 billion in deposits beyond normal insurance limits); Gelpert & Gerding, supra note 40, at 400 (observing that statutory guarantees make deposits “default-free” in the eyes of the public).

⁷² See Press Release, U.S. Dep’t of the Treasury, Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC (Mar. 12, 2023), <https://home.treasury.gov/news/press-releases/jy1337>. Whether this treatment will extend to future failures remains uncertain, but the precedent has shaped market expectations.

⁷³ See 12 U.S.C. §§ 343, 347b. See also Awrey, *Bad Money*, supra note 40, at 27 (observing that lender of last resort facilities relax the liquidity constraint of banks, avoiding the fire sale of

access reduces the probability that a solvent but illiquid bank will fail, thereby protecting depositors from losses that would otherwise result from coordination failures among withdrawing creditors.

The third layer is prudential supervision.⁷⁴ Banks operate under comprehensive regulatory oversight designed to prevent insolvency before it occurs. Capital requirements mandate that banks maintain equity buffers to absorb losses, liquidity requirements ensure banks hold sufficient liquid assets to meet short-term obligations, and ongoing examination identifies emerging risks before they metastasize into failure.⁷⁵ This supervisory architecture reduces the baseline probability of bank failure and diminishes the circumstances in which deposit insurance or resolution regimes must be invoked.

The fourth layer is a tailored resolution regime that differs markedly from ordinary bankruptcy. Should a bank nonetheless fail, it does not enter proceedings under the Bankruptcy Code. Instead, the FDIC serves as receiver, operating under a specialized statutory framework designed to minimize disruption to depositors.⁷⁶ This regime prioritizes rapid resolution: the FDIC typically arranges for assumption of the failed bank's deposits by an acquiring institution and permits depositors to access their funds with minimal interruption. Where assumption is not feasible, the FDIC pays insured deposits directly. Critically, depositor claims receive statutory priority over general unsecured creditors, thus enhancing recovery prospects for any uninsured portion.⁷⁷ This specialized treatment, combining public law protections with a

illiquid assets, and enabling banks to continue operating under conditions where almost any other type of firm would be forced into bankruptcy); Pistor, *Legal Theory of Finance*, *supra* note 65, at 324 (noting that while central banks are not legally obliged to offer convertibility of all assets into legal tender, deposit insurance and discount window access provide critical backstopping); Anna Gelpern & Erik F. Gerding, *Private and Public Ordering in Safe Asset Markets*, 10 BROOK. J. CORP. FIN. & COM. L. 97, 122 (2015) (noting that collateral eligibility at the central bank's discount window sends "a clear signal" of the safety of the assets that qualify)

⁷⁴ Judge, *Information Gaps*, *supra* note 65, at 431-34 (providing a comprehensive account of how the prudential supervisory apparatus, including chartering, activity restrictions, ongoing examination, enforcement authority, and early closure powers).

⁷⁵ See 12 U.S.C. § 3907; 12 C.F.R. pt. 249 (2014); 12 C.F.R. pt. 329 (2014); 12 U.S.C. § 1820. See also Awrey, *Bad Money*, *supra* note 40, at 31 (observing that the net effect of the supervisory and stress testing processes is to support financial safety, reducing the risk of bank failure and supporting the obligations that banks owe to their depositors).

⁷⁶ The FDIC serves as receiver for failed insured depository institutions, whether nationally or state-chartered. See 12 U.S.C. § 1821(c)-(d). For systemically important financial institutions, Title II of the Dodd-Frank Act provides an additional resolution mechanism, the Orderly Liquidation Authority, also administered by the FDIC. See 12 U.S.C. §§ 5381-5394. See also Awrey, *Bad Money*, *supra* note 40, at 32 (observing that without the special resolution regime, deposit agreements would be transformed from a safe and liquid monetary instrument into a risky, and potentially illiquid claim on a bankrupt bank, effectively rendering deposits bad money); Judge, *Information Gaps*, *supra* note 65, at 432-33 (observing that regulators can close a bank before insolvency on a range of bases and that the FDIC enjoys a level of control that a creditor never achieve in bankruptcy; see also Richard M. Hynes & Steven D. Walt, *Why Banks Are Not Allowed in Bankruptcy*, 67 WASH. & LEE L. REV. 985, 989 (2010).

⁷⁷ See 12 U.S.C. § 1821(d)(11)(A).

resolution regime outside ordinary bankruptcy, stands in sharp contrast to the framework governing non-bank providers.

These four layers collectively render most bank deposits nearly equivalent to public money in safety. Retail depositors within insurance limits face essentially zero credit risk. Even depositors with larger balances benefit from prudential supervision that reduces failure probability, liquidity support that prevents unnecessary failures, and a resolution regime that prioritizes their claims. The result is that holders of bank deposits can accept them at par without investigating the issuing bank’s financial condition. This creates a functional equivalence to public money that sustains bank deposits’ central role in the payment system.⁷⁸

Non-bank payment claims present a substantially weaker and more variable safety profile. Unlike bank depositors, customers of non-banks are not directly protected by federal deposit insurance. If a provider maintains customer funds in its own bank account, it is the provider, not its customers, that qualifies as the insured depositor. Customers have only a contractual claim against the provider, which itself may or may not be recoverable.⁷⁹ Non-bank providers also lack access to Federal Reserve liquidity facilities, leaving them vulnerable to funding disruptions that could impair their ability to honor redemption requests.⁸⁰

The private law structure of the customer-provider relationship compounds these vulnerabilities. A threshold question is whether customer funds constitute a debt owed by the provider or property held in trust for the customer.⁸¹ This characterization carries profound consequences. If the

⁷⁸ Awrey, *Bad Money*, *supra* note 40, at 33 (suggesting that it is financial regulation that provides the safety necessary to make bank deposits good money.); *see also* Awrey, *Unbundling Banking, Money, and Payments*, 110 GEO. L.J. 715 (2022) [hereinafter Awrey, *Unbundling Banking*], at 744 (observing that this safety net is what transforms a bank deposits into so-called “safe assets”); Ricks, *Money as Infrastructure*, *supra* note 65, at 768 (arguing that banking regulation functions as a subfield of public utility and common carrier regulation because banks’ distinctive legal privilege concerns “the provision of ‘deposit’ accounts, which are widely acknowledged to be a form of money”); Judge, *Information Gaps*, *supra* note 65, at 431-34 (suggesting that prudential regulation supports the information insensitivity of bank deposits, enabling depositors to remain only minimally informed).

⁷⁹ Awrey, *Bad Money*, *supra* note 40, at 7, 38–56 (providing a detailed analysis in the literature of the safety deficiencies of non-bank payment providers). Awrey develops this analysis at book length in *Beyond Banks*, *supra* note 65, at chs. 4–6. *See also* Dan Awrey & Kristin van Zwieten, *Shadow Payment System*, 43 J. CORP. LAW 775, 794–96 (2018) (observing that non-bank payment providers do not directly benefit from the emergency liquidity facilities, deposit guarantee schemes, special resolution regimes, or other prudential regulatory devices typically available for banks during periods of institutional or systemic crises).

⁸⁰ *See* John Crawford, Lev Menand, & Morgan Ricks, *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113, 122–27 (2021).

⁸¹ *See* Awrey, *Bad Money*, *supra* note 40, at 54–55 (documenting state-by-state variation in whether money transmitter statutes impose trust obligations on customer funds); Awrey, *Beyond Banks*, *supra* note 65, at 185–200 (analyzing trust, bailment, and structural separation as mechanisms for protecting customer funds in non-bank payment systems); Awrey & van

relationship is one of debt, the customer is merely an unsecured creditor. The funds belong to the provider, and the customer's claim competes with those of other creditors upon insolvency. If, by contrast, funds are held in trust, the customer retains a beneficial interest in specific assets, which may be recoverable outside the bankruptcy estate. Yet this characterization is rarely explicit. Provider terms of service frequently obscure the legal relationship, and applicable state law varies in whether it imposes trust obligations on money transmitters. The result is that customers often cannot determine, *ex ante*, what legal interest they hold in funds they believe to be "theirs."

Closely related is the question of segregation. Even where state law or provider policy nominally requires that customer funds be held separately from operating assets, actual practice may diverge. Providers commonly hold customer funds in omnibus accounts maintained in the provider's own name, commingling the funds of thousands or millions of customers. This pooling creates identification and tracing problems upon insolvency. If the provider has dissipated a portion of the pool, or if the pool has been subject to creditor claims or setoff by the depository bank, individual customers may be unable to trace their contributions to identifiable assets. The absence of segregation thus transforms what might have been a proprietary claim into a mere personal claim against an insolvent estate.

State money transmitter statutes provide some regulatory overlay, but these requirements vary considerably across jurisdictions and frequently fall short of comprehensive protection. Some states require providers to maintain reserves equal to outstanding customer obligations; others require only surety bonds that may cover a fraction of potential claims; still others impose minimal requirements altogether.⁸² The result is a patchwork in which the safety of a non-bank payment claim depends substantially on which state's law governs and how rigorously that state enforces its requirements.

Should a non-bank provider become insolvent, customers confront the ordinary bankruptcy process rather than a tailored resolution regime. They typically rank as general unsecured creditors, entitled only to a *pro rata* distribution after satisfaction of secured and priority claims.⁸³ Recovery may take years and yield only a fraction of the claim's face value. The private law deficiencies identified above, particularly the ambiguity surrounding trust characterization and the prevalence of commingling, exacerbate this vulnerability. Customers who believed their funds were segregated may discover

Zwieten, *Shadow Payment System*, *supra* note 79, at 813–15 (examining how the trust characterization converts customers from creditors to equitable owners, though observing that trusts alone do not ensure that customers have adequate liquidity in case of bankruptcy).

⁸² Awrey, *Bad Money*, *supra* note 40, at 45–56, 71–90 (providing a comprehensive state-by-state analysis of money transmitter statutes). *See also* Awrey, *Unbundling Banking*, *supra* note 78, at 760–62 (calculating that PayPal's effective minimum capital requirement stood at just 0.004% of total assets, approximately 1/3000 of the average CET1 capital level for U.S. bank holding companies).

⁸³ *See* 11 U.S.C. § 726.

that no identifiable property rights exist to which they can assert a superior claim. Even customers with arguable trust claims face the expense and uncertainty of litigating that characterization against a bankruptcy trustee and competing creditors.⁸⁴

Finally, the contractual architecture governing non-bank payment claims frequently curtails the remedies available to aggrieved customers. Provider terms of service routinely include mandatory arbitration clauses requiring disputes to be resolved through confidential proceedings rather than litigation, class action waivers preventing collective enforcement, and limitation of liability provisions capping or excluding consequential damages. These provisions insulate providers from accountability and deprive customers of the procedural mechanisms, particularly class actions, that might otherwise discipline provider misconduct or establish precedent clarifying customer rights.⁸⁵ The contrast with bank deposits is stark: while bank depositors benefit from regulatory enforcement, FDIC resolution authority, and relatively standardized account agreements, non-bank customers must navigate provider-drafted terms designed to minimize provider exposure.

The safety of non-bank payment claims thus varies with four factors: the financial condition of the provider, the rigor of applicable state regulation, the private law structure of the customer-provider relationship, and the specific contractual terms governing the treatment of customer funds and the resolution of disputes. This variability means that holders cannot assume non-bank payment claims are safe at par. Prudent holders must either investigate these factors or accept the risk of loss. Neither response is consistent with the effortless acceptance that characterizes the most effective monetary instruments.

The gradient of safety across monetary instruments thus reflects the gradient of legal protection.⁸⁶ Public money, backed by the sovereign, requires

⁸⁴ Awrey, *supra* note 40, at 50–52. *See also* Awrey, *Beyond Banks*, *supra* note 65, at 201–08 (surveying alternative resolution and customer-protection frameworks for non-bank payment providers across multiple jurisdictions); Awrey, *Money and Federalism*, *supra* note 65, at 229 (observing that the automatic stay prevents consumers “holding a purely contractual claim . . . from transferring or withdrawing their money until the conclusion of the bankruptcy process”); Adam J. Levitin, *Not Your Keys, Not Your Coins: Unpriced Credit Risk in Cryptocurrency*, 101 TEX L. REV. 877, 902–35 (2023) (analyzing the likely fate treatment of customers of crypto intermediaries in bankruptcy, outside the UCC Article 8 framework); Christopher K. Odinet & Andrea Tosato, *DIGITAL COMMERCIAL LAW: PRIVATE LAW IN THE AGE OF TOKENS, PLATFORMS, AND AUTOMATION*, at ch. 4 (2026) (suggesting that deposit of digital assets could be treated as bailments at common law under certain circumstances and also observing that customers would hold a securities entitlement if their agreement with crypto intermediaries was covered by UCC Article 8).

⁸⁵ *See infra* Part II.B.2.

⁸⁶ Awrey, *Bad Money*, *supra* note 40, at 1-10 (suggests that private money claims exist along a spectrum from “good money,” instruments transformed by the financial safety net into safe assets, to “bad money,” instruments lacking comparable regulatory protection); Gelpert & Gerding, *supra* note 40, at 389-406 (observing that “not all forms of intervention operate

no creditworthiness assessment.⁸⁷ That is, it is most “informationally insensitive.” Bank deposits, transformed by deposit insurance, liquidity support, prudential supervision, and tailored resolution, approach this standard for most holders. Non-bank payment claims, subject to fragmented state regulation and ordinary bankruptcy, fall materially short. Instruments that require holders to investigate issuer creditworthiness or discount face value function less effectively as money than those that can be accepted at par without inquiry.⁸⁸

C. Discharge Capacity and Negotiability

The preceding section demonstrated that safety is necessary for a monetary instrument to function as money and examined how law strengthens the safety of private money claims. Yet safety alone is insufficient. Even an instrument the issuer of which is unimpeachably solvent may fail to function effectively as money if it lacks *discharge capacity* or *negotiability*.

Discharge capacity requires two things: that creditors accept the instrument in satisfaction of obligations and that transfers of the instrument achieve legal finality.

Negotiability, on the other hand, requires that recipients take the instrument free of competing claims and defenses.

Two familiar instruments illustrate these requirements. Treasury securities are obligations of the federal government, carrying essentially zero credit risk, yet Treasuries do not function as money in the transactional economy.⁸⁹ They lack legal tender status, as no statute compels creditors to accept them in discharge of monetary obligations. A holder seeking to pay rent or settle a contractual debt cannot tender Treasury bills. Rather, the instrument must first be converted to bank deposits or currency. While Treasuries benefit from robust finality and negotiability rules under the law, these rules facilitate

simultaneously in all safe assets,” capturing the variance in regulatory coverage that produces the gradient).

⁸⁷ See Mehrling, *supra* note 50, at 394-396; Pistor, *Legal Theory of Finance*, *supra* note 62, at 319-20 (suggesting that different financial instruments, which in normal times appear as close substitutes for state money, are revealed in crises to occupy different positions in a hierarchy determined by proximity to sovereign backing).

⁸⁸ On the connection between safety, moneyness, and information insensitivity, see Awrey, *Bad Money*, *supra* note 40, at 26-27. See also Awrey, *Money and Federalism*, *supra* note 70, at 175-77 (proposing the concept of “monetary heterogeneity” to describe the variance across monetary instruments). Bengt Holmstrom, *Understanding the Role of Debt in the Financial System* (Bank for Int’l Settlements, Working Paper No. 479, 2015) at 6; Judge, *Guarantor*, *supra* note 65, at 718-19 (observing that government guarantees can render money claims “information insensitive,” restoring “that special characteristic that makes short-term claims so useful and pervasive”); Gelpern & Gerding, *supra* note 40, at 398-99 (observing that regulatory labels “promote information insensitivity, and boost the liquidity of labeled assets” and that such labels “traffic in fictions” by authoritatively deeming asset categories safe).

⁸⁹ See, e.g., BEN S. BERNANKE, *THE FEDERAL RESERVE AND THE FINANCIAL CRISIS* 59 (2013).

trading in investment markets rather than circulation as a medium of exchange.⁹⁰ Moreover, Treasuries promise payment at maturity rather than on demand, and their market value fluctuates with interest rates and liquidity conditions—all characteristics incompatible with money’s requirement of stable, immediate value.⁹¹

Money market mutual funds (MMMFs) present a similar pattern. These funds invest in short-term, high-quality instruments and ordinarily maintain a stable net asset value of one dollar per share, yet MMMF shares do not perform the functions that money requires.⁹² They lack legal tender status. More significantly, redemption is not unconditional. Fund boards may impose liquidity fees or, in certain circumstances, suspend redemptions entirely during periods of market stress (all restrictions that became salient during the March 2020 market turmoil).⁹³ As with Treasuries, MMMF shares are governed by securities-law rules designed for investment markets. They settle through securities infrastructure rather than payment system rails, which introduce delays and counterparty dependencies that are incompatible with the finality that transactional money requires. These examples reveal that safety, while necessary, does not by itself confer moneyness. Thus, two additional elements are essential: *discharge capacity* and *negotiability*.

Discharge capacity concerns whether a monetary instrument can extinguish the payor’s obligation to the payee. Two dimensions are relevant: acceptance and finality. Acceptance concerns whether creditors will recognize tender of the instrument as satisfying the obligation owed to them. For physical currency, acceptance is compelled by statute: federal law designates United States coins and currency as “legal tender for all debts, public charges, taxes, and dues.”⁹⁴ A debtor who tenders cash in the proper amount is entitled to discharge the obligation. A creditor who refuses valid tender does so at the risk of losing the right to collect interest, costs, or attorneys’ fees accruing after the tender, and any security for the debt may be discharged.⁹⁵

Bank deposits lack legal tender status, and no statute obligates creditors to accept payment by check or wire transfer.⁹⁶ Nevertheless, bank-mediated payments achieve near-universal acceptance in practice, supported by the comprehensive regulatory infrastructure of the banking system and the

⁹⁰ See U.C.C. art. 8 (A.L.I. & Unif. L. Comm’n 2022); 31 C.F.R. pt. 357 (2005).

⁹¹ Treasury bills, notes, and bonds have maturities ranging from four weeks to thirty years and are not redeemable on demand prior to maturity. See *About Treasury Marketable Securities*, TREASURY DIRECT, <https://www.treasurydirect.gov/marketable-securities/> (last visited Jan. 27, 2026).

⁹² See 17 C.F.R. § 270.2a-7 (2023).

⁹³ See 17 C.F.R. § 270.2a-7(c)(2) (2023); see also Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers, 88 Fed. Reg. 51404 (Aug. 3, 2023).

⁹⁴ 31 U.S.C. § 5103.

⁹⁵ See *Brinton v. Haight*, 870 P.2d 677, 680 (Idaho Ct. App. 1994); cf. U.C.C. § 3-603(c) (A.L.I. & Unif. L. Comm’n 2002).

⁹⁶ See 31 U.S.C. § 5103; U.C.C. § 2-511(2) (A.L.I. & Unif. L. Comm’n 2022).

functional equivalence between bank money and cash for most commercial purposes.⁹⁷ Non-bank payment claims occupy weaker ground. Acceptance depends entirely upon private ordering: a creditor may refuse payment via digital wallet just as readily as payment in foreign currency. At most, acceptance is confined to the provider’s closed-loop network; a Venmo balance cannot discharge a tax obligation, satisfy a legal judgment, or settle a contractual debt outside the Venmo ecosystem without first converting to bank money or cash.⁹⁸

Finality concerns when discharge becomes legally conclusive. The term has acquired diverse meanings in payment law, generating considerable confusion.⁹⁹ We use the term in a specific and stipulated sense: finality denotes the point at which the payor’s obligation to the payee is extinguished and the transaction is closed to subsequent challenge. Robust finality requires that this point be clearly defined and that the discharge be adequately protected from subsequent reversal, whether through insolvency proceedings, defect-based claims such as mistake or fraud, or uncertainty about when intermediaries become obligated to perform.¹⁰⁰

For physical currency, finality is straightforward. Delivery of cash extinguishes the underlying obligation immediately. There is no intermediary whose obligations must be determined. The common law principle that “money has no earmark” ensures that the payor’s obligation is extinguished upon delivery regardless of the currency’s provenance.¹⁰¹ While bankruptcy avoidance powers may permit a trustee to recover value from the recipient, such recovery operates as a personal claim; it does not reopen the discharge itself.¹⁰² Physical currency thus represents the benchmark for robust finality: the moment of discharge is clear, and the transaction is effectively final upon delivery.

For bank deposits, finality is complicated significantly by the presence of intermediaries. A wire transfer involves the payor, the payor’s bank, potentially intermediary banks, and the beneficiary’s bank. Rules are necessary to specify not only when the payor’s underlying obligation to the payee is discharged, but also when each intermediary becomes obligated and when interbank settlement is complete. UCC Article 4A provides this statutory framework.¹⁰³ It specifies the moment at which a receiving bank accepts a payment order and becomes obligated to execute it, when the beneficiary’s bank becomes obligated to the beneficiary to credit their account, and when the originator’s underlying obligation is discharged.¹⁰⁴ Regulation J supplements

⁹⁷ See Awrey, *supra* note 40, at 18–22 (2020); MORGAN RICKS, *THE MONEY PROBLEM: RETHINKING FINANCIAL REGULATION* 51–53 (2016).

⁹⁸ See Awrey, *supra* note 40, at 55–57 (2020).

⁹⁹ See Benjamin Geva, *Payment Finality and Discharge in Funds Transfers*, 83 *CHI.-KENT L. REV.* 633, 633–35 (2008).

¹⁰⁰ See 11 U.S.C. §§ 547, 548.

¹⁰¹ *Miller v. Race* (1758) 97 Eng. Rep. 398, 401 (K.B.).

¹⁰² See 11 U.S.C. § 550(a); *cf.* U.C.C. § 4A-406 cmt. 2 (A.L.I. & Unif. L. Comm’n 2022).

¹⁰³ U.C.C. art. 4A (A.L.I. & Unif. L. Comm’n 2022).

¹⁰⁴ See U.C.C. §§ 4A-209, 4A-404, 4A-406.

these rules for Fedwire transfers.¹⁰⁵ This comprehensive statutory architecture permits parties to close high-value transactions with confidence that completed transfers are final.

Non-bank payment claims generally lack an Article 4A-style finality regime. The legal rules that bear on finality in digital wallet and app-based transfers are fragmented across provider contract terms (often reserving reversal, freeze, or delay rights¹⁰⁶), consumer-protection law such as the Electronic Fund Transfer Act and Regulation E where applicable (which can require recrediting for unauthorized transfers and prescribed errors), payment-card network chargeback rules when transactions are card-funded (like VISA), and state money-transmitter/stored-value rules that govern issuance and redemption but typically do not provide a comprehensive settlement-finality framework. As a result, the point at which a wallet transfer is practically irreversible (and the point at which an underlying obligation is safely discharged) may be less determinate than under cash delivery or Article 4A funds transfers, particularly where disputes, fraud claims, chargebacks, or compliance holds are possible.¹⁰⁷

Acceptance and finality together determine whether a monetary instrument can discharge the payor's obligation to the payee.¹⁰⁸ But to function as effective money, a monetary instrument must also circulate freely among holders without inquiry into provenance. This is negotiability. Under ordinary property law, a transferee acquires only what the transferor had to give, subject to existing defects in title or defenses assertable against the transferor.¹⁰⁹ Applied strictly to monetary instruments, this rule would require recipients to investigate the instrument's chain of title before accepting payment. Money clearly cannot function under such a constraint.

Physical currency has a very high level of negotiability. We noted above that the common law principle "money has no earmark" protects finality by preventing third parties from reopening completed transactions. The same principle serves a distinct but related function for negotiability: it permits a bona fide purchaser to take currency free of competing ownership claims, even if the transferor obtained the funds through theft or fraud.¹¹⁰ For security interests, UCC Article 9 provides even broader protection: a transferee of money takes free unless acting in collusion with the debtor.¹¹¹ Bank deposits are not negotiable instruments, and the deposit relationship is personal to the account

¹⁰⁵ 12 C.F.R. § 210.30 (2022).

¹⁰⁶ See Awrey, *supra* note 40, at 55–57.

¹⁰⁷ See *id.* at 55–57; *cf.* U.C.C. § 4A-211 cmt. 1 (A.L.I. & Unif. L. Comm'n 2022).

¹⁰⁸ See Geva, *supra* note 99, at 635–36; PROCTOR, *supra* note 43, at 9–11.

¹⁰⁹ See Grant Gilmore, *The Commercial Doctrine of Good Faith Purchase*, 63 Yale L.J. 1057, 1057–59 (1954). *Cf.* Pistor, *Code of Capital*, *supra* note 65, at 92 (observing that bills of exchange were more liquid than notes because their legal coding limited debtor defenses, implicitly recognizing a relationship between negotiability and monetary function).

¹¹⁰ *Miller v. Race* (1758) 97 Eng. Rep. 398, 401 (K.B.).

¹¹¹ U.C.C. § 9-332(a) (A.L.I. & Unif. L. Comm'n 2010).

holder, but the payment system creates functional equivalents when deposit value is transferred.¹¹² For checks, UCC Article 3 codifies the holder in due course doctrine, permitting qualifying holders to take free of personal defenses.¹¹³ For wire transfers, the beneficiary receives a new, independent obligation from her own bank rather than acquiring the originator's potentially defective claim, and actions by the originator's creditors cannot reach funds once the payment order has been executed.¹¹⁴

Non-bank payment claims occupy materially weaker ground. As creatures of contract, their transfer is governed by ordinary assignment rules: an assignee takes subject to all defenses the obligor could assert against the assignor.¹¹⁵ Unlike a wire transfer where the beneficiary receives a fresh obligation, a transfer within a non-bank network merely reassigns the same underlying claim with all its vulnerabilities intact. If the original holder obtained funds through fraud, in violation of the provider's terms, or subject to a third-party dispute, the transferee may find the claim subject to setoff, freezing, or forfeiture.¹¹⁶ Recipients must either trust their counterparty or accept the risk that adverse claims from earlier in the chain may compromise their entitlement.

D. The Framework of Moneyness

The preceding Sections examined how law constructs the capacity of monetary instruments to perform money's core functions. From this analysis, we extract a unified concept: moneyness denotes the degree to which an instrument reliably serves as a medium of exchange, unit of account, and store of value. Instruments possess this attribute in varying measure depending on their legal architecture.

Economists have long invoked the concept of "moneyness," yet their accounts theorize it purely as an economic phenomenon.¹¹⁷ James Tobin establishes the foundational insight: the distinction between money and other assets is one "of degree, not of kind."¹¹⁸ Subsequent scholars have sought to identify the features that determine where an instrument falls on this spectrum. Gary Gorton and Bengt Holmström locate moneyness in "information insensitivity": the characteristic of debt claims that permits holders to accept them without investigating issuer creditworthiness.¹¹⁹ Milton Friedman and

¹¹² See *Foley v. Hill* (1848) 2 H.L.C. 28, 9 Eng. Rep. 1002 (H.L.).

¹¹³ U.C.C. §§ 3-302, 3-305(b) (A.L.I. & Unif. L. Comm'n amended 2002).

¹¹⁴ U.C.C. §§ 4A-404(a), 4A-502(d) & cmt. 4 (Am. L. Inst. & Unif. L. Comm'n 1989); see also U.C.C. § 4A-502(b) (A.L.I. & Unif. L. Comm'n 2012).

¹¹⁵ RESTATEMENT (SECOND) OF CONTRACTS § 336 (A.L.I. 1981).

¹¹⁶ Awrey, *supra* note 40, at 55–57.

¹¹⁷ Morgan Ricks, *Money, Private Law, and Macroeconomic Disasters*, 83 LAW & CONTEMP. PROBS. 65, 74–75 (2020) (for an exhaustive account of the economists' moneyness literature).

¹¹⁸ See James Tobin, *Commercial Banks as Creators of "Money"*, in BANKING AND MONETARY STUDIES 408, 412–13 (Deane Carson ed., 1963).

¹¹⁹ See GARY B. GORTON, SLAPPED BY THE INVISIBLE HAND: THE PANIC OF 2007 11–12 (2010); see Holmstrom, *supra* note 66, at 1–2, 5, 15.

Anna Schwartz view moneyiness through the perception of reliable nominal value storage.¹²⁰ These accounts identify moneyiness through observable economic properties, but do not query the legal mechanisms that produce them. Manmohan Singh comes closest to identifying functional metrics, measuring collateral velocity and reuse rates as proxies for monetary functionality and specifying properties that anticipate several elements of our framework: acceptability to counterparties, ease of use, and price stability.¹²¹ Yet Singh explicitly treats these attributes as market phenomena to be measured rather than legal constructions to be explained.¹²²

Financial regulation scholars have enriched this literature further elaborating the notion of “moneyiness.” Their crucial contribution has been to theorize how public law constructs the safety of private monetary claims and, in doing so, determines their capacity to function as money. Awrey has developed the most comprehensive account of this relationship. His work demonstrates that bank deposits achieve a degree of safety comparable to that of public money because an interlocking framework of prudential regulation, deposit insurance, lender-of-last-resort facilities, and special resolution regimes transforms otherwise risky private claims into what he terms “good money.”¹²³ Applied beyond banking, his analysis yields a clear normative prescription: non-bank monetary instruments can function as effective substitutes for bank deposits only if they are brought within a regulatory perimeter functionally equivalent to that governing banks.¹²⁴

Within this body of legal scholarship, Ricks engages with the concept of moneyiness most directly, deploying it as the foundation for a reconceptualization of banking regulation. Drawing on Friedman and Schwartz’s original framing, he surveys uses of the concept across economics and legal scholarship.¹²⁵ For Ricks, the significance of moneyiness lies in its implications for regulatory design. If private instruments can achieve money-like status, then the institutions that issue them are engaged in money creation and, thus, should be regulated accordingly.¹²⁶

¹²⁰ See MILTON FRIEDMAN & ANNA J. SCHWARTZ, *MONETARY STATISTICS OF THE UNITED STATES: ESTIMATES, SOURCES, METHODS* 151–52 (1970).

¹²¹ See Manmohan Singh, *Velocity of Pledged Collateral: Analysis and Implications* 4–6 (Int’l Monetary Fund, Working Paper No. 11/256, 2011); Manmohan Singh, *Managing the Fed’s Liftoff and Transmission of Monetary Policy* 14 (IMF Working Paper No. 15/202, 2015).

¹²² Singh, *Managing the Fed’s Liftoff and Transmission of Monetary Policy*, *supra* note 121.

¹²³ See Awrey, *Bad Money*, *supra* note 40, at 1, 25–33; Awrey *Beyond Banks*, *supra* note 65, at chs. 1–2. See also Judge, *Information Gaps*, *supra* note 65, at 431–34.

¹²⁴ Awrey, *Beyond Banks*, *supra* note 65, at chs. 6–7.

¹²⁵ Ricks, *Money, Private Law, and Macroeconomic Disasters*, *supra* note 117, at 74–75 (collecting uses of “moneyiness” across the literature from Friedman & Schwartz through contemporary scholarship). See also Judge, *The Importance of “Money,”* 130 HARV. L. REV. 1148, 166 (2017) (reviewing Ricks, *The Money Problem* (2016), and observing that moneyiness is “one of degree,” greater for shorter-term instruments than longer-term ones).

¹²⁶ Ricks, *Money as Infrastructure*, *supra* note 65, at 758–60 (developing the “money paradigm”); *id.* at 765–66 (arguing that money creation is “an intrinsically public activity”

Pistor approaches the question from a broader theoretical vantage. Her work does not address moneyness directly but instead theorizes how law transforms simple assets into capital, with money-like debt as one application. In *The Code of Capital*, she identifies four legal attributes—priority, durability, universality, and convertibility—through which legal coding creates and preserves economic value.¹²⁷ Applied to money, her analysis is most illuminating on the dimension of convertibility, which captures the mechanism by which holders of private credit claims retain the ability to convert those claims into state money on demand.¹²⁸ Though Pistor’s framework was not designed as a theory of moneyness, its demonstration that legal coding determines the quality and reliability of private monetary claims provides important conceptual foundations.

This Article builds upon these contributions. Collectively, these scholars have established that safety, constructed through the regulatory architecture of deposit insurance, prudential supervision, lender-of-last-resort facilities, and tailored resolution regimes, is constitutive of moneyness.¹²⁹ We take this insight and incorporate safety as a core element of our framework. But safety, however essential, does not exhaust what makes an instrument function as money. Even an instrument whose safety is fully constructed by regulatory architecture must function within a legal framework that determines how payment discharges obligations, when transfers achieve finality, and whether recipients take free of prior claims.

The scholars whose work we have described investigate the public law architecture that makes money safe. They do not theorize the private law infrastructure through which monetary instruments function in transactions. Ricks himself has observed that “payment law—one facet of the law of money—has become something of a scholarly backwater.”¹³⁰ When these scholars do engage with “private law,” moreover, they tend to employ the term in senses distinct from ours: to denote the freedom to issue debt, the legal modules by which assets are coded into capital, or the contractual structures that construct safe asset pools; they do not address the nature of the monetary claim itself nor the commercial law architecture of discharge, finality, and negotiability.¹³¹ We see this as a matter of scope, not oversight. Our framework

outsourced to banks through a “franchise arrangement”); *see also* RICKS, THE MONEY PROBLEM, *supra* note 97 (developing this thesis at book length).

¹²⁷ Pistor, *The Code of Capital*, *supra* note 65, at 3, 15.

¹²⁸ *Id.* at 15, 77.

¹²⁹ *See also* Gelpert & Gerding, *Inside Safe Assets*, *supra* note 40, at 389–406 (developing a three-part taxonomy—“Made Safe,” “Labeled Safe,” and “Guaranteed Safe”—of the legal tools by which public law constructs the safety of financial instruments); Gelpert & Gerding, *Private and Public Ordering in Safe Asset Markets*, *supra* note 73, at 120–27 (extending this analysis to the interaction of private and public ordering tools).

¹³⁰ Ricks, *Safety First*, *supra* note 71, at 122.

¹³¹ *See* Ricks, *Money, Private Law*, *supra* note 117, at 67 (using “private law” to denote contractual rights and obligations and, specifically, the freedom to issue debt); PISTOR, THE CODE OF CAPITAL, *supra* note 65, at 107 (using “private law” generally to refer to contract,

is designed as a complement: where prior scholarship specifies the regulatory conditions that construct monetary confidence, we specify the private law conditions necessary for monetary operation.

We identify four elements that constitute moneyness, one foundational and three functional. The foundational element is the *nature and substance of the claim*: what kind of legal interest does the holder possess, what is its source, and what relationship must exist between holder and issuer? Public money is sui generis, reifying value through statutory designation rather than evidencing a right to receive it from an obligor. Private money, by contrast, consists of contractual claims requiring privity and exposing holders to counterparty risk. This ontological distinction shapes what legal architecture is necessary to achieve the three functional elements. Because private money exposes holders to counterparty risk in ways public money does not, private money requires legal architecture, deposit insurance, priority rules, and payment system finality to achieve the safety and discharge capacity that public money possesses by statutory designation. The second element, *safety*, concerns confidence that the underlying promise will be honored, encompassing both the likelihood of ongoing performance and the prospect of recovery upon failure. *Discharge capacity* is the third element, and it concerns whether creditors will accept the instrument in satisfaction of obligations and whether transfers achieve legal finality. *Negotiability* is the fourth and final element and concerns whether recipients can take free of competing claims and defenses, thus allowing circulation without inquiry into provenance.

An instrument achieves moneyness to the extent its legal architecture satisfies all four elements. Critically, the relationship among elements is not additive but conjunctive: an instrument that fails to achieve adequacy in any single element cannot function reliably as money, regardless of how well it performs on the others. Minimal adequacy across all four produces more reliable money than excellence in one dimension combined with deficiency in another. Once the adequacy threshold is met across all elements, improvements in any dimension enhance overall moneyness.

This framework gives legal content to Perry Mehrling’s insight that monetary systems are hierarchical.¹³² Where he describes the structure, our framework specifies the legal criteria that determine an instrument’s placement within it. The moneyness framework developed here thus provides the analytical tools necessary to assess any monetary instrument, old or new. The analytical task is to determine whether an instrument’s legal architecture adequately addresses each of the four elements. Parts II and III of this Article undertake that analysis for stablecoins.

property, trust, corporate, and bankruptcy law); Gelpern & Gerding, *Private and Public Ordering*, supra note 73, at 127 (using “private law” to describe contractual ordering and structural techniques for constructing safe asset pools).

¹³² Mehrling, supra note 50, at 394.

II. ARCHITECTURE AND ANALYSIS OF CENTRALIZED STABLECOINS

Stablecoins exist on a spectrum from fully centralized instruments issued by identifiable corporations to decentralized protocols operating through autonomous smart contracts.¹³³ This Part examines centralized stablecoins: tokens issued by corporations capable of entering into legal relationships and subject to regulatory oversight.

First, subpart A explores the theoretical promise of these instruments: accessibility through open blockchain networks, transferability through rapid low-cost settlement, and safety through reserve backing and transparency. Subpart B then analyzes how the two dominant issuers, Tether and Circle, have actually implemented these promises through their corporate structures, reserve management, and business practices. Subpart C deconstructs these stablecoin private law frameworks and reveals a stark disconnect between the objective aims of stablecoins and the contractual reality put in place to deliver on these promises. We demonstrate how gatekeeping mechanisms limit direct issuer relationships to institutional users, the ways in which asymmetric terms transfer virtually all risks to holders while insulating issuers from liability, how redemption functions as a conditional privilege rather than a guaranteed right, and that holders lack any proprietary interest in backing reserves. Finally, we examine the GENIUS Act's public law interventions and document how the statute reshapes the regulatory framework, laying the groundwork to show, in Part III, how the Act falls short in fully imbuing attributes of moneyness to stablecoin claims.

A. Centralized Stablecoins in Theory

The growing enthusiasm for stablecoins reflects confidence in their theoretical capacity to function as monetary instruments capable of meeting needs unaddressed by present-day dollar payment systems.¹³⁴ A defining feature of stablecoins is their issuance on public blockchains: distributed ledgers replicated across geographically dispersed nodes, where each node maintains a copy of the transaction record.¹³⁵ The U.S. dollar payment system, by contrast, relies on bank-based infrastructure.¹³⁶ Those with bank accounts and firms with Federal Reserve master accounts are best positioned to take advantage of this

¹³³ Bruce, Odet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1084–1108.

¹³⁴ TOBIAS ADRIAN ET AL., UNDERSTANDING STABLECOINS (Dec. 3, 2025), <https://www.imf.org/en/publications/departamental-papers/issues/2025/12/02/understanding-stablecoins-570602>; Bruce, Odet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1076.

¹³⁵ DYLAN YAGA ET AL., BLOCKCHAIN TECHNOLOGY OVERVIEW 1–3 (Oct. 2018), <https://doi.org/10.6028/NIST.IR.8202>.

¹³⁶ BANK FOR INT'L SETTLEMENTS, DISTRIBUTED LEDGER TECHNOLOGY IN PAYMENT, CLEARING AND SETTLEMENT: AN ANALYTICAL FRAMEWORK 1, 5 (Feb. 2017), <https://www.bis.org/cpmi/publ/d157.pdf>; YAGA ET AL., *supra* note 135, at iii.

system, while the unbanked and non-traditional financial institutions face higher costs or must route payments through intermediary banks.¹³⁷

Public blockchains operate using relatively open entry criteria. On permissionless networks, any user can download software to access the system without authorization from a central authority.¹³⁸ Unlike traditional payment systems where banks perform gatekeeping functions, blockchains rely on distributed validators who collectively verify transactions through consensus protocols, with security deriving from cryptographic techniques and economic incentives rather than trusted intermediaries.¹³⁹ This architecture enables the transfer of value without the layered intermediation characteristic of traditional payment systems.¹⁴⁰

Stablecoins emerged around 2014, largely to facilitate payments where traditional banks could not operate.¹⁴¹ In contrast to volatile cryptocurrencies like Bitcoin or Ether, stablecoins aim to provide reliable value, with each token representing exactly one U.S. dollar.¹⁴² As digital tokens transferable peer-to-peer without third-party certification, stablecoins theoretically embody the moneyness attributes described in Part I.¹⁴³ Networks like Solana can move value globally in minutes at costs approaching \$0.10 per transaction, compared to international wire transfers costing \$15 to \$50.¹⁴⁴ These efficiencies have made stablecoins attractive for cross-border payments and remittance corridors, as well as in economies where domestic payment systems lack trust and coverage.¹⁴⁵

To be sure, blockchains present drawbacks. Open access means networks can be used by illicit actors and sanctioned entities, creating challenges

¹³⁷ Rod Garratt & Michael Junho Lee, *The Future of Payment Infrastructure Could Be Permissionless*, FED. RSRV. BANK OF N.Y: LIBERTY ST. ECON. (Nov. 25, 2025), <https://libertystreeteconomics.newyorkfed.org/2025/11/the-future-of-payment-infrastructure-could-be-permissionless/>.

¹³⁸ See Julie Andersen Hill, *Opening a Federal Reserve Account*, 40 YALE J. ON REGUL. 453 (2023).

¹³⁹ Tobias Adrian, Marcello Miccoli & Nobuyasu Sugimoto, *How Stablecoins Can Improve Payments and Global Finance*, IMF BLOG (Dec. 4, 2025), <https://www.imf.org/en/blogs/articles/2025/12/04/how-stablecoins-can-improve-payments-and-global-finance>; G7 WORKING GRP. ON STABLECOINS, INVESTIGATING THE IMPACT OF GLOBAL STABLECOINS 1 (Oct. 2019), <https://www.bis.org/cpmi/publ/d187.pdf>.

¹⁴⁰ See generally RONALD J. MANN, PAYMENT SYSTEMS AND OTHER FINANCIAL TRANSACTIONS (2023) (describing how payment systems like checks, credit cards, and wire transfers work).

¹⁴¹ Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1085–90.

¹⁴² Seira Amber et al., *Governance of Permissionless Blockchain Networks*, BD. OF GOVERNORS OF THE FED. RSRV. SYS.: FEDS NOTES (Feb. 9, 2024), <https://doi.org/10.17016/2380-7172.3443>; Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1085–90.

¹⁴³ Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1085–90; see U.S. GOV'T ACCOUNTABILITY OFF., SCIENCE & TECH SPOTLIGHT: BLOCKCHAIN & DISTRIBUTED LEDGER TECHNOLOGIES 1 (2019), <https://www.gao.gov/assets/gao-19-704sp.pdf>.

¹⁴⁴ See *id.*

¹⁴⁵ *Id.*

for anti-money laundering controls.¹⁴⁶ And users may be dissuaded by difficulties converting stablecoins back into traditional dollars (the “last mile” problem where theory meets reality).¹⁴⁷

Fundamentally, whether stablecoins can function as monetary instruments depends on whether they possess the moneyness attributes articulated in Part I. There we explained that *safety* sits at the foundation of moneyness: public money represents an unconditional claim on the state, while bank deposits benefit from federal deposit insurance and regulatory protections. For stablecoins to achieve comparable safety, holders must be assured that claims can be redeemed at par without costly investigation into the issuer’s creditworthiness or reserve adequacy.

The same imperative applies to *acceptance* and *finality*: the capacity to irrevocably discharge monetary obligations. Public money achieves this through legal tender status; bank deposits through integration into regulated payment infrastructure. Stablecoins must similarly achieve sufficient acceptance that counterparties will reliably receive them, with sufficient finality that transactions cannot be unwound.

Finally, stablecoins must enjoy some degree of *negotiability*, which is the attribute by which transferees take instruments free of prior claims and defenses. Physical currency achieves near-perfect negotiability as a bearer instrument, and bank deposits achieve functional negotiability through payment rules and infrastructure. For stablecoins to serve as monetary instruments, transferees must be confident they acquire clean title.

In sum, centralized stablecoins present themselves as monetary instruments combining blockchain efficiency with traditional financial backing, all promising accessibility through open networks, transferability through rapid low-cost settlement, and safety through reserve backing and transparency. Next, we turn to the contractual and operational ways in which the avowed goals of stablecoins have sought to be realized in practice. In the historic absence of dedicated regulation prior to the GENIUS Act, these market norms have served to shape the nature and experience of the claim for everyday users.

B. Centralized Stablecoins in Practice

Evaluating whether the theoretical aspirations hold up in reality requires examining the operational architecture that centralized stablecoin issuers have constructed for delivering on the promise of stablecoins. To be sure, the stablecoin market broadly has expanded dramatically with a number of centralized and decentralized issuers coming on the scene over the past several

¹⁴⁶ *Id.*

¹⁴⁷ *See generally id.* (“governments may feel uncomfortable allowing cryptocurrencies (or other DLT) to be used as a method of exchange”).

years. *Table 1* shows the leading stablecoin issuers ordered by market capitalization as of December 17, 2025.¹⁴⁸

Table 1
Largest Stablecoin Issuers by Market Capitalization
(as of December 17, 2025)

Stablecoin Issuer/Token	Market Capitalization
Tether (USDT)	\$186,270,019,186.00
Circle (USDC)	\$78,033,367,481.00
Ethena (USDe)	\$6,431,995,821.00
MakerDao (DAI)	\$5,364,508,126.00
PayPal (PYUSD)	\$3,864,828,354.00
World Liberty Financial (USD1)	\$2,718,094,032.00
Global Dollar (USDG)	\$1,443,442,255.00
Ripple (RLUSD)	\$1,027,359,553.00

Here we focus mainly on Tether and Circle because they dominate the market and their architectures are representative of centralized stablecoins generally. Both issue tokens backed by reserve assets and promise redemption at par for U.S. dollars. Centralized stablecoins, in turn, command the overwhelming share of the market relative to more decentralized or non-asset-backed stablecoins.

Yet while both Circle and Tether offer dollar-pegged tokens, their operational and contractual implementation diverges dramatically. Structural choices made by Tether and Circle regarding corporate organization, reserve management, and revenue generation are not merely technical details but rather foundational decisions that shape the nature and quality of holders' claims as well as their safety and soundness. Understanding these design elements is prerequisite to analyzing the legal relationships they create and the quality of moneyness attributable to their claims.

1. Issuer Design and Corporate Structure

Tether operates through a corporate structure that has undergone multiple reorganizations and is viewed by commentators as relatively opaque. The primary contracting party is Tether International, S.A. de C.V., following a

¹⁴⁸ *Top Stablecoin Tokens by Market Capitalization*, COINMARKETCAP, <https://coinmarketcap.com/view/stablecoin/> (last visited Dec. 17, 2025) (The market capitalization figures were retrieved from CoinMarketCap on December 17, 2025, at 1:08 PM CST. As these values are subject to high volatility, they should be considered a snapshot reflective only of that specific time).

recent corporate migration to El Salvador from the British Virgin Islands (BVI), where it was formerly known as Tether International Limited.¹⁴⁹ In El Salvador, the company obtained authorization as a stablecoin issuer and digital assets service provider.¹⁵⁰ Yet this regulatory domicile is decoupled from its legal governance: the Terms of Service mandate that agreements “shall be governed by and construed and enforced in accordance with the Laws of the British Virgin Islands,” with disputes resolved through confidential, binding arbitration before a sole arbitrator in that jurisdiction.¹⁵¹

Circle presents a contrasting structure. In the United States, the sole issuer of USDC is Circle Internet Financial, LLC, a Delaware limited liability company that completed its initial public offering in June 2025.¹⁵² The company holds money transmitter licenses in forty-seven states and a BitLicense from the New York State Department of Financial Services.¹⁵³ For European operations, Circle established a licensed electronic money institution in France to comply with the European Markets in Crypto Assets Regulation (MiCAR).¹⁵⁴ For Singapore, customers contract with a local subsidiary under Singaporean law.¹⁵⁵

These structural choices create different enforcement landscapes. Tether’s BVI arbitration can increase costs and complexity for claim holders while ensuring confidentiality that shields conduct from public scrutiny.¹⁵⁶ Circle’s agreements require arbitration under JAMS rules in the user’s county or Suffolk County, Massachusetts—notably more accessible, though class action waivers still limit collective action.¹⁵⁷

The companies also differ in operational transparency. Tether does not publicly disclose its client list or commercial arrangements with key customers, leaving the mechanisms through which USDT flows to major exchanges

¹⁴⁹ *Terms of Service*, TETHER, <https://tether.to/en/legal/> (last updated Nov. 27, 2025).

¹⁵⁰ TETHER, RELEVANT INFORMATION DOCUMENT 1 (2025), https://tether.to/public/Relevant_Information_Document_-_Tether_International,_S.A._de_C.V..pdf.

¹⁵¹ TETHER, *supra* note 149, at §§ 1.4, 7.1; TETHER, *supra* note 150, at 24.

¹⁵² Circle Internet Grp., Inc., Amend. No. 3 to SEC Registration Statement (Form S-1/A), <https://www.sec.gov/Archives/edgar/data/1876042/000119312525126208/d737521ds1a.htm> [hereinafter Circle, Form S-1]; *Circle Announces Pricing of Upsized Initial Public Offering*, CIRCLE: NEWS DETAILS (June 4, 2025), <https://investor.circle.com/news/news-details/2025/Circle-Announces-Pricing-of-Upsized-Initial-Public-Offering/default.aspx>.

¹⁵³ *Circle Mint User Agreement*, CIRCLE § 39, <https://www.circle.com/legal/user-agreement> (last updated Jan. 7, 2026); *Circle Granted First BitLicense*, FINEXTRA (Sep. 22, 2015), <https://www.finextra.com/newsarticle/27884/circle-granted-first-bitlicense>.

¹⁵⁴ CIRCLE, USDC WHITE PAPER (2025), <https://www.circle.com/legal/mica-usdc-whitepaper>.

¹⁵⁵ CIRCLE, *supra* note 153, at § 40; *Singapore Addendum*, CIRCLE, <https://www.circle.com/legal/singapore-addendum> (last updated May 30, 2025).

¹⁵⁶ TETHER, *supra* note 149, at § 7.1.

¹⁵⁷ CIRCLE, *supra* note 153, at §§ 26, 36.

opaque. Circle’s S-1 filing, by contrast, reveals detailed partnership information and key corporate relationships.¹⁵⁸

2. Stabilization Mechanisms and Reserve Management

Both Tether and Circle commit to minting and redeeming their stablecoins at a one-to-one ratio with the U.S. dollar.¹⁵⁹ The stabilization mechanism for this peg operates through economic arbitrage: when market prices deviate from the 1:1 peg, arbitrageurs profit from the spread between market prices and the fixed redemption rate.¹⁶⁰ If USDT trades below \$1, arbitrageurs purchase tokens and redeem them for \$1, contracting supply until the price recovers. This mechanism’s viability depends entirely on market confidence that issuers maintain sufficient reserves and will honor redemption requests.¹⁶¹

Reserve composition has evolved dramatically since 2022.¹⁶² Tether’s reserves, which once included commercial paper, secured loans, and crypto assets, now consist primarily of U.S. Treasury Bills (rising from 70% in early 2022 to over 80% by mid-2025).¹⁶³ Yet approximately 17% of holdings still include precious metals, bitcoin, and secured loans, which suggests a continued pursuit of higher-yield investments despite accompanying risks.¹⁶⁴ Importantly, Tether’s Relevant Information Document states that “the composition of Reserves is subject to change at Tether’s sole discretion.”¹⁶⁵

Circle’s reserve management reflects its institutional positioning. Approximately 90% of USDC reserves are held in the Circle Reserve Fund, a government money market fund managed by BlackRock with BNY Mellon as custodian.¹⁶⁶ This structure provides professional management and segregation, though only Circle (not USDC holders) maintains legal claims to the fund’s assets.¹⁶⁷

¹⁵⁸ Circle, Form S-1, *supra* note 152, at 13, 72, 96–108.

¹⁵⁹ Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1094–95.

¹⁶⁰ *Id.* at 1095.

¹⁶¹ *See id.*

¹⁶² Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at *4.

¹⁶³ *Independent Accountant Report*, TETHER (Sep. 30, 2022), <https://tether.to/en/transparency/?tab=usdt> [<https://perma.cc/UN54-5EUD>]; BDO, INDEPENDENT AUDITORS’ REPORT ON THE FINANCIAL FIGURES & RESERVES REPORT (2025), https://assets.ctfassets.net/vyse88cgwfb1/1LdSmP3HBynDxm6wvkDSsL/c4bcbd1f6fc18a0e8b3a12444ac8ae97/ISAE_3000R_-_Opinion_Tether_International_Financial_Figures___Reserves_Report_31.03.2025_RC187322025BD0040.pdf [<https://perma.cc/JZD3-VYGR>].

¹⁶⁴ *Id.*

¹⁶⁵ TETHER, *supra* note 150, at 17.

¹⁶⁶ Circle, Form S-1, *supra* note 152, at 156–57.

¹⁶⁷ *Id.*

Custody arrangements reveal different risk profiles. Tether has repeatedly restructured its custodial relationships, moving from institutions in the Bahamas and Cayman Islands to primarily relying on the global financial services firm Cantor Fitzgerald, while transitioning attestation services from Moore Cayman to BDO Italia.¹⁶⁸ This pattern, combined with limited disclosure, creates uncertainty about reserve security and accessibility. Circle’s use of established infrastructure provides greater institutional stability, though concentration in a single fund structure creates its own operational risks.¹⁶⁹

Transparency practices further distinguish the issuers. Tether provides quarterly attestations but not full audits, maintaining that reserves are “100% backed” without real-time visibility into composition changes.¹⁷⁰ Circle’s public company status requires comprehensive SEC disclosures, including detailed breakdowns of reserve assets, custody arrangements, and risk factors.¹⁷¹ Yet even Circle’s enhanced transparency does not extend to real-time reserve reporting or independent verification of redemption capacity during periods of stress.

Lastly, neither issuer provides its customers with mechanisms to monitor or influence reserve management decisions. Issuers can unilaterally alter reserve composition, change custodians, or modify investment strategies without stablecoin holder input.¹⁷²

3. Business Models and Incentive Structures

Both Tether and Circle generate returns primarily through reserve investment. The transformation of stablecoin economics following the Federal Reserve’s 2022 rate increases illustrates these dynamics starkly. In the near-zero interest rate environment preceding 2022, issuers faced substantial investment risk, operating as portfolio managers seeking returns while potentially compromising their ability to honor redemptions.¹⁷³ The shift to rates exceeding 4% allowed issuers to generate substantial returns simply by holding U.S. Treasuries.¹⁷⁴

Circle’s financial disclosures provide unprecedented visibility into this model. The company swung from losses exceeding \$768 million in 2022 to

¹⁶⁸ David Jeans, *Billions of Tether’s Reserves Were Stored at Cantor Fitzgerald*, FORBES (Feb. 10, 2023), <https://www.forbes.com/sites/davidjeans/2023/02/10/tether-reserves-cantor-capital-union-ansbacher/>; Helen Partz, *Tether’s Reported Bank Partner Capital Union Shares Its Crypto Strategy*, INVESTING.COM (June 2, 2022).

¹⁶⁹ Circle, Form S-1, *supra* note 152, at 156–57.

¹⁷⁰ *Transparency: Reports*, TETHER, <https://tether.to/en/transparency/?tab=reports> (last visited Aug. 19, 2025).

¹⁷¹ Circle, Form S-1, *supra* note 152, at 13–15, 56–58, 156–57.

¹⁷² TETHER, *supra* note 150, at 17; CIRCLE, *supra* note 153, at § 16.

¹⁷³ Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1095; *see also* Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at *4.

¹⁷⁴ Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at *4.

substantial profitability in 2023 and 2024, driven almost entirely by Federal Reserve policy rather than any operational improvements.¹⁷⁵ Interest and dividends on reserves constituted 95.3%, 98.6%, and 99.1% of total revenue for fiscal years 2022, 2023, and 2024, respectively.¹⁷⁶ Circle has effectively become a non-bank cash management operation, capturing the economic value of its holders' balances while those holders bear all associated risks.

Tether's approach, while less transparent, suggests similar dynamics with additional risk-taking. The retention of approximately 17% of reserves in precious metals, bitcoin, and secured loans indicates pursuit of higher yields despite potential volatility.¹⁷⁷ This creates asymmetric risk allocation: Tether captures the upside while holders bear the downside if reserve values decline or investments prove illiquid during redemption surges.

Fee structures provide secondary revenue but create distortions. Tether charges 0.1% for minting its token and the greater of \$1,000 or 0.1% for redeeming them, with \$100,000 minimum thresholds.¹⁷⁸ These fees weaken the stabilization mechanism as arbitrageurs will only correct price imbalances if they can profit after fees, meaning a 0.2% total fee prevents action unless deviation exceeds that threshold.¹⁷⁹ Circle's lower fees reduce this friction but still permit value extraction from the minting and redemption process.¹⁸⁰

C. Deconstructing the Private Law Frameworks

To understand the legal architecture governing centralized stablecoins, we conducted a comprehensive study of the contractual frameworks and operational documents of Tether and Circle.¹⁸¹ Our analysis draws upon three categories of materials collected as of July 2025: (1) legal agreements governing issuer-user relationships, including terms of service, user agreements, privacy policies, and risk disclosure statements;¹⁸² (2) public-facing communications and marketing materials, analyzed to identify discrepancies between representations and contractual obligations;¹⁸³ and (3) technical whitepapers, corporate filings,

¹⁷⁵ Circle, Form S-1, *supra* note 152, at 32.

¹⁷⁶ *Id.* at 57.

¹⁷⁷ BDO, *supra* note 163.

¹⁷⁸ TETHER, *supra* note 150, at 14–15; *Fees*, TETHER, <https://tether.to/en/fees> (last visited Aug. 16, 2025).

¹⁷⁹ Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1095.

¹⁸⁰ CIRCLE, *supra* note 153, at § 10.

¹⁸¹ For an abridged version of our analysis, see Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3.

¹⁸² *Legal*, TETHER, <https://tether.to/en/legal/> (last updated Jan. 27, 2025); *Legal & Privacy*, CIRCLE, <https://www.circle.com/legal> (last updated Aug. 7, 2025).

¹⁸³ TETHER, <https://tether.to/en/> (last visited Aug. 25, 2025); *The World's Largest Regulated Stablecoin Powering Global Finance*, CIRCLE, <https://www.circle.com/en/usdc> (last visited Sept. 5, 2025).

and regulatory disclosures, including Circle’s S-1 registration statement.¹⁸⁴ For Tether, this required navigating a fragmented framework distributed across six distinct instruments.¹⁸⁵ Circle similarly compartmentalizes its terms across multiple agreements with jurisdictional variations for the United States, European Economic Area, and Singapore.¹⁸⁶ While these documents represent a temporal snapshot, the structural issues we identify reflect patterns that have persisted throughout these stablecoins’ existence and appear inherent to their operational models.¹⁸⁷

The private law architecture reveals a fundamental disconnect between the promised goals of stablecoins for claimholders and legal reality established by contract. While issuers offer their stablecoins as delivering “unparalleled liquidity” and being “always redeemable 1:1 for U.S. dollars,” contracts tell a starkly different story.¹⁸⁸ Our analysis highlights a pattern of one-sided agreements, conditional rights, and scant protections for holders that severely compromise these instruments’ claims to capture fullest moneyness.¹⁸⁹

1. Gatekeeping and Direct Claims

Centralized stablecoin issuers limit direct contractual relationships to a small cohort of users, while millions of holders acquire tokens through secondary markets without any direct legal access to the issuer. This structural bifurcation creates two distinct classes of participants with fundamentally different legal rights.

Tether maintains the most restrictive access regime. Despite USDT’s approximately \$150 billion in circulation, the company limits direct relationships to only 882 verified customer accounts worldwide.¹⁹⁰ Barriers include minimum transaction thresholds of \$100,000 for both minting and redemption, a non-refundable verification fee of 150 USDT, and categorical geographic exclusions barring individuals from the United States, Canada, and Singapore.¹⁹¹ These

¹⁸⁴ *Legal: Risk Disclosure Statement*, TETHER, <https://tether.to/en/legal/?tab=risk-disclosure-statement> (last updated Jan. 27, 2025); *Knowledge Base*, TETHER, <https://tether.to/en/knowledge-base> (last visited Aug. 24, 2025); TETHER, *supra* note 150; Circle, Form S-1, *supra* note 152.

¹⁸⁵ *Legal*, TETHER, <https://tether.to/en/legal/> (last updated Jan. 27, 2025); *Legal & Privacy*, CIRCLE, <https://www.circle.com/legal> (last updated Aug. 7, 2025).

¹⁸⁶ CIRCLE, *Singapore Addendum*, *supra* note 155; CIRCLE, *supra* note 153.

¹⁸⁷ See Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1091–93.

¹⁸⁸ See TETHER, *supra* note 183; CIRCLE, *supra* note 183; *Legal & Privacy: USDC Terms*, CIRCLE § 13, <https://www.circle.com/en/legal/usdc-terms> (last updated Oct. 4, 2024).

¹⁸⁹ See DUNE & ARTEMIS, *THE STATE OF STABLECOINS 2025: SUPPLY, ADOPTION & MARKET TRENDS 1* (Mar. 2025), <https://perma.cc/HE67-NWH2>; *Top Stablecoins by Market Capitalization*, COINMARKETCAP, <https://coinmarketcap.com/view/stablecoin/> (last visited Aug. 18, 2025).

¹⁹⁰ TETHER, *supra* note 150, at 14.

¹⁹¹ TETHER, *supra* note 150, at 14–15; TETHER, *supra* note 149, at § 1.1.30; *Fees*, TETHER, <https://tether.to/en/fees> (last visited Sept. 19, 2025).

verified customers undergo extensive compliance checks through the Tether.to platform,¹⁹² which the company explicitly describes as unsuitable for holding stablecoins: “Tether.to is not a wallet service.” Users are instructed, and should deposit USDT only “if you are planning to redeem TETHER tokens to fiat currency.”¹⁹³

Circle operates a broader but still institutionally-focused framework, maintaining 1,834 Circle Mint accounts as of March 2025.¹⁹⁴ Access is limited to corporations, partnerships, and other business organizations “duly organized and validly existing under the applicable laws of the jurisdiction of its organization.”¹⁹⁵ While Circle avoids geographic exclusions and verification fees, it explicitly directs non-account holders to secondary markets,¹⁹⁶ stating that those without accounts “are not customers of Circle” and “may not redeem USDC with Circle unless and until [they] open a Circle Mint account.”¹⁹⁷

This gatekeeping produces a stark reality: millions of stablecoin holders have no direct relationship with issuers. These secondary market holders own stablecoins as personal property under UCC Article 12,¹⁹⁸ but maintain no contractual privity with the issuer.

The legal implications are profound. Direct account holders enter into comprehensive user agreements defining their rights and obligations, while secondary market holders exist in a legal vacuum vis-à-vis the issuer.¹⁹⁹ Circle attempts to bridge this gap by asserting that its terms “apply to your holding and use of USDC” even for non-customers.²⁰⁰ Yet this claim lacks workability in contract law—these holders have never manifested assent to terms and were never presented with any in the first place.²⁰¹ The result is a two-tiered system where verified institutional clients possess enforceable (albeit limited) contractual rights, while the vast majority of holders remain entirely outside both issuers’ legal frameworks.

¹⁹² TETHER, *supra* note 150, at 22; TETHER, *supra* note 149, at § 9.

¹⁹³ *Knowledge Base: Deposits of Unsupported Tokens to Tether.to*, TETHER, <https://tether.to/ru/deposits-of-unsupported-tokens-to-tether-to> (last visited Sept. 19, 2025).

¹⁹⁴ Circle, Form S-1, *supra* note 152, at 100; CIRCLE, *supra* note 153, at § 1.

¹⁹⁵ Circle, Form S-1, *supra* note 152, at 100; CIRCLE, *supra* note 153, at § 1.

¹⁹⁶ *Who Is Eligible for a Circle Account?*, CIRCLE, <https://help.circle.com/s/article/Who-is-eligible-for-a-Circle-Account> (last visited Sept. 19, 2025).

¹⁹⁷ CIRCLE, *supra* note 188, at § 2.

¹⁹⁸ U.C.C. § 12-102(a)(2) (Am. L. Inst. & Unif. L. Comm’n 1977); *see also* Andrea Tosato & Christopher K. Odinet, *Digital Assets and the Property Question*, FLORIDA L. REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5151907 [hereinafter Tosato & Odinet, *Digital Assets*].

¹⁹⁹ TETHER, *supra* note 149, at § 2; CIRCLE, *supra* note 153, at § 1.

²⁰⁰ TETHER, *supra* note 149, at § 2; CIRCLE, *supra* note 153, at § 1.

²⁰¹ NANCY S. KIM, WRAP CONTRACTS: FOUNDATIONS AND RAMIFICATIONS (2013); Robert A Hillman & Jeffrey J Rachlinski, *Standard-Form Contracting in the Electronic Age*, 77 N.Y.U. L. REV. 429, 442–45 (2002); *See, e.g.*, Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1177 (9th Cir. 2014); Specht v. Netscape Commc’ns Corp., 306 F.3d 17, 20 (2d Cir. 2002).

2. Asymmetric Terms of Service

The contractual frameworks governing Tether and Circle establish overwhelmingly one-sided relationships that grant issuers sweeping powers while systematically disclaiming virtually all liability. These agreements, drafted in dense legal language and fragmented across multiple documents, create comprehensive shields insulating issuers from responsibility while transferring risks entirely to the limited cohort of users reliant on their protection.²⁰²

Both issuers begin with foundational disclaimers negating any warranties or guarantees. Tether’s Terms of Service provide that “Tether makes no representations, warranties, covenants or guarantees to you of any kind” and that services are offered “strictly on an as-is, where-is basis.”²⁰³ Circle uses identical language, specifically disclaiming implied warranties of title, merchantability, fitness for a particular purpose, and non-infringement.²⁰⁴

Beyond these baseline disclaimers, both issuers construct elaborate liability shields extending far beyond typical commercial arrangements. Tether requires clients to irrevocably acknowledge that neither the company nor its “Associates” (defined expansively to include shareholders, directors, officers, employees, contractors, agents, partners, insurers, and attorneys) assumes liability for losses across seventeen enumerated categories encompassing operational failures, security breaches, government seizures, blockchain forks, and third-party insolvency.²⁰⁵ Circle similarly disclaims all liability for indirect, incidental, special, consequential, or exemplary damages, as well as losses arising from unauthorized access, data alteration, and “any other matter relating to Circle’s services.”²⁰⁶

Both agreements grant issuers power to make unilateral modifications without meaningful notice or consent.²⁰⁷ Tether reserves authority to “delay or suspend your access to the Site or the Services (including in respect of purchases and redemptions)” for mere suspicion of violations or “unacceptable risk.”²⁰⁸ Circle claims even broader authority to “change, suspend, or discontinue any aspect of the Services at any time, including hours of operation or availability of any feature, without notice and without liability.”²⁰⁹

Force majeure provisions further expand issuer protections by excusing performance under circumstances directly implicating their core business models. Tether’s provision explicitly includes “bank failures” and “Digital

²⁰² TETHER, *supra* note 149, at pmb1.

²⁰³ *Id.* at § 12.

²⁰⁴ CIRCLE, *supra* note 153, at § 23; CIRCLE, *supra* note 188, at § 24.

²⁰⁵ TETHER, *supra* note 149, at § 1.1.4; *id.* at § 15; *id.* at §§ 15.1–15.17.

²⁰⁶ CIRCLE, *supra* note 153, at § 23.

²⁰⁷ TETHER, *supra* note 149, at § 4.4; CIRCLE, *supra* note 153, at §§ 9, 15

²⁰⁸ TETHER, *supra* note 149, at § 6.

²⁰⁹ CIRCLE, *supra* note 153, at § 16.

Token market collapse” as excusing events.²¹⁰ Circle’s encompasses “equipment failures” and “Internet disturbances” that could excuse virtually any operational failure.²¹¹

The agreements also impose extensive representations and warranties on users, any breach of which provides grounds to freeze assets, terminate accounts, and deny liability.²¹² Enforcement powers approach draconian levels: Tether can “freeze,” “burn,” or “block the transfer of Tether Tokens” based on its assessment of suspicious transactions.²¹³ Circle authorizes asset seizure “in its sole discretion” for activity it determines “may be associated with illegal activity.”²¹⁴

Lastly, both issuers categorically disclaim fiduciary duties. Tether states it has no fiduciary obligations and “does not provide any investment, portfolio management, legal, accounting, tax or other advice.”²¹⁵ Circle reinforces that it “is not a fiduciary” and is neither a trust company nor a qualified custodian under federal regulations.²¹⁶ These disclaimers, combined with mandatory arbitration and class action waivers, create relationships where users bear all risks while surrendering traditional legal remedies.²¹⁷

3. Conditional and Revocable Redemption Rights

The redemption mechanism constitutes the cornerstone of any reserve-backed stablecoin’s value proposition: the promise that tokens can be converted to fiat currency at a fixed rate. Yet our examination reveals that redemption rights are neither absolute nor guaranteed; rather, they are constructed as conditional privileges subject to extensive limitations and issuer discretion.

The disconnect between a stablecoin’s promise and its contractual reality is especially stark in this context. Tether’s website prominently claims “unparalleled liquidity,” while its Knowledge Base describes redemption as a simple three-step process.²¹⁸ Circle states that USDC is “[a]lways redeemable 1:1 for U.S. dollars.”²¹⁹ These representations suggest unconditional, on-demand convertibility—characteristics expected of successful monetary instruments.

²¹⁰ TETHER, *supra* note 149, at § 17.

²¹¹ CIRCLE, *supra* note 153, at § 30.

²¹² TETHER, *supra* note 149, at §§ 11.1–11.12, 16; CIRCLE, *supra* note 153, at § 19, 35.

²¹³ TETHER, *supra* note 150, at 22.

²¹⁴ CIRCLE, *supra* note 153, at § 19.

²¹⁵ TETHER, *supra* note 149, at § 14.

²¹⁶ CIRCLE, *supra* note 153, at § 3.

²¹⁷ TETHER, *supra* note 149, at § 7.6; CIRCLE, *supra* note 153, at §§ 26–27.

²¹⁸ TETHER, *supra* note 183; *Knowledge Base: Redeem Tether Tokens to Fiat Currency*, TETHER, <https://tether.to/en/redeem-tethers-to-fiat-currency/> (last visited Aug. 25, 2025).

²¹⁹ *USDC Now Available Natively on Base*, CIRCLE (Sep. 5, 2023), <https://www.circle.com/blog/usdc-now-available-natively-on-base>; CIRCLE, *supra* note 188, at § 13.

The contractual documents reveal a fundamentally different reality. For Tether, redemption is available exclusively to KYC Verified Customers with pre-approved accounts (only 882 entities worldwide).²²⁰ These customers face minimum thresholds of \$100,000 and fees of the greater of \$1,000 or 0.1%,²²¹ with multiple layers of discretionary review.²²² The legal characterization is tellingly restrictive: Tether describes redemption access as “a personal, restricted, non-exclusive, non-transferable, non-sublicensable, revocable, limited licence”²²³ and “a contractual right personal to [the client].”²²⁴ This framing establishes redemption not as an inherent attribute of the token but as a revocable privilege.

Circle’s framework, while superficially more accessible, contains similar limitations. Direct redemption remains exclusive to Circle Mint account holders (approximately 1,834 institutions), with the USDC Terms stating: “you may not redeem USDC with Circle unless and until you open a Circle Mint account.”²²⁵ Circle’s legal construction presents additional confusion: the Circle Mint User Agreement characterizes redemption as “a limited, non-exclusive, non-sublicensable, and non-transferable license,”²²⁶ yet the USDC Terms assert that “sending USDC to another address automatically transfers and assigns to that Holder . . . the right to redeem USDC.”²²⁷ The redemption right cannot simultaneously be non-transferable and automatically assignable.

Both issuers reserve broad authority to suspend or deny redemptions. Tether can “delay or suspend your access to the Site or the Services (including in respect of purchases and redemptions)” for suspicion of violations, legal concerns, government directives, or “unacceptable risk.”²²⁸ Most significantly, Tether reserves the right to delay redemptions “if such delay is necessitated by the illiquidity or unavailability or loss of any Reserves held by Tether to back the Tether Tokens”²²⁹ (in essence, a contractual escape hatch permitting suspension precisely when redemption would be most critical).²³⁰

Circle maintains similarly expansive powers, reserving the right to “decline to process any issuance or redemption without prior notice and may limit or suspend your use of one or more USDC Services at any time, in our sole discretion.”²³¹ The USDC Terms layer additional conditions, making

²²⁰ TETHER, *supra* note 150, at 14.

²²¹ *Id.* at 15; TETHER, *Fees*, *supra* note 191.

²²² TETHER, *Knowledge Base: Redeem Tether Tokens to Fiat Currency*, *supra* note 218.

²²³ TETHER, *supra* note 149, at § 2.

²²⁴ *Id.* § 4.1.

²²⁵ CIRCLE, *supra* note 188, at § 2; Circle, Form S-1, *supra* note 152, at 100.

²²⁶ *Id.* § 33.

²²⁷ CIRCLE, *supra* note 188, at §§ 2, 13, 27.

²²⁸ TETHER, *supra* note 149, at § 6.

²²⁹ *Id.* § 4.1.

²³⁰ *Legal: Risk Disclosure Statement*, *supra* note 184, at § 5.

²³¹ CIRCLE, *supra* note 153, at § 27.

redemption contingent upon account registration, no terms violations, and no pending regulatory or legal restrictions.²³²

Enforcement of whatever redemption rights exist faces significant procedural obstacles. Tether mandates confidential binding arbitration in the British Virgin Islands.²³³ Circle requires JAMS arbitration with class action waivers.²³⁴ Combined with the liability disclaimers and force majeure provisions analyzed above, these barriers render redemption rights largely theoretical for most holders.

4. Property Rights and Bankruptcy Treatment

Returning to the principle expressed in Part I that the ultimate test of any monetary instrument lies in the security of the holder's claim (particularly in insolvency), our analysis reveals a troubling reality: holders possess no proprietary interest in reserves and would likely stand as unsecured creditors (if they have standing at all) in bankruptcy proceedings.

Both verified account holders and secondary market participants own USDT and USDC tokens as personal property under UCC Article 12.²³⁵ However, the critical question is whether stablecoin ownership translates into any claim on the reserve assets backing the token's value.

For Tether, multiple provisions indicate that deposits create a debtor-creditor relationship rather than a bailment. Tether disclaims providing custodial services, stating that "Tether.to is not a wallet service."²³⁶ The Risk Disclosure Statement establishes that deposits are commingled: "Any Tether Tokens transferred to Tether to enable redemptions may be commingled with the Tether Tokens of other users of the Site and with the Tether Tokens of Tether and its Affiliates."²³⁷ Most significantly, the Terms require acknowledgment that assets "are not segregated assets held in your name or for your benefit but reflected only in the books and records of Tether."²³⁸ This language strongly indicates account holders have only contractual claims rather than proprietary interests.

Circle's framework presents greater ambiguity but reaches a similar conclusion. The Circle Mint User Agreement states that "you own the Digital Currencies held in your Hosted Wallet" and that "title to all of your Supported

²³² CIRCLE, *supra* note 188, at § 13.

²³³ TETHER, *supra* note 149, at § 7.1; TETHER, *supra* note 150, at 24.

²³⁴ CIRCLE, *supra* note 153, at §§ 26–27.

²³⁵ U.C.C. § 12-102(a)(2) (Am. L. Inst. & Unif. L. Comm'n 1977); *see also* Tosato & Odinet, *Digital Assets*, *supra* note 198.

²³⁶ *Knowledge Base: Deposit Tether Tokens to Tether Account*, TETHER, <https://tether.to/ru/deposit-tethers-to-your-account> (last visited July 16, 2025).

²³⁷ *Legal: Risk Disclosure Statement*, *supra* note 184, at § 11.

²³⁸ TETHER, *supra* note 149, at § 11.

Digital Currency will remain with you at all times”²³⁹ (language suggesting a trust or bailment). However, Circle definitively rules out a trust: “we are not a trust company” and “Circle is not a fiduciary, and Circle does not provide any trust or fiduciary services.”²⁴⁰ The bailment argument is severely weakened by Circle’s admission 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.”²⁴¹ Circle also disclaims status as a Qualified Custodian under federal regulations.²⁴²

The absence of proprietary interests extends to reserve assets. Tether’s Risk Disclosure Statement clarifies that “your right to request redemption of your Tether Tokens is a contractual right and does not represent security in favour of a holder of Tether Tokens.”²⁴³ Nothing suggests reserves are ring-fenced from general creditor claims, and Tether warns that reserves “could be subject to unexpected diminution in value” and are uninsured.²⁴⁴

Circle’s reserve structure, while more professionally managed, yields the same result. Approximately 90% of USDC reserves are held in the Circle Reserve Fund managed by BlackRock, but only Circle (not USDC holders) maintains legal claims to the fund’s assets.²⁴⁵ While the USDC Terms state reserves are held “on behalf of, and for the benefit of, Users,” this must be evaluated against Circle’s categorical disclaimers.²⁴⁶ The redemption right is consistently framed as contractual rather than proprietary, positioning holders as creditors rather than beneficial owners.²⁴⁷

The bankruptcy implications are severe. Verified account holders would likely be treated as general unsecured creditors. Absent imposition of a constructive trust (an uphill battle given explicit disclaimers and courts’ sparing use of such devices), reserves would constitute estate property available to all creditors.²⁴⁸ Both issuers disclaim deposit insurance.²⁴⁹

For secondary market holders, the situation is catastrophic. These holders have no contractual relationship with issuers and thus arguably no standing to file claims at all.²⁵⁰ Their only recourse would be against exchanges or platforms, which themselves are likely only unsecured creditors. The result is

²³⁹ CIRCLE, *supra* note 153, §§ 2.4, 4.

²⁴⁰ *Id.* § 3.

²⁴¹ *Id.* § 4.

²⁴² *Id.* § 3; 17 C.F.R. § 275.206(4)-2 (2022).

²⁴³ *Legal: Risk Disclosure Statement*, *supra* note 184, § 4; TETHER, *supra* note 150, at 17.

²⁴⁴ *Legal: Risk Disclosure Statement*, *supra* note 184, §§ 4.5, 9.

²⁴⁵ Circle, Form S-1, *supra* note 152, at 156–57.

²⁴⁶ CIRCLE, *supra* note 188, § 1; CIRCLE, *supra* note 153, § 3.

²⁴⁷ CIRCLE, *supra* note 188, § 2.

²⁴⁸ 11 U.S.C. §§ 507, 726.

²⁴⁹ TETHER, *supra* note 149, § 4.1; CIRCLE, *supra* note 153, § 14.

²⁵⁰ CIRCLE, *supra* note 188, § 2; TETHER, *supra* note 150, at 14.

complete disconnection between stablecoin ownership and any meaningful claim on backing assets.

D. The GENIUS Act's Public Law Intervention

In July 2025, Congress enacted the GENIUS Act (“Act”), the first comprehensive federal legislation addressing stablecoins in the United States.²⁵¹ The Act introduces mandatory operational requirements, strengthens holder protections, and implements significant bankruptcy reforms. While these provisions substantially enhance the regulatory framework for centralized stablecoins, our analysis in the pages that follow reveals that the Act’s interventions, when measured against the private law deficiencies identified above, leave critical gaps intact. These omissions preserve considerable issuer flexibility and continue to expose stablecoin holders to risks embedded in the existing private ordering arrangements.

1. Enhanced Redemption Framework

The GENIUS Act fundamentally restructures redemption rights by transforming them from revocable contractual privileges into statutory obligations. The Act defines a “payment stablecoin” as a digital asset whose issuer “is obligated to convert, redeem, or repurchase for a fixed amount of monetary value”,²⁵² thereby shifting redemption from a discretionary service to a mandatory legal duty inherent in the stablecoin itself.

The Act operationalizes this obligation through disclosure and procedural requirements. Section 4(a)(1)(B) mandates that issuers establish and publicly disclose “clear and conspicuous procedures for timely redemption” with fees disclosed in “plain language.”²⁵³ Changes to fees require “not less than 7 days’ prior notice to consumers,” preventing the sudden modifications currently permitted under issuer terms.²⁵⁴

Most significantly, the Act strips issuers of unilateral power to suspend redemption. Under current frameworks, both Tether and Circle reserve broad authority to delay or deny redemptions for reasons ranging from unacceptable risk to reserve illiquidity.²⁵⁵ The GENIUS Act eliminates this discretion, providing that “any discretionary limitations on timely redemptions can only be imposed by a State qualified payment stablecoin regulator, the Corporation, the

²⁵¹ 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/>; Guiding and Establishing National Innovation for U.S. Stablecoins Act of 2025 (GENIUS Act), 12 U.S.C. §§ 5901–5916.

²⁵² *Id.* § 2(22)(A)(ii)(I).

²⁵³ *Id.* § 4(a)(1)(B).

²⁵⁴ *Id.*

²⁵⁵ TETHER, *supra* note 149, at § 6; CIRCLE, *supra* note 153, at § 27.

Comptroller, or the Board.”²⁵⁶ This transfers suspension authority from private issuers to public regulators who must justify such actions through formal processes rather than unreviewable business judgments.

However, the Act’s framework contains notable ambiguities. The statutory language does not explicitly address whether the redemption obligation extends to all token holders or only those with direct issuer relationships. The phrase “the issuer of which is obligated” leaves open to whom this obligation runs: the owner, the person in control, or only verified account holders.²⁵⁷ Given millions hold stablecoins without direct issuer relationships, this ambiguity perpetuates critical uncertainty.

The Act also remains silent on minimum transaction thresholds, processing timeframes, and verification requirements. Issuers retain discretion to set fee levels, minimum redemption amounts, and eligibility criteria subject only to disclosure obligations. Nothing prevents issuers from maintaining current gatekeeping, limiting direct redemption to institutional clients completing extensive KYC/AML procedures. The requirement for “clear and conspicuous procedures” does not mandate universal access.²⁵⁸

Lastly, the Act does not address contractual characterization of redemption rights. Issuers may continue describing redemption as a revocable license in their terms of service, creating potential conflicts between statutory obligations and contractual frameworks.

2. Reserve Requirements and Custody

The GENIUS Act establishes comprehensive reserve management requirements designed to ensure full backing and protect reserves from issuer misuse. Section 4(a)(1)(A) mandates one-to-one reserve backing, requiring issuers to maintain reserves equal to all outstanding stablecoins.²⁵⁹ These reserves must consist exclusively of low-risk assets: U.S. currency, Treasury securities, central bank reserves, and repurchase agreements collateralized by Treasuries.²⁶⁰ This eliminates the discretion issuers currently exercise over reserve composition, addressing situations like Tether’s historical holdings of commercial paper, secured loans, and crypto assets.²⁶¹

The Act imposes strict custody requirements to prevent commingling and misappropriation. Section 10(c) requires reserves be held with qualified custodians (insured depository institutions, federal or state-chartered trust

²⁵⁶ GENIUS Act § 4(a)(1)(B)(i).

²⁵⁷ *Id.* § 2(22)(A)(ii)(I).

²⁵⁸ *Id.* § 4(a)(1)(B)(i).

²⁵⁹ *Id.* § 4(a)(1)(A).

²⁶⁰ *Id.*

²⁶¹ See BDO, *supra* note 163; *Transparency*, TETHER (Sept. 30, 2022), <https://perma.cc/UN54-5EUD>.

companies, or authorized Federal Reserve Banks).²⁶² Reserves must be segregated from the assets of the custodian and held in a manner that identifies the assets as customer assets.²⁶³ Section 4(a)(2) categorically prohibits rehypothecation except for limited liquidity management, preventing custodians from lending or encumbering reserve assets,²⁶⁴ thus directly addressing the vulnerability where neither Tether nor Circle’s terms explicitly prevent custodians from using reserves for their own purposes.

The Act also addresses custodian insolvency through bankruptcy priority provisions. Section 10(c)(3) grants stablecoin holders priority claims over other custodian creditors with respect to reserves held in custody,²⁶⁵ providing protections similar to those afforded securities customers under the Securities Investor Protection Act.²⁶⁶

However, significant limitations remain. The Act does not grant holders direct proprietary interests in reserves. Rather, they remain issuer assets, albeit segregated.²⁶⁷ This preserves the fundamental debtor-creditor relationship, a distinction that becomes critical if reserves lose value or operational failures prevent access to segregated assets.

The Act also fails to address several operational risks. Nothing prevents issuers from changing custodians without disclosure or regulatory approval, allowing shifts to potentially weaker institutions.²⁶⁸ While reserve assets are restricted to high-quality instruments, the Act does not address concentration risk, such as if an issuer were to hold all its cash at one bank.²⁶⁹ The Act remains also silent on interest earned on reserves, thus preserving issuers’ ability to retain all economic benefits while holders bear all risks.²⁷⁰

Overall, the custody provisions strengthen segregation requirements but fail to replicate protections available under established frameworks like UCC Article 8. Had the Act required treatment of reserves as “financial assets” held in “securities accounts,” holders would receive more robust protection through Article 8’s security entitlement regime.²⁷¹ Instead, the Act creates a bespoke

²⁶² GENIUS Act § 10(c).

²⁶³ *Id.* § 10(b).

²⁶⁴ *Id.* § 4(a)(2).

²⁶⁵ *Id.* § 10(c)(3).

²⁶⁶ *See* 15 U.S.C. § 78fff-2(d).

²⁶⁷ *See* GENIUS Act § 10(c).

²⁶⁸ *See, e.g.,* David Jeans & Sarah Emerson, *Billions of Tether’s Reserves Were Stored at Cantor Fitzgerald, Capital Union and Ansbacher*, FORBES (Feb. 10, 2023), <https://www.forbes.com/sites/davidjeans/2023/02/10/tether-reserves-cantor-capital-union-ansbacher/>.

²⁶⁹ *See generally* Yesha Yadav & Brendan Malone, *Stablecoins and the US Treasury Market*, (Vanderbilt Law, Working Paper No. 5286924, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5286924 (noting that while concentration in short-term Treasury bills is typically desirable, illiquidity can still be an issue).

²⁷⁰ *See* Circle, Form S-1, *supra* note 152, at 57.

²⁷¹ U.C.C. §§ 8-501 to 8-511 ((A.L.I. & Unif. Law Comm’n 1994).

framework that improves upon current practices but falls short of time-tested protective structures.

3. Bankruptcy Protections

Lastly, the Act introduces unprecedented bankruptcy protections for stablecoin holders through amendments to the U.S. Bankruptcy Code, fundamentally altering holders' status in issuer insolvency proceedings and addressing the vulnerability where holders would stand as mere unsecured creditors (or lack standing entirely).

Section 11(e)(3) creates the Act's most radical departure from traditional bankruptcy principles by excluding required reserves from the debtor's estate entirely. The provision states that reserves are excluded "from the property of the estate," effectively creating complete bankruptcy remoteness.²⁷² This prevents general creditors from reaching reserves, prohibits using reserves as collateral for debtor-in-possession financing,²⁷³ and shields reserves from being surcharged under Section 506(c) for estate preservation expenses.²⁷⁴

The Act also establishes comprehensive standing and priority rules. Section 11(a)(2) ensures that "any person holding a payment stablecoin . . . shall be deemed to hold a claim."²⁷⁵ This guarantees standing regardless of contractual privity and directly addresses the reality where millions of secondary market holders have no issuer relationship. Section 11(a)(1) grants holders priority over all other creditors with respect to reserves.²⁷⁶ Notably, this priority provision appears redundant given that Section 11(e)(3) already excludes reserves from the estate, which raises questions about why the Act establishes priority rules for assets beyond the bankruptcy proceeding's reach.

Most controversially, Section 11(d) establishes "super-priority" for any shortfall between reserves and outstanding stablecoin claims. If reserves prove insufficient, holders receive priority over all administrative expenses under Section 507, including costs of operating the proceeding itself.²⁷⁷ This subordination of administrative claims represents an extraordinary departure from established principles whereby administrative expenses receive first priority to ensure proper estate administration.²⁷⁸

These protections create potential unintended consequences. The super-priority provision dramatically increases administrative insolvency risk wherein the estate lacks assets to pay trustees, attorneys, and accountants necessary to

²⁷² GENIUS Act § 11(e)(3).

²⁷³ *Id.*; 11 U.S.C. § 364.

²⁷⁴ GENIUS Act § 11(e)(3); 11 U.S.C. § 506(c).

²⁷⁵ GENIUS Act § 11(a)(2).

²⁷⁶ *Id.* § 11(a)(1).

²⁷⁷ *Id.* § 11(d).

²⁷⁸ 11 U.S.C. § 507(a)(2).

operate the proceeding.²⁷⁹ This could paradoxically harm holders by preventing effective asset recovery.

The Act also creates interpretive challenges. Section 11(a)(3) specifies that priority applies only to claims “arising directly from the holding of payment stablecoins,”²⁸⁰ but the boundary between direct and indirect claims remains undefined, potentially spawning litigation over whether lost profits or consequential damages qualify.

Critically, while the Act excludes reserves from the estate and grants priority, it does not create true proprietary rights. This distinction matters for cross-border insolvencies where foreign courts may not recognize U.S. bankruptcy priorities, and for determining whether holders can trace reserves improperly transferred before bankruptcy. The statutory priority scheme leaves holders vulnerable where reserves are dissipated pre-bankruptcy or where proceedings involve multiple jurisdictions.

Finally, the Act fails to address operational continuity during insolvency. Unlike bank failures where the FDIC can transfer deposits to healthy institutions, the Act provides no mechanism for maintaining stablecoin functionality during bankruptcy administration.

III: ASSESSING THE MONEYNES OF STABLECOINS

Part II examined the legal architecture of centralized stablecoins by documenting their private ordering frameworks and the recent regulatory interventions of the GENIUS Act. This Part applies the moneyness framework developed in Part I to assess how effectively stablecoins perform monetary functions. We first examine the *nature and substance of the redemption claim*, identifying persistent ambiguities regarding privity and tokenization. We then evaluate *safety* along regulatory and insolvency dimensions, finding that the GENIUS Act leaves critical gaps. The inquiry next turns to *discharge capacity*, revealing the absence of statutory acceptance mandates and finality rules. Finally, we analyze *negotiability*, showing that while UCC Article 12 protects transferees of the token itself, uncertainties persist regarding whether the redemption right circulates under the same regime or remains a separate asset subject to less protective rules.

A. The Heterogeneity of Stablecoins

Assessing the moneyness of stablecoins as a category presents a methodological challenge because these instruments are highly heterogeneous.

²⁷⁹ 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>.

²⁸⁰ GENIUS Act § 11(a)(3).

This contrasts sharply with other forms of money. Currency is issued by the federal government. Bank deposits, though issued by thousands of institutions, are homogenized by a comprehensive federal framework encompassing deposit insurance, prudential supervision, and standardized payment rules. Non-bank payment claims are less uniform, with providers like PayPal and Cash App operating under varying terms and fragmented state regimes.²⁸¹ Yet stablecoins are more heterogeneous still. They can differ markedly in their legal architectures as well as their structural design, including issuer type, peg, stabilization mechanism, and blockchain infrastructure.²⁸² As Part II documented, Tether and Circle, despite sharing the same structural design (centralized, dollar-pegged, reserve-backed), diverge dramatically in contractual terms, gatekeeping thresholds, corporate domicile, and dispute resolution mechanisms.²⁸³

The GENIUS Act reduces some of this heterogeneity. Structurally, the Act mandates a particular model: to obtain a license, an issuer must establish a centralized, dollar-pegged stablecoin employing a reserve-backed stabilization mechanism.²⁸⁴ Operationally, the Act standardizes reserve composition, mandates 100% backing, prohibits fractional reserve banking and rehypothecation, requires public disclosure of redemption procedures, imposes a statutory obligation to redeem, and establishes bankruptcy protections including reserve exclusion from the estate and holder priority.²⁸⁵

Nevertheless, key aspects of legal architecture remain at the discretion of issuers: contractual terms beyond statutory minimums, redemption procedures and fee structures, corporate structure, custodian arrangements, dispute resolution mechanisms, and blockchain selection. This variation is deliberate. By offering multiple licensing pathways (State and Federal) and permitting diverse entities (banks and non-banks) to issue tokens, Congress chose to construct a competitive market of distinct private liabilities.²⁸⁶ The consequence is that a GENIUS license establishes legality but does not guarantee uniformity in moneyness. Critical attributes, especially safety, remain issuer-dependent variables rather than statutory guarantees.

²⁸¹ See *supra* Part I.A–B.

²⁸² For a taxonomy of stablecoin issuer types (centralized corporate issuers, decentralized protocols, and hybrid models), see Bruce, Odinet & Tosato, *Private Law of Stablecoins*, *supra* note 3, at 1084–92.

²⁸³ See *supra* Part II.B–C.

²⁸⁴ See GENIUS Act § 2(22)(A). This definition effectively excludes algorithmic stablecoins that lack reserve backing.

²⁸⁵ See GENIUS Act § 4(a)(1)(A); *id.* § 4(a)(2); *id.* § 4(a)(1)(B); *id.* § 11(e)(3); *id.* § 11(a)(1); *id.* § 11(d).

²⁸⁶ The Act creates parallel regulatory tracks: state-licensed issuers operate under state "qualified payment stablecoin regulator" supervision, while federally licensed issuers may obtain charters from the Office of the Comptroller of the Currency or operate as insured depository institutions. See GENIUS Act §§ 3, 5–6. The Act permits both bank and non-bank entities to issue payment stablecoins, provided they satisfy applicable requirements. See *id.* § 2(22) (defining permitted issuer categories).

In practice, the analytical burden will depend on how many stablecoins achieve market relevance. Currently, Tether and Circle command an overwhelming majority of the stablecoin market, and their network effects may make direct competition difficult for new entrants.²⁸⁷ Yet traditional financial institutions are showing considerable interest in this space, particularly in developing stablecoins tailored to institutional ecosystems. Western Union plans to deploy its stablecoin (USDPT) for cross-border remittances, pairing the token with off-ramps at its physical locations.²⁸⁸ PayPal has integrated its stablecoin (PYUSD) into its own payment products, including Venmo and Xoom.²⁸⁹ Fidelity Investments is exploring a stablecoin to settle transactions within its funds.²⁹⁰ As this landscape develops, the market might stratify along functional lines, with some stablecoins serving as general-purpose monetary instruments and others operating within proprietary ecosystems. Whatever form this stratification takes, the analytical task remains the same: assessing each stablecoin's moneyness requires examining its specific legal architecture.

B. Nature and Substance of the Claim

As Part I established, modern monetary systems comprise a hierarchy of claims ranging from public money, which intrinsically embodies value, to various forms of private money, which evidence contractual rights to receive it.²⁹¹ The legal character of an instrument within this hierarchy determines fundamental aspects of its moneyness: whether privity with the issuer is required, what relationship exists between holder and obligor, and how the claim circulates.

²⁸⁷ See COINMARKETCAP, *supra* note 148; see, e.g., Senne Aerts, Claudia Lambert & Elisa Reinhold, *Stablecoins on the Rise: Still Small in the Euro Area, but Spillover Risks Loom*, EU. CENT. BANK (Nov. 2025), https://www.ecb.europa.eu/press/financial-stability-publications/fsr/focus/2025/html/ecb.fsrbox202511_05~63636227b4.en.html. Network effects in payment systems tend to reinforce incumbent dominance, as the utility of a payment instrument increases with the number of counterparties willing to accept it. See generally David S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two-Sided Platforms*, 3 COMPETITION POL'Y INT'L 151 (2007) (explaining that “the platform owner can institute a pricing structure to harness indirect network effects.”).

²⁸⁸ See Press Release, Western Union Co., Western Union Announces USDPT Stablecoin on Solana and Digital Asset Network (Oct. 28, 2025), <https://ir.westernunion.com/news/archived-press-releases/press-release-details/2025/Western-Union-Announces-USDPT-Stablecoin-on-Solana-and-Digital-Asset-Network/default.aspx>

²⁸⁹ See Press Release, PayPal Holdings, Inc., Buy. Hold. Earn Rewards. PayPal Unlocks Rewards for Holding PayPal USD (Apr. 23, 2025), <https://newsroom.paypal-corp.com/2025-04-23-Buy-Hold-Earn-Rewards-PayPal-Unlocks-Rewards-for-Holding-PayPal-USD>

²⁹⁰ In December 2025, the Office of the Comptroller of the Currency conditionally approved Fidelity Digital Assets, National Association, authorizing the resulting bank to, *inter alia*, “issue its own stablecoin.” Office of the Comptroller of the Currency, Conditional Approval No. 1289, at 2 (Dec. 12, 2025), <https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125d.pdf>.

²⁹¹ See *supra* Part I.A.

Stablecoins occupy an unambiguous position in this hierarchy: they are private money. Even before the GENIUS Act, this was evident: stablecoins are claims against their issuers, evidencing a right to receive value upon redemption and exposing holders to counterparty risk—largely resembling, as Gary Gorton and Jeffrey Zhang have observed, the circulation of private banknotes during the U.S. Free Banking Era.²⁹² The GENIUS Act makes this classification explicit, providing that “[i]t shall be unlawful to represent that payment stablecoins are backed by the full faith and credit of the United States, guaranteed by the United States Government, or subject to Federal deposit insurance or Federal share insurance.”²⁹³ By prohibiting such representations, the Act confirms that stablecoins are neither public money nor beneficiaries of governmental guarantee or insurance.

The critical question, however, is what kind of private money claim a stablecoin represents. In Part I, we distinguished bank deposits, which operate as standardized contractual claims within a comprehensive statutory framework, from non-bank payment claims, which remain heterogeneous and governed by provider-specific terms.²⁹⁴ We further observed that physical currency reifies value (the instrument is the asset), whereas contractual claims create personal rights ordinarily requiring privity to assert.²⁹⁵ The GENIUS Act regulates the soundness of issuers but does not resolve where stablecoins fall along these dimensions. It does not determine whether the redemption right is embedded in the token or remains a separate contractual entitlement, whether holders must have privity with the issuer, or to whom the issuer’s obligation runs. Answering these questions requires examining the private law architecture governing stablecoin claims: first, the contractual foundations that currently define the redemption right, and second, whether the GENIUS Act alters this regime.

Under current private ordering, as detailed in Part II, the redemption right originates from contractual terms of service between issuers and select clients.²⁹⁶ This entails a critical limitation: privity. Only parties (882 for Tether and 1,834 for Circle) who have entered into direct agreements with the issuer possess redemption rights.²⁹⁷ The millions of individuals and entities holding stablecoins acquired through secondary markets possess no contractual relationship with the issuer and consequently no direct redemption claim. These holders must rely on intermediaries who themselves have privity with the issuer to effectuate redemption. During market crises holders lacking such privity may

²⁹² See *supra* Part II.A; see Gary B. Gorton & Jeffrey Y. Zhang, *Taming Wildcat Stablecoins*, 90 U. CHI. L. REV. 909, 940–45 (2023).

²⁹³ GENIUS Act § 4(e)(2)(A).

²⁹⁴ See *supra* Part I.A.

²⁹⁵ See *supra* Part I.A.

²⁹⁶ See *supra* Part II.

²⁹⁷ See *supra* Part II. During the Free Banking Era, thousands of banks issued their own currency backed by state bonds. See Gorton & Zhang, *supra* note 292 (arguing that stablecoins are unregulated banks). Like those banknotes, stablecoins represent private money claims that trade at varying discounts based on perceived issuer risk. See *id.*

face difficulty in locating willing counterparties, potentially triggering cascading liquidity failures.

Yet, even for parties in privity, the redemption right is far from unconditional. As Part II showed, issuers reserve extensive discretion to delay, suspend, or refuse redemption, and disclaim liability for a variety of circumstances that might hinder redemption.²⁹⁸ At present, the right of redemption is thus a highly conditional, unsecured contract claim, subject to broad issuer discretion.

The GENIUS Act addresses some of these deficiencies, but it introduces fresh uncertainties. The Act does not directly regulate the nature of the redemption right. Its sole provision on the topic is terse, worded in the passive voice, and embedded within the definition of *payment stablecoin*: an issuer “is obligated to convert, redeem, or repurchase for a fixed amount of monetary value.”²⁹⁹ This is supplemented by procedural requirements whereby issuers must publicly disclose redemption procedures (with discretionary limitations permitted only by designated regulators) and also provide seven days’ notice before modifying fees.³⁰⁰

Yet two foundational questions remain unresolved. The first concerns the nature of the redemption right itself. One possible interpretation is that the Act creates a statutory obligation imposed by operation of law, existing independent of contract and thereby upending the privity limitations described in Part II. We think that this is the most reasonable and cogent interpretation. However, we observe that the Act fails to clarify the boundaries that such a right would have, the conditions for its exercise, the available remedies, or any issuer defenses. A less plausible but still reasonable interpretation is that the Act merely imposes an implied contractual redemption obligation in the issuers’ terms. Under this reading, issuers could continue restricting redemption to parties in privity, leaving secondary market holders without direct claims. Moreover, even those in privity would lack clear protections, as permissible contractual terms would remain undefined.³⁰¹

The second unresolved question, persisting under either interpretation of the first, is to whom the redemption obligation is owed. This governs not only who may demand redemption, but also the commercial circulation of stablecoins as monetary instruments.³⁰² Consider two possible constructions. The first is that the GENIUS Act tokenizes the redemption right such that it is embedded in and inseparable from the digital asset itself.³⁰³ Historically, the

²⁹⁸ See *supra* Part II.

²⁹⁹ GENIUS Act § 2(22)(A)(ii)(I).

³⁰⁰ GENIUS Act § 4(a)(1)(B).

³⁰¹ Although the Act provides that “discretionary limitations” on redemption may be imposed “only by” specified regulators, the boundaries of permissible contractual terms remain undefined. See GENIUS Act § 4(a)(1)(B).

³⁰² See *infra* Part III.E.

³⁰³ See Tosato & Odinet, *Digital Assets*, *supra* note 198, at 43-46.

beneficiary of rights derived from a token is the party who has possession of it, the best example being a negotiable promissory note, the benefits of which accrue to the possessor.³⁰⁴ Under this construction, the most natural reading is that the redemption right runs to whomever controls the stablecoin.³⁰⁵ Textual support for this interpretation appears in Section 11, which addresses issuer insolvency and confers certain bankruptcy-related rights on persons “holding” stablecoins.³⁰⁶ Although undefined, “holding” might be read to link the redemption entitlement to control of the stablecoin. Given that stablecoins qualify as controllable electronic records under UCC Article 12, it seems to us that the concept of “control” as defined therein provides the natural legal reference.³⁰⁷ If this approach governs insolvency rights, applying it to the redemption right seems cogent.

To be sure, this interpretation is far from certain. Historically, tokenizations require authority, either in case law or statute. The GENIUS Act does not contain such explicit authority, although, read as a whole, it seems more likely than not that the GENIUS Act is oriented in this direction. Therefore, a second, alternative construction is that the redemption right and the token itself are two distinct things, which is indeed the case today as explored in Part II.

As such, if the redemption right is contractual, then the current status quo would persist: the right would run to the issuer’s contractual counterparty pursuant to the terms of their agreement, and potentially to assignees under ordinary rules governing assignment of choses in action.³⁰⁸ Under this bifurcated structure, the token and redemption right would circulate pursuant to different legal regimes and could be held by different parties, thus introducing complexity and uncertainty into stablecoin transactions.

On the other hand, if the redemption right is statutory in nature, then the right of redemption would run to whomever the statute is deemed to benefit. And this is indeed a most speculative question. On the one hand, perhaps Congress intended for the GENIUS Act to help create a highly liquid market

³⁰⁴ *Id.*

³⁰⁵ *Cf.* U.C.C. § 3-301 (Am. L. Inst. & Unif. L. Comm'n 2022) ((stating that the redemption right belongs to “(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 30418(d).”)); *see generally* Grant Gilmore, *The Commercial Doctrine of Good Faith Purchase*, 63 *YALE L.J.* 1057 (1954) (concluding that possession of property protects the good faith purchaser).

³⁰⁶ GENIUS Act § 11(a)(2).

³⁰⁷ UCC Article 12, adopted in most U.S. jurisdictions beginning in 2022, governs “controllable electronic records” (CERs), defined as “a record stored in an electronic medium that can be subjected to control.” U.C.C. § 12-102(a)(1) (Am. L. Inst. & Unif. L. Comm'n 2022). “Control” requires the power to (i) avail oneself of substantially all the benefit from the CER, (ii) exclude others from such benefits, and (iii) transfer these powers. *Id.* § 12-105(a)(1). This framework treats control of a CER as the functional equivalent of possession of a tangible asset. *Id.* § 12-105, cmt. 2. For comprehensive analysis of Article 12’s application to digital assets, *see* Tosato & Odinet, *Digital Assets*, *supra* note 198, at 43–46.

³⁰⁸ *See* RESTATEMENT (SECOND) OF CONTRACTS § 317 (A. L. I. 1981); *id.* § 336.

akin to that enjoyed by securities trading. If so, then the right would likely flow to whomever is the holder (or, in terms of UCC Article 12, the person in control) of the stablecoin. If instead, however, Congress desired the GENIUS Act's redemption rights to be for the benefit of only the rightful owners of such tokens, then the right would likely flow to whomever is the owner of the stablecoin.

Overall, the stakes of this interpretive choice are considerable. The former approach would facilitate the use of stablecoins as negotiable instruments, while the latter would saddle redemption rights to ownership determinations that may be difficult to ascertain in real-time transactions.

C. Safety

As Part I established, *safety* is one of the constitutive elements of moneyness. It encompasses two interconnected inquiries. The first encompasses ongoing performance: whether the issuer is likely to remain able to honor its undertakings throughout the period the holder expects to hold the instrument. The second addresses recovery upon failure: should the issuer nonetheless become unable to perform, what priority will the holder's claim receive, and what proportion of value can the holder expect to recover. As with all types of private money, safety is not inherent but is constructed through the interaction of public and private law. For stablecoins, the public law dimension concerns regulatory constraints governing reserve requirements, custodial arrangements, issuer conduct and access to public backstops. The private law dimension covers whether a holder's claim is proprietary or personal in nature, its priority relative to other creditors, and the coherence of the applicable insolvency regime.

1. Along Regulatory Dimensions

Prior to the GENIUS Act, stablecoins enjoyed neither public backstops nor comprehensive asset restrictions. No federal mandate governed reserve composition, no standardized custody or segregation requirements existed, and no prohibition on rehypothecation applied. Issuers operated under fragmented state money transmitter regimes, which applied only to the extent an issuer voluntarily sought state licensure, and which imposed varying and often minimal requirements.

The GENIUS Act represents a fundamental departure from this regime, but not in the direction of established private money. As detailed in Part I, bank deposits achieve safety through ex post public backstops: deposit insurance guarantees the liability, and access to the Federal Reserve's discount window ensures liquidity during stress. The GENIUS Act does not extend such protections to stablecoin holders. Instead, it shifts the locus of safety entirely to

ex ante asset restrictions, effectively codifying a “narrow bank”³⁰⁹ model in which safety derives not from who stands behind the issuer, but from what the issuer holds.

To that end, the Act’s regulatory architecture rests on two pillars. First, an issuer must maintain high-quality reserves (primarily cash and short-dated Treasuries) whose value entirely backs outstanding claims. Second, issuers are restricted from using these reserves to engage in traditional kinds of onward lending (in other words, stablecoin issuers cannot perform fractional reserve banking). This fosters a narrowness in institutional competencies that seeks to restrict the kinds of risks an issuer takes. Notably, an issuer cannot assume dangerous maturity mismatches arising from longer-term lending when reserves are redeemable by customers in the short-term. Regulators must monitor issuers for compliance with these core conditions, and issuers must publicly disclose their reserve balances and composition to assure the marketplace of safety and dampen the likelihood of panic.

Importantly, non-bank stablecoin issuers, as well as relatively more novel types of banking firms such as crypto-focused banks, are generally deemed ineligible to receive an account with the Federal Reserve where they can park their cash and securities. Thus, to operate within the US dollar payments system, non-bank stablecoin issuers must plug into the existing financial infrastructure for warehousing and moving their cash and treasuries reserves. This means that whatever cash or securities balances they hold must be safeguarded at a custodian institution, such as a Fed-account-holding bank. This makes them reliant on private third parties to deliver if mass redemption becomes necessary. Stablecoin issuers are thus exposed to the credit and operational risk of the custodians safeguarding their reserve assets.³¹⁰ And by extension of this, holders of stablecoins are indirectly exposed to the failure risks of the custodial system on which non-bank issuers depend.

This reliance presents both operational and existential challenges. From the operational standpoint, stablecoin issuers can face redemption demands from customers at any time, even outside normal banking hours. Crypto never sleeps: blockchains and the tokens that transfer on their rails run 24/7/365. This perpetual cycle is out of sync with traditional financial services and settlement systems that operate on usual business days and working hours. Consider that a stablecoin issuer facing significant redemption requests on a Friday night may have to wait until Monday morning to instruct its custodian to release cash or begin selling treasuries. Even if the bank is able to make cash available on Friday night, an issuer may not be able to transmit those dollars across Fed-operated

³⁰⁹ See generally David Zaring, *Modernizing the Bank Charter*, 61 WM. & MARY L. REV. 1397, 1400 (2020) (discussing the use of banking charters for a wide range of purposes beyond “that which we call a bank”); see also David Zaring, *Skinny Charters: Rebuilding the Banking Regulatory Perimeter*, 50 J. CORP. L. 699 (2025) (proposing offering “skinny charters” to create a permeable regulatory perimeter).

³¹⁰ See Gorton & Zhang, *supra* note 292, at 916-917, 936-939.

payment schemes like Fedwire to reach other bank accounts, or for funds to transmit internationally to foreign accounts if redemption requests arise in a different jurisdiction.

This reliance on traditional infrastructure to move funds within normal business hours can create problems even where the issuer’s own solvency is not in doubt. Where an issuer needs multiple days to transmit funds into the bank accounts of redeeming token-holders, the delay impairs users’ ability to receive the liquidity they need. And in doing so, it undermines the use-case for stablecoins, where the promise of this technology relies in large part on an ability to deliver value immediately and cheaply in ways far more efficient than the present-day bank-based payment system. This dynamic can set stablecoins up for failure as a payments system: their capacity to stand out is diminished at the *last mile* where the process for turning a token into cash forces issuers back into the very system of delays and costs that stablecoins were designed to avoid.

Misalignment between crypto-hours and banking hours becomes even more problematic where a stablecoin is at risk of a run.³¹¹ Indeed, an inability to access the traditional payment system can amplify uncertainty and destabilize the issuer’s peg. The failure of Silicon Valley Bank in March 2023 illustrates this danger. SVB failed over the weekend holding over \$3 billion of Circle’s uninsured cash deposit (at the time, approximately 8% of Circle’s total reserves).³¹² Circle announced that issuance and redemptions were slowed, owing to the issuer being “constrained by working hours of the U.S. banking system.”³¹³ Perceived worries about Circle’s viability caused panic selling that ultimately drove USDC to trade at \$0.88 over the weekend.³¹⁴ Even though Circle could not honor redemption requests on these non-business days, high-volume trading in the always-on secondary markets caused the price to fall precipitously.

This episode reveals a troubling asymmetry. Whereas bank runs can traditionally be halted by closing doors or by the natural pause of a weekend, stablecoin issuers remain vulnerable at all times even when their bank-custodian’s own run can be cauterized. Stablecoin issuers are in a special bind. Their need to re-enter the banking system exposes them to crises arising in that sector. Yet unlike banks, they lack access to braking mechanisms such as

³¹¹ See *id.* at 946 (detailing historical data on banking panics during the National Banking Era in Table 5).

³¹² Krisztian Sandor, *Circle Confirms \$3.3B of USDC’s Cash Reserves Stuck at Failed Silicon Valley Bank*, COINDESK (Mar. 10, 2023, at 9:52), <https://www.coindesk.com/business/2023/03/11/circle-confirms-33b-of-usdcs-cash-reserves-stuck-at-failed-silicon-valley-bank>.

³¹³ See Bitcoin News, *Circle Issues Update Amid Stablecoin Volatility; Firm Is Prepared to ‘Stand Behind USDC and Cover Any Shortfall’*, CRYPTORANK (Mar. 11, 2023), <https://cryptorank.io/news/feed/0c3b6-circle-issues-update-amid-stablecoin-volatility-firm-is-prepared-to-stand-behind-usdc-and-cover-any-shortfall>.

³¹⁴ Nataly Antonenko, *Silicon Valley Bank Bankruptcy Destabilizes Stablecoin Market*, COINSPAIRED MEDIA (Mar. 13, 2023), <https://coinspaidmedia.com/news/svb-collapse-destabilizes-usdc-and-other-stablecoins/>.

weekends or the ability to close the door (and, as detailed below, lack express provision of federal insurance or liquidity support that can act as a buffer). USDC's price stabilized only once banking regulators made clear they would stand behind SVB's entire depositor base, even where customer deposits like Circle's were well in excess of the insurance ceiling.

Beyond custodian solvency, issuers face risks arising from custodian governance. An issuer must ensure that a custodian has the operational processes and procedures to look after reserve cash and ensure segregation of securities. Gaps can have grave consequences. For example, an issuer's reserve assets may end up becoming part of the custodian's estate in bankruptcy. Securities and cash must also be accessible when needed. A custodian that holds them in a foreign jurisdiction presents the risk that these assets may be ring-fenced by a local court to repay local creditors and customers.

Thus, these vulnerabilities reveal a mismatch between the aims of the GENIUS Act's regulatory interventions when it comes to safety and the practical reality of relying on third-party custodians. On paper, 100% backing and activity restrictions help make stablecoin claims safe: holders gain protection against the need to thoroughly vet an issuer's creditworthiness and governance. But stablecoin claims come with complex informational sensitivities that crystallize precisely as crisis strikes. Holders are dependent on the quality of third-party custodians and cannot guarantee repayment when needed, largely owing to the constraints of traditional payment and settlement systems. Yet everyday claimholders lack the incentive or capacity to research custodian governance and solvency or to understand the workings of systems like Fedwire. Many hold only small sums, which negates the motivation for due diligence. Also, holders do not contract directly with custodians and thus cannot demand sensitive information on how assets are safeguarded. These deficits make holders vulnerable to discovering information gaps and emerging risks only during a crisis (i.e., when racing to redeem becomes the rational response). The SVB episode illustrates this danger: the discovery that Circle maintained cash reserves at the failed bank came as a surprise to much of its holder base.

The GENIUS Act does not include safety protections that would enhance information insensitivity by reducing the need for due diligence on third-party custodians. Specifically, it does not require issuers to keep their cash and securities in a Federal Reserve account. Claimholders thus face the prospect of assuming credit risk on both the stablecoin issuer and the custodians safeguarding its reserve assets. The Act is also explicit in refusing to provide federal insurance to make whole those holding stablecoin claims, even if custodians or an issuer collapse. And while a stablecoin issuer, as a customer of a bank, may itself enjoy deposit insurance, that protection belongs to the issuer—not to stablecoin holders. Once an issuer claims insurance proceeds, it may not necessarily distribute them to holders. As SVB demonstrated, an issuer may end up uninsured where its cash holdings exceed coverage limits. In that episode, ad hoc regulatory action to protect all SVB depositors ended up backstopping Circle's reserves. But such intervention has faced criticism for its

expansiveness, and a repeat should not be taken for granted, especially given the GENIUS Act’s express denial of federal insurance to stablecoin holders.

2. Along Insolvency Dimensions

The counterparty risks and information gaps described above operate as ongoing vulnerabilities when it comes to assessing the safety of stablecoins. They are risks that persist even when an issuer remains solvent and operational. But these vulnerabilities can also culminate in actual issuer distress or insolvency. When that occurs, stablecoin holders confront a further problem: the legal rights they hold against the issuer are themselves poorly defined, and the GENIUS Act’s attempt to address this through amendments to the Bankruptcy Code produces a regime that is internally contradictory and operationally incoherent.

As we noted in Part II, under existing private ordering, stablecoin redemption rights constitute personal claims against issuers.³¹⁵ More specifically, the contractual frameworks of the major issuers disclaim any trust relationship or proprietary interest in reserves.³¹⁶ Consequently, if a stablecoin issuer became insolvent, those with redemption claims would be treated as general unsecured creditors, entitled only to pro rata distribution after satisfaction of secured and priority claims.³¹⁷ For the millions of secondary market holders lacking contractual privity with the issuer, the situation is even more precarious: absent a direct contractual nexus, their standing to even file a proof of claim in bankruptcy is legally ambiguous, which potentially renders them strangers to the debtor’s estate entirely.³¹⁸

The GENIUS Act attempts to address this vulnerability through amendments to the Bankruptcy Code, but the resulting architecture is tortuous and operationally incoherent.

First, the Act’s starting point is an exclusion of reserve assets from the debtor’s estate under Section 11(e)(3).³¹⁹ Read in conjunction with the super-priority provision in Section 11(d), which applies only to “remaining claim[s]” after stablecoin holders are “not able to redeem all outstanding payment stablecoin claims from required payment stablecoin reserves,” the statutory structure appears to contemplate the following sequence: reserves exist as a protected pool of assets outside the estate; stablecoin claimants have their redemption claims satisfied from liquidation of the assets in the pool; and if these reserves prove insufficient to satisfy the claims of the stablecoin holders,

³¹⁵ See *supra* Part II.

³¹⁶ See *supra* Part II.

³¹⁷ See 11 U.S.C. § 726(a)(2) (2024); see also 11 U.S.C. § 507(a) (2024) (establishing priority).

³¹⁸ See 11 U.S.C. § 101(10) (2024); 11 U.S.C. § 501(a) (2024). Secondary market holders lacking contractual privity may struggle to establish the requisite “right to payment” under 11 U.S.C. § 101(5)(A) sufficient to qualify as creditors.

³¹⁹ GENIUS Act § 11(e)(3), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025).

they can bring a claim against the assets of the debtor’s estate with super-priority status.³²⁰ On this reading, other creditors of the stablecoin issuer (such as trade creditors, employees, lenders, tort claimants) would have no recourse to reserve assets whatsoever, since their recourse is limited to the debtor’s estate and the reserve assets are not part of that estate.

The difficulty with this interpretation, however, is that the GENIUS Act contains numerous provisions that effectively assume that the reserves are indeed part of the estate. Consider that the Act extends the automatic stay to any enforcement actions against these reserves.³²¹ Yet bankruptcy’s automatic stay exists to protect property of the debtor’s estate.³²² But if reserves are excluded from the estate (under Section 11(e)(3)), extending the stay to them is conceptually incoherent.³²³

Moreover, Section 11(c)(2)(C) directs the bankruptcy court to “use best efforts” to begin distributions to stablecoin claimants within fourteen days of a required hearing.³²⁴ This language again presupposes judicial administration of reserve assets as part of the bankruptcy proceeding rather than their existence being outside the estate entirely.³²⁵ The Act thus speaks in two voices, thereby creating a paradox where assets are simultaneously sequestered from the estate yet subject to its protective jurisdiction. This paradox creates an immediate funding crisis: if reserves are excluded from the estate, they arguably cannot be surcharged under Section 506(c) for expenses incurred in their preservation or distribution.³²⁶ Yet effectuating redemption (which the bankruptcy court is directed to use “best efforts” in operationalizing) entails real costs, as it requires identifying claimants, verifying claims, and transferring value. The Act provides no answer to who bears these expenses or how they are recovered.

But even assuming that reserves are outside the estate and accessible to stablecoin holders for redemption, a significant gap in the protective scheme still remains. Section 4(a)(2) prohibits the pledging, rehypothecation, or reuse of reserves.³²⁷ However, this limitation is subject to some exceptions. Reserves may be collateralized to secure margin obligations related to permitted reserve investments, to secure obligations associated with standard custodial services, and to secure short-term repurchase agreements for liquidity management.³²⁸ When secured claims arise under these exceptions, we note that most likely any

³²⁰ *Id.* § 11(d).

³²¹ *Id.* § 11(c).

³²² *See* 11 U.S.C. § 362(a)(3) (2024).

³²³ *Id.* *See also* Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at 18; Edwin E. Smith et al., *The Proposed GENIUS Act Raises Concerns Over Insolvency Provisions*, MORGAN LEWIS LAWFLASH (July 2, 2025), <https://www.morganlewis.com/pubs/2025/07/the-proposed-genius-act-raises-concerns-over-insolvency-provisions> [hereinafter Morgan Lewis LawFlash].

³²⁴ GENIUS Act § 11(c), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025).

³²⁵ *See id.*

³²⁶ *See* 11 U.S.C. § 506(c) (2024).

³²⁷ GENIUS Act § 4(a)(2), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025).

³²⁸ *Id.* § 4(a)(2)(A)–(C).

unpaid custodial fees will give rise to setoff rights. These setoff rights, in turn, will take priority over stablecoin holders' claims to the reserves.³²⁹ This loss in the priority contest is supported by two reasons. First, the stablecoin holders' super-priority right applies only to the issuer's estate, not to the reserve assets themselves. Second, these holders have only unsecured claims to those reserve assets, which means they must yield to a secured creditor. As a result, secured creditors would be satisfied first, thus reducing the pool available for redemption and increasing the likelihood of a shortfall that would trigger the super-priority regime.

Second, for stablecoin claimants whose claims are not fully satisfied through redemption against the reserves, Section 11(d) grants these shortfall claims super-priority above all other claims against the estate, including administrative expenses.³³⁰ The statutory language is explicit: this priority applies only "to the extent compliance with section 4 of the GENIUS Act would have required additional reserves to be maintained." In other words, the super priority treatment applies only to the gap between what reserves should have been and what they were.³³¹ While this limits the super-priority's scope to reserve deficiencies (rather than the entire stablecoin float), it remains deeply problematic in practice. Consider the ways that the super-priority of shortfall claims creates severe difficulties for estate administration. No rational trustee, attorney, or debtor-in-possession (DIP) lender would agree to service a reorganization when their fees are junior to the potentially massive liability of the stablecoin float. The resulting inability to retain professionals or obtain working capital would render reorganization attempts futile.³³² In theory, stablecoin claimants could contractually subordinate their claims to permit effective administration. In practice, obtaining subordinations from potentially millions of dispersed claimants is impracticable, and the Act provides no mechanism for representative action.³³³

One possible escape from this impasse has been suggested. Adam Levitin has argued that courts might permit DIP financing secured by reserves by distinguishing the "debtor-in-possession" (subject to Bankruptcy Code section 364) from the "debtor" (subject to the GENIUS Act's restrictions on reserve encumbrance).³³⁴

³²⁹ The setoff rights of custodians and counterparties holding reserve assets would take priority over stablecoin holders' unsecured claims to the reserves.

³³⁰ GENIUS Act § 11(d), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025).

³³¹ *Id.*

³³² See Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at 18-19; Morgan Lewis LawFlash, *supra* note 323.

³³³ See Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at 18-19; Morgan Lewis LawFlash, *supra* note 323.

³³⁴ See Adam Levitin, *Sorry to Break It to You Geniuses: Under the GENIUS Act the Holders of Stablecoins Actually Have FIFTH Priority in an Issuer Bankruptcy*, CREDIT SLIPS (Dec. 2, 2025), <https://creditslips.org/2025/12/02/sorry-to-break-it-to-you-geniuses-under-the-genius-act-the-holders-of-stablecoins-actually-have-fifth-priority-in-an-issuer-bankruptcy/> [hereinafter Levitin, *Fifth Priority*].

Albeit somewhat speculative and yet untested, this reading is creative. If adopted, it would effectively subordinate stablecoin claimants to DIP lenders and the professional fee carve-outs that inevitably accompany such financing, significantly diminishing their recoveries.³³⁵ The stablecoin claimants’ ostensible “super-priority” would thus be demoted in order to save the estate from administrative collapse (even if it is a result that is directly contrary to the Act’s apparent protective purpose).³³⁶

The Act’s bankruptcy provisions also create a two-track regime. These amendments apply only to issuers eligible for treatment under the Bankruptcy Code, yet the GENIUS Act creates multiple possible categories of issuer, which includes certain kinds of banks and financial institutions.³³⁷ To that end, banks and financial institutions are often subject to special resolution regimes (such as FDIC receivership, OCC receivership, state resolution regimes, or Federal Reserve resolution procedures) that fall outside the Code’s coverage.³³⁸ Stablecoins issued by such institutions may not necessarily benefit from the Act’s various bankruptcy and related protections, including the reserve exclusion and priority provisions. Their redemption claimants would remain general unsecured creditors subject to whatever priority rules govern the applicable resolution framework. Conversely, the Act creates perverse incentives for regulatory arbitrage. In other words, entities who are typically ineligible for bankruptcy protection (such as insurance companies) could theoretically attempt to gain access to the Bankruptcy Code simply by issuing stablecoins, thereby bypassing their standard, more rigorous insolvency regimes.³³⁹ This disparity introduces significant uncertainty and undermines any claim that stablecoins, as a category, provide consistent safety characteristics.

In our view, the core problem with the bankruptcy regime of the GENIUS Act is methodological. It all comes back to the problem of a poorly defined legal nature. These provisions are all aimed at retrofitting existing protections onto a claim whose fundamental legal nature remains undefined. Rather than determining what stablecoin claimants actually own and allowing bankruptcy treatment to flow as a logical consequence, Congress crafted an elaborate series of statutory patches that both contradict one another and also conflict with the Bankruptcy Code’s basic architecture. A coherent approach would have addressed the nature of the redemption right *ex ante*, thereby determining bankruptcy treatment as a consequence of that classification rather than through ad hoc statutory amendments.

³³⁵ Under this interpretation, DIP financing would be secured with a first priority lien over all assets, including reserves, and would include a “carve-out” for professional fees. Given the super-priority granted to stablecoin claims, Levitin anticipates “extremely large carveouts to ensure that the professionals do in fact get paid first.” *Id.* (citation modified).

³³⁶ *Id.*

³³⁷ See 11 U.S.C. § 109(b), (d) (2024); GENIUS Act § 2(11), (23), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025).

³³⁸ See 11 U.S.C. § 109(b)(2), (d) (2024); 12 U.S.C. § 1821 (2024); 12 U.S.C. § 1787 (2024).

³³⁹ See GENIUS Act § 11(g)(2), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025); Morgan Lewis LawFlash, *supra* note 323.

D. Discharge Capacity

As Part I established, *discharge capacity* is one of the constitutive elements of moneyness. It comprises two dimensions. Acceptance addresses whether creditors will recognize tender of the instrument as satisfying the obligation owed to them. Finality addresses when discharge becomes legally conclusive: the point at which the payor's obligation to the payee is extinguished and the transaction is closed to subsequent challenge.³⁴⁰ Public money achieves both through statutory designation.³⁴¹ Bank deposits lack legal tender status, yet achieve functional acceptance and statutory finality through the comprehensive infrastructure of the UCC and Regulation J.³⁴² Non-bank payment claims occupy weaker ground on both dimensions: acceptance depends entirely on private ordering and no comprehensive legislative framework governs their finality.³⁴³ Stablecoins have neither a statutory acceptance mandate nor finality rules, and the GENIUS Act entirely disregards these issues.

Much like non-bank payment claims, whether stablecoins can discharge a monetary debt or other obligation depends largely on private ordering. Unlike physical currency, which a creditor must generally accept, stablecoins require the express agreement of the counterparty.³⁴⁴ This shifts the issue in question from public mandate to transaction-by-transaction negotiation. Ultimately, holders unable to reach such agreement will have to convert their tokens into fiat currency, a process that, as Part II details, can be laden with redemption fees, delays, and counterparty risk.³⁴⁵

The reliance on private ordering for acceptance is further complicated by the fragmentation of the underlying infrastructure. In the traditional banking system, thousands of issuers compete for depositors, yet all utilize a standardized, interoperable architecture that allows value to move seamlessly across the network.³⁴⁶ Stablecoins lack this unified rail. They are issued on diverse public blockchains, such as Ethereum, Solana, or Avalanche, that operate under diverse protocols. These networks are generally not natively interoperable in that a stablecoin held in a Solana wallet cannot simply be transferred to a creditor with an Ethereum wallet. To transfer value across networks, parties must rely on bridging mechanisms, introducing additional

³⁴⁰ See *supra* Part I.C.

³⁴¹ See *supra* Part I.D.

³⁴² See U.C.C. arts. 3, 4, 4A (A.L.I. & UNIF. L. COMM'N 2022); 12 C.F.R. § 210.30; see also *supra* Part I.C.

³⁴³ See *supra* Part I.C.

³⁴⁴ Cf. 31 U.S.C. § 5103 (legal tender includes United States coin and currency).

³⁴⁵ See *supra* Part II.B.

³⁴⁶ See, e.g., Fedwire Funds Service, Bd. of Governors of the Fed. Reserve Sys., https://www.federalreserve.gov/paymentsystems/fedfunds_about.htm; ACH Network, NACHA, <https://www.nacha.org/content/ach-network>.

transaction costs and security vulnerabilities that act as practical barriers to acceptance.³⁴⁷

Certain forms of programmability can further undermine the fungibility that universal acceptance requires. A useful distinction exists between programmable payments, where smart contracts automate transfer logic, and programmable money, where tokens carry embedded restrictions on who may hold or transfer them.³⁴⁸ The former enhances efficiency without impairing fungibility. The latter, however, fragments the asset class. Institutional stablecoins, such as JPMorgan's JPM Coin, are designed to move only between KYC-verified wallets, rendering them incompatible with open-market tokens.³⁴⁹ A token that can only be received by a whitelisted counterparty is not fungible with one that circulates freely. The creditor without an approved wallet cannot accept it. To the extent stablecoins embed such restrictions, they sacrifice the uniformity that acceptance as money demands. Consequently, absent a universal standard for interoperability across these permissioned systems, stablecoins risk becoming walled-garden assets rather than a universally accepted medium of exchange.

Even where parties surmount these acceptance barriers, the second dimension of discharge capacity, finality, raises challenges that may be more difficult still. Other forms of private money present a uniform analytical context: bank deposits and non-bank payment claims are inherently intermediated, while physical currency passes directly from payor to payee. Stablecoins are different. The underlying technology certainly permits peer-to-peer transfers without intermediaries, yet stablecoin transactions are also frequently effectuated through centralized platforms such as Coinbase, Gemini, Kraken, and similar exchanges.³⁵⁰ This duality means that a complete finality analysis must address both scenarios: when stablecoins are transferred directly between parties, and when transfers are routed through intermediaries. For neither scenario has law supplied the finality rules that govern other payment forms.³⁵¹

³⁴⁷ See, e.g., Chainalysis Team, *Cross-Chain Bridge Hacks Emerge as Top Security Risk*, CHAINALYSIS BLOG (Aug. 2, 2022), <https://www.chainalysis.com/blog/cross-chain-bridge-hacks-2022/>.

³⁴⁸ See Philipp Sandner, *Programmable Money and Programmable Payments*, MEDIUM (Sep. 27, 2020), <https://philippsandner.medium.com/programmable-money-and-programmable-payments-8038ed8fa714>; see also Fabio Panetta, *Member of the Exec. Bd. of the Eur. Cent. Bank*, Keynote Speech at the Insight Summit: The Digital Euro and the Evolution of the Financial System (Nov. 18, 2022).

³⁴⁹ See *JPM Coin: Institutional Deposit Tokens & Blockchain Payments by Kinexys*, J.P. MORGAN, <https://www.jpmorgan.com/kinexys/digital-payments/jpm-coin> (last visited Dec. 24, 2025).

³⁵⁰ See Odinet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3.

³⁵¹ Though UCC Article 12 provides key property rules for controllable electronic records, see *supra* note 198, it does not establish a finality rule specifying when transfer of such assets discharges an underlying obligation. Article 12's qualifying purchaser doctrine determines when a transferee takes free of adverse claims, U.C.C. § 12-104(a), but this addresses property rights rather than payment discharge.

For direct transfers between parties, no statute or judicial precedent establishes when a stablecoin payment achieves finality. The question has two dimensions. The first is conceptual: what act or event should effect discharge of the payor's obligation? For physical currency, delivery suffices; for wire transfers, UCC Article 4A specifies when the beneficiary's bank becomes obligated. Stablecoins fit neither paradigm. They are intangibles, not chattels, yet they transfer peer-to-peer without intermediaries. Whether existing legal categories can accommodate this hybrid character, or whether new rules are required, remains unresolved.

The second dimension is technological. DLT networks employ different mechanisms to finalize transactions.³⁵² Some, like Bitcoin, use a probabilistic approach, whereby transactions become increasingly secure as more blocks are added to the blockchain.³⁵³ Others, like Ethereum, employ mechanisms that render transactions final after a defined period.² Market practice reflects these variations.³⁵⁴ Whether and how these technological differences should affect legal finality rules is an open question.

For intermediated transfers of stablecoins, the finality picture is even more complex. When a user instructs a platform to transfer stablecoins to another party, the transaction may occur entirely on the platform's internal ledger rather than on the public blockchain, or it may involve multiple steps across different systems. In either case, intermediaries stand between the payor and payee. Part I.C described how UCC Article 4A and Regulation J provide a comprehensive regime for bank-mediated payments and Fedwire transfers, specifying when each intermediary becomes obligated, when the beneficiary's bank becomes obligated to the beneficiary, and when the originator's underlying obligation is discharged.³⁵⁵ No equivalent framework exists for stablecoin intermediaries.

Nor would analogical application of Article 4A provide a workable solution. Article 4A operates effectively because banks function within a homogeneous regulatory environment, utilize standardized payment rails, and bear uniform obligations to their customers and counterparties.³⁵⁶ Stablecoin intermediaries share none of these characteristics. They vary dramatically in form: some are regulated domestic exchanges subject to state money transmitter laws; others are offshore platforms beyond the practical reach of U.S. regulators;

³⁵² For a technical overview of DLT finality mechanisms, see Aggelos Kiayias & Giorgos Panagiotakos, *Speed-Security Tradeoffs in Blockchain Protocols*, (Cryptology ePrint Archive, Paper 2015/1019, 2015)

³⁵³ See Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* 6-7 (2008).

³⁵⁴ Ethereum's proof-of-stake mechanism employs a finality mechanism that marks transactions as finalized after approximately 12-15 minutes under normal network conditions. See Vitalik Buterin et al., *Casper the Friendly Finality Gadget* (2017), <https://arxiv.org/abs/1710.09437>.

³⁵⁵ See *supra* Part I.C.

³⁵⁶ See U.C.C. § 4A-105 cmt. 1-3.

and still others are decentralized finance protocols controlled by DAOs.³⁵⁷ Without a tailored framework, key issues are entirely shrouded in uncertainty, including when an intermediary becomes obligated to execute a customer's instruction for a stablecoin transfer, at what point the payor's underlying obligation to the payee is discharged, and what recourse exists if an intermediary fails mid-transaction.

The widespread use of stablecoins within crypto-native ecosystems should not be confused with legal robustness. Within decentralized finance protocols and centralized cryptocurrency exchanges, stablecoins function as if they were legal tender, and blockchain confirmation is treated as if it constituted legal finality. Anecdotally, it appears that significant transaction volume proceeds daily upon these assumptions. Yet this practice reflects technological necessity rather than legal status. Within distributed ledger networks, only crypto-assets can technically serve as a medium of exchange; the infrastructure cannot process wire transfers or other traditional payment forms. That stablecoins dominate this technological realm does not *per se* confer upon them the legal attributes of money. Code is not law.

The history of private money suggests that divergences between commercial practice and positive law are unstable. During the free banking era, private bank notes circulated widely under market conventions that participants treated as authoritative.³⁵⁸ Those conventions proved inadequate when issuers failed and disputes reached courts of general jurisdiction. A similar reckoning may await stablecoins. When disputes migrate from the closed loop of crypto ecosystems to courts applying established principles of commercial and payment law, participants may discover that the technological conventions they relied upon provide no legal defense. The absence of statutory acceptance mandates and finality rules will then reassert itself, potentially with disruptive consequences for transactions that the parties believed were conclusively settled.

E. Negotiability

As Part I established, negotiability is the legal attribute that permits a good faith purchaser for value to take an instrument free of adverse claims and defenses, enabling circulation without inquiry into the transferor's title.³⁵⁹ Physical currency sets the benchmark, with the common law principle that "money has no earmark" and UCC Section 9-332(a) combining to provide comprehensive protection against both competing ownership claims and prior security interests.³⁶⁰ Bank deposits achieve functional equivalents through the

³⁵⁷ On decentralized finance protocols see Odet & Tosato, *Regulating Centralized Stablecoins*, *supra* note 3, at 3.

³⁵⁸ See generally HOWARD BODENHORN, *STATE BANKING IN EARLY AMERICA: A NEW ECONOMIC HISTORY* (2003); see also GARY B. GORTON, *SLAPPED BY THE INVISIBLE HAND: THE PANIC OF 2007*, at 17-24 (2010).

³⁵⁹ See *supra* Part I.C.

³⁶⁰ See *supra* Part I.C.

payment system infrastructure, particularly through wire transfers that create new, independent obligations from the beneficiary's bank.³⁶¹

For stablecoins, negotiability presents a fragmented landscape. Under UCC Article 12, stablecoins are classified as “controllable electronic records” (CERs) and benefit from a framework for protecting transferees against adverse property claims.³⁶² The centerpiece of this framework is the “qualifying purchaser” rule. Under this rule, a person who obtains control of a CER for value, in good faith, and without notice of conflicting claims acquires rights in the CER free from any adverse property claim.³⁶³ This protection extends to actions “whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.”³⁶⁴

The qualifying purchaser rule provides genuine negotiability for the stablecoin token itself. If Alice acquires USDC from Bob, who had previously stolen the tokens from Carol, Alice takes free of Carol's ownership claim, provided Alice satisfies the qualifying purchaser requirements. Carol's remedy lies solely against Bob; she cannot recover the tokens from Alice.³⁶⁵

However, the scope of this protection must be precisely understood. Section 12-104(e) cuts off “property claims” to the CER, meaning competing assertions of ownership or other proprietary interests by third parties.³⁶⁶ For the digital asset itself, this creates genuine negotiability. The difficulty, as we analyzed in Part II, is that the redemption right is an entirely separate and distinct asset and subject to a different private law regime.³⁶⁷ Under existing issuer terms, the redemption right is a contractual claim governed by ordinary rules for the assignment of contract rights. As such, assignees take subject to all defenses, claims, and setoffs that the issuer could assert against the assignor.³⁶⁸ A transferee might therefore obtain clean title to the stablecoin token under Article 12, while at the same time acquiring the redemption right subject to issuer defenses arising from the conduct of prior holders. If the issuer can raise defenses against the original holder (for example, that the holder violated terms

³⁶¹ See *supra* Part I.C.

³⁶² See U.C.C. § 12-102(a)(1) (A.L.I. & Unif. L. Comm'n 2022); *supra* note 307; Tosato & Odinet, *Digital Assets*, *supra* note 198, at 43-46.

³⁶³ U.C.C. § 12-102(a)(2) (A.L.I. & Unif. L. Comm'n 2022); *id.* § 12-104(e). “Control” requires the power to avail oneself of substantially all the benefit from the CER, the power to exclude others from such benefits, and the power to transfer these powers. *Id.* § 12-105(a)(1); see also Tosato & Odinet, *Digital Assets*, *supra* note 198, at 44-46. “Value” encompasses any consideration sufficient to support a simple contract, including the satisfaction of a preexisting claim. U.C.C. § 1-204 (Am. L. Inst. & Unif. L. Comm'n 2022). “Good faith” requires honesty in fact and the observance of reasonable commercial standards of fair dealing. *Id.* § 1-201(b)(20). “Notice” includes actual knowledge, reason to know from facts and circumstances, or notification received. *Id.* § 1-202.

³⁶⁴ U.C.C. § 12-104(g) (A.L.I. & Unif. L. Comm'n 2022).

³⁶⁵ See *id.* § 12-104 cmt. 7.

³⁶⁶ *Id.* § 12-104(e).

³⁶⁷ See *supra* Part II.C.

³⁶⁸ U.C.C. § 12-104(g) (A.L.I. & Unif. L. Comm'n 2022).

of service or is subject to sanctions), those defenses may persist against subsequent transferees through the separate legal regime governing the redemption right.

The GENIUS Act could have resolved this asymmetry, but it did not. As discussed in Section A of this Part III, the Act's sparse language leaves open whether the redemption right is merged with the token or remains a separate asset. This ambiguity risks perpetuating the status quo's fundamental defect: uncertain negotiability of the very claim that makes stablecoins valuable.

IV: IMPROVING THE MONEYNES OF STABLECOINS

Part III applied the moneyness framework to stablecoins under the GENIUS Act and revealed deficiencies across multiple dimensions. Three are particularly severe. First, these novel monetary instruments lack robust safety. The narrow bank model relies on third-party custodians, exposing holders to credit and operational risk. Meanwhile, the Act's bankruptcy provisions are internally contradictory: they exclude reserves from the estate yet subject them to judicial administration, and they subordinate administrative expenses to stablecoin claims in ways that make reorganization impracticable. Second, finality rules are absent: no statutory framework establishes when a stablecoin transfer extinguishes the payor's obligation, whether the transfer occurs peer-to-peer or through intermediaries. Third, uncertainty persists regarding the redemption claim: the Act does not specify whether the obligation is statutory or contractual, to whom it runs, or whether it is tokenized such that it travels with the stablecoin itself. This ambiguity undermines negotiability, leaving uncertain whether transferees acquire the redemption right free of defenses assertable against prior holders.

This Part proposes five targeted interventions to address these deficiencies. Three concern safety: granting qualifying stablecoin issuers access to Federal Reserve master accounts, establishing an industry-funded insurance mechanism, and replacing the GENIUS Act's flawed bankruptcy provisions. One addresses discharge capacity: enacting finality rules for stablecoin transfers, both direct and intermediated. One resolves the redemption claim uncertainty: expressly providing that the redemption right is embedded in the token and travels with it.

Two caveats merit emphasis. First, this list is not exhaustive; other reforms could enhance stablecoin moneyness, and we do not address every possible intervention. Second, each proposal entails tradeoffs that warrant fuller treatment than we provide here. Our aim is to specify the legal architecture that greater moneyness would require, leaving detailed design and cost-benefit analysis for future work.

It bears emphasis that this Article takes no position on the degree of moneyness that stablecoins ought to possess, whether on par with bank

deposits, greater, lesser, or perhaps comparable to some other monetary instrument, or even whether they should be a form of money at all. These are normative and political judgments for legislators and regulators, informed by considerations beyond the scope of the intended analysis here. Rather, our aim is to identify the gap between the current legal architecture and the architecture that greater moneyness would require. If policymakers conclude that stablecoins should more closely approximate the moneyness of public money, the interventions we describe represent what would be necessary. If they conclude otherwise, the analysis nonetheless clarifies what stablecoins are and are not under existing law.

A. Master Account Access for Stablecoin Issuers

Earlier we identified custodial dependencies as a critical deficiency undermining stablecoin safety.³⁶⁹ Granting qualifying issuers access to master accounts at Federal Reserve Banks would address this vulnerability directly, permitting them to hold cash reserves with the central bank rather than as claims against private custodians subject to default risk.³⁷⁰ Such access would greatly enhance the information insensitivity of stablecoin claims, as holders would no longer need to assess the creditworthiness of custodian banks. This clarity would also dampen the motivation to stage runs against an issuer if one of its custodians is perceived as vulnerable, since reserve accessibility would no longer depend on third-party solvency.

Master account access would also eliminate reliance on ad-hoc regulatory intervention. Under current arrangements, stablecoin safety during a banking crisis depends on whether regulators choose to extend extraordinary support, as they did when backstopping Silicon Valley Bank's uninsured deposits. Such intervention is discretionary and may not be repeated. An ex-ante framework providing direct central bank access would obviate crisis-time improvisation and ensure that any failure reflects the issuer's own conduct rather than contagion from third-party distress.³⁷¹

Access to master accounts would also close a gap in the GENIUS Act's regulatory architecture. The Act prohibits stablecoin issuers from engaging in fractional reserve banking, but when they deposit their reserves at commercial banks, those institutions may use the funds for ordinary lending activities.³⁷² The Act's prohibition thus operates directly on issuers but cannot prevent the fractional reserve practices of their custodians. Holding reserves at the Federal Reserve would eliminate this indirect circumvention.

³⁶⁹ See *supra* Part IV.A.

³⁷⁰ See 12 U.S.C. § 342; see also John Crawford, Lev Menand & Morgan Ricks, *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113, 115–16, 122–123 (2021).

³⁷¹ See *supra* Part III.C.1.

³⁷² See GENIUS Act § 4(a)(2), Pub. L. No. 119-27, 139 Stat. 419, 420, 422 (2025).

Additional benefits would flow from integration with central bank infrastructure. Operationally, master accounts would provide issuers with direct access to Federal Reserve payment systems, enabling faster settlement of redemption requests and eliminating dependence on correspondent banking relationships that may not operate outside business hours.³⁷³ From a supervisory perspective, the Federal Reserve would gain direct visibility into reserve adequacy, permitting real-time monitoring rather than reliance on periodic disclosures.

This proposal has support abroad. The Bank of England has suggested permitting systemic stablecoin issuers to hold settlement accounts at the central bank, recognizing that direct access to public money infrastructure may be necessary to ensure the safety of stablecoins.³⁷⁴ Notably, it contemplates that such accounts need not replicate those provided to depository institutions. Rather, they could be more limited, with fewer permissions and functions and tailored to the narrow operational needs of stablecoin issuers.³⁷⁵

We acknowledge that the Federal Reserve has historically been reluctant to extend master account access beyond traditional depository institutions.³⁷⁶ The Fed Board's 2022 guidelines establish a tiered review framework subjecting novel applicants to heightened scrutiny, and the Tenth Circuit's recent affirmance of Custodia Bank's master account denial confirms that Reserve Banks retain broad discretion to reject applications from digital asset-focused institutions deemed to present elevated risk.³⁷⁷ Critics may raise concerns about moral hazard, arguing that central bank access could encourage risk-taking, or about operational and systemic risks that novel account holders might pose to the payment infrastructure. These objections warrant serious consideration but, in our mind, do not defeat the proposal. Master accounts for qualifying stablecoin issuers could be tailored specifically, with limited functionality, conditioned on enhanced supervision and reserve requirements, mitigating moral hazard concerns while preserving the safety benefits of direct central bank access. The question of whether all stablecoin issuers should qualify, and under what conditions, merits detailed treatment we leave for future work.

³⁷³ See Bd. of Governors of the Fed. Reserve Sys., Fedwire Funds Service, https://www.federalreserve.gov/paymentsystems/fedfunds_about.htm.

³⁷⁴ See Bank of England, Consultation Paper: Proposed Regulatory Regime for Sterling-Denominated Systemic Stablecoins (2025), <https://www.bankofengland.co.uk/paper/2025/cp/proposed-regulatory-regime-for-sterling-denominated-systemic-stablecoins>.

³⁷⁵ *Id.*

³⁷⁶ See generally Saule T. Omarova, *The People's Ledger: How to Democratize Money and Finance the Economy*, 74 *VAND. L. REV.* 1231, 1265 (2021) (discussing extending master account access to individuals through community banks and credit unions).

³⁷⁷ See Guidelines for Evaluating Account and Services Requests, 87 *Fed. Reg.* 51099 (Aug. 19, 2022); *Custodia Bank, Inc. v. Fed. Rsrv. Bd. of Governors*, No. 24-8024 (10th Cir. Oct. 31, 2025).

B. Private Industry Insurance

In addition to providing Federal Reserve master accounts, the moneyness of stablecoins can be further enhanced by backing them with industry-provided insurance.³⁷⁸ As detailed in Part I, federally backed deposit insurance serves critical functions within a system that is pervasively vulnerable to runs. Most importantly, it works to increase the information insensitivity of the claim by removing doubt, at least partially, in the minds of deposit holders about whether their claim is safe.³⁷⁹ To be sure, this danger carries extra salience in the context of a banking system where firms engage in fractional reserve banking, and the loans they make are out of sync in maturity with the on-demand nature of deposit claims. At the same time, insurance can also be relevant for stablecoin issuers where holders may be subject to different kinds of risks, such as disruptions to underlying blockchains, hacking of user wallets, and token theft. The provision of basic insurance covering some limit on holders' claims can serve a consumer protection purpose by protecting them against these novel and uncertain risks.

Such a fund would enable the stablecoin industry to mutualize failure risk. Instead of relying on government-backed guarantees or emergency loans from the Fed to bridge cash needs, a fund contributed to by the industry can create a source of protection for the marketplace as a whole. The market itself would raise money to create a collective buffer against the risk of failure attaching to one of its own. This mobilizes a form of consumer protection that can also preserve financial stability for issuers as well as the wider payments ecosystem. The viability of such a fund would depend on its design, but such arrangements are not new. Industry insurance funds are commonplace within financial markets; the Securities Investor Protection Corporation (SIPC) protects clients of broker-dealers for up to \$500,000 in securities and cash when a firm fails.³⁸⁰ A similar form of coverage could protect holders of stablecoins where an issuer falls into bankruptcy, covering certain kinds of losses (such as security breaches).

The trade-offs reflect the moral hazard that insurance funds can foster.³⁸¹ Holders may not adequately monitor a stablecoin issuer or assess the quality of their claim. Further, an issuer may assume greater risks knowing that a collective fund is backstopping exposures. These moral hazard concerns are well understood—deposit insurance and SIPC both confront them. Yet

³⁷⁸ See *supra* Part I.B

³⁷⁹ See 12 U.S.C. § 1821(a)(1) (2024); see also Gary B. Gorton & Bengt Holmström, *Understanding the Role of Debt in the Financial System* 5, 15 (Bank for Int'l Settlements, Working Paper No. 479, 2015)

³⁸⁰ Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa–78lll. SIPC is a nonprofit, member-funded corporation that protects customers of failed broker-dealers for up to \$500,000 in securities and cash, including a \$250,000 sublimit for cash claims. See SIPC, *What SIPC Protects*, SIPC <https://www.sipc.org/for-investors/what-sipc-protects>.

³⁸¹ See Charles W. Calomiris & Matthew Jaremski, *Deposit Insurance: Theories and Facts*, 8 ANN. REV. FIN. ECON. 97, 97–98 (2016).

insurance funds offer a way to cover holders who realistically lack the capacity to evaluate issuer solvency. Most importantly, they enhance information insensitivity, enabling stablecoin claims to circulate as payment instruments that can be widely used and trusted, without the need for prior due diligence.

C. Better Insolvency Rules

Lastly, the GENIUS Act's bankruptcy provisions are fundamentally flawed and should be replaced entirely. Rather than retrofitting special protections through ad hoc amendments to the Bankruptcy Code, the preferable approach would be to grant stablecoin holders a perfected security interest in the reserve assets under UCC Article 9. This approach would integrate stablecoins into established commercial law and bankruptcy infrastructure, thus providing clear, familiar, predictable priority treatment.

As we explained in Part III, the Act's current framework suffers from multiple internal contradictions. Most critically, it creates a theoretical paradox by on the one hand declaring that reserves are excluded from the estate while on the other extending the automatic stay to those reserves and directing courts to administer their distribution (provisions that all presuppose the reserves are property of the estate). The super-priority provision compounds these problems by subordinating administrative expenses to stablecoin holder shortfall claims and thus creating administrative insolvency risk that renders reorganization attempts hopeless. Lastly, the Act also creates a two-track regime where protections apply only to issuers eligible for treatment under the Bankruptcy Code. As such, it excludes banks and certain financial institutions subject to special, non-bankruptcy resolution regimes.

A security interest approach would eliminate these problems entirely. Were stablecoin holders granted a perfected security interest in reserve assets under UCC Article 9, their claims would integrate seamlessly into existing commercial and bankruptcy law. Priority rules under Section 9-322 would determine the ranking of competing security interests according to well-established principles. Bankruptcy treatment would follow automatically from secured creditor status under existing Code provisions, with no need for special amendments. Section 725 would govern disposition of the secured collateral, while familiar mechanisms such as adequate protection requirements, lift-stay motions, and cramdown rules would operate according to established rules. These changes would provide unified treatment regardless of issuer type, would offer clear outcomes for all parties, and would avoid perverse incentives that might allow entities to circumvent their normal insolvency regimes.

The core methodological failure of the GENIUS Act's bankruptcy provisions is their attempt to create an elaborate series of statutory protections that contradict both one another, as well as the Bankruptcy Code's basic architecture. A security interest resolves this by establishing ex ante that holders possess a specific, identifiable property right (i.e., a lien) in reserve assets.

Bankruptcy treatment then follows as a natural consequence of that classification, which is governed by a comprehensive body of commercial law developed over decades of practice and refined through countless cases. This is the approach the Act should have taken, and it remains the approach that should replace its current provisions.

D. Finality

Part III identified the absence of finality rules as a critical deficiency in stablecoin moneyiness.³⁸² Unlike other forms of private money, stablecoins can transfer either peer-to-peer or through intermediaries. Thus, a complete framework must address both scenarios.

For peer-to-peer transfers, finality could be enhanced by providing that transfer of control, as defined by UCC Article 12, effects discharge of the payor's obligation to the payee.³⁸³ This approach would extend the logic Article 12 already employs: control of a controllable electronic record is the functional equivalent of possession of a tangible asset, and delivery of possession has long effected discharge under principles governing payment in goods or currency.³⁸⁴ The technological characteristics of distributed ledgers, however, raise the possibility that a completed transfer might subsequently be reversed through blockchain reorganization or protocol failure. This risk could be addressed directly: discharge occurs at the moment control passes, but if that transfer is later reversed due to technological factors, the payee acquires a personal claim against the payor under the law of restitution. The original discharge would not be reopened. This approach mirrors the treatment of counterfeit currency: delivery effects discharge, but if the cash proves counterfeit, the payee may treat the payment as a nullity and recover upon the original claim against the payor.³⁸⁵

For intermediated transfers, we propose introducing provisions functionally equivalent to UCC Article 4A. Such a framework would specify the precise moment at which a transfer instruction becomes irrevocable, following Article 4A's model of defining when payment orders are accepted and when they can no longer be canceled or amended. It would also allocate risks among parties in the transfer chain (the payor, the payor's intermediary, any subsequent intermediaries, and the payee) for scenarios such as erroneous transfers, fraudulent instructions, and intermediary failures. These finality provisions would operate alongside Article 12's property-based protections for qualifying purchasers, creating a comprehensive framework governing both token ownership and payment discharge.

³⁸² See *supra* Parts III.D.

³⁸³ See U.C.C. § 12-105 (A. L. I. & Unif. L. Comm'n 2022).

³⁸⁴ See U.C.C. § 2-401(2) (A. L. I. & Unif. L. Comm'n 2022); *cf.* *Miller v. Race* (1758) 97 Eng. Rep. 398, 401 (K.B.).

³⁸⁵ See 6 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1572 (rev. ed. 1938).

E. Clarification of Redemption Rights

Lastly, the GENIUS Act leaves unresolved a fundamental question about the legal nature of the redemption right and to whom it runs. As we observed in Part III, the Act states that an issuer “is obligated to convert, redeem, or repurchase” stablecoins but provides no clarity on whether this obligation is statutory or contractual, or more importantly, whether the redemption right is embedded in the token itself or exists as a separate claim. Under the current issuer terms we explained in Part II, the redemption right is treated as a distinct contractual claim requiring privity with the issuer. This bifurcated structure means that token ownership and redemption rights are governed by different legal regimes and may be held by different parties. Congress should resolve this ambiguity by explicitly tokenizing the redemption right: whomever controls the stablecoin under UCC Article 12 holds the right to redeem it—full stop.

The current uncertainty undermines negotiability. A transferee might acquire clean title to the stablecoin under Article 12’s qualifying purchaser rule while simultaneously acquiring a redemption right subject to competing claims or defenses under ordinary principles of assignment. This, in turn, forces recipients to conduct due diligence on the chain of title and the validity of prior holders’ claims (precisely the inquiry that negotiability is designed to eliminate). When payment instruments require investigation before acceptance, they fail as money.

Explicit tokenization would resolve this by merging the redemption right with the controllable electronic record. Congress should specify that control of the stablecoin carries with it the right to demand redemption from the issuer, following the model of negotiable instruments where the holder possesses enforcement rights. As we noted in our analysis in Part III of the GENIUS Act above, Section 11 already uses language suggesting this approach by granting bankruptcy-related rights to persons “holding” stablecoins. Extending this principle throughout the statutory framework would create a unified regime where one asset is governed by one set of rules. This approach enables true negotiability. Article 12’s qualifying purchaser protections would shield both the token and the redemption right. The token would function as a complete monetary instrument, carrying its value-realization mechanism (i.e., redemption) within itself rather than depending on separate contractual documentation.

CONCLUSION

Money works best when we do not have to think about its ability to move value from one person to another. Stablecoins aspire to this seamless operation. Yet, as this Article has demonstrated, their legal and regulatory

architecture presently falls short in supporting their aspiration to achieve fullest moneyness. The GENIUS Act leaves critical gaps. To that end, we have proposed targeted reforms that seek to address these deficiencies and introduce enhanced safety, finality, negotiability, and clarity within the stablecoin claim. Given that stablecoins are being positioned as the rails on which the future US dollar payments system will run, establishing robust public and private law foundations for these instruments is now an immediate policy necessity. But the deeper lessons here extend well beyond stablecoins: financial regulation too often proceeds without adequate attention to the private law foundations upon which regulated money instruments rest. One without the other leaves a money claim exposed. A medium of exchange or unit of account that acts as a store of value can still end up discarded by history if it first fails to anchor its operations within legal and institutional protections that make the money claim feel effortless, safe, and endlessly usable, capable of driving the economy while filling piggy banks, real or virtual, with something that can always buy bigger things tomorrow.