GENIUS Act Transition Needs ‘Hyper-Speed’ Progress Given Capital Invested

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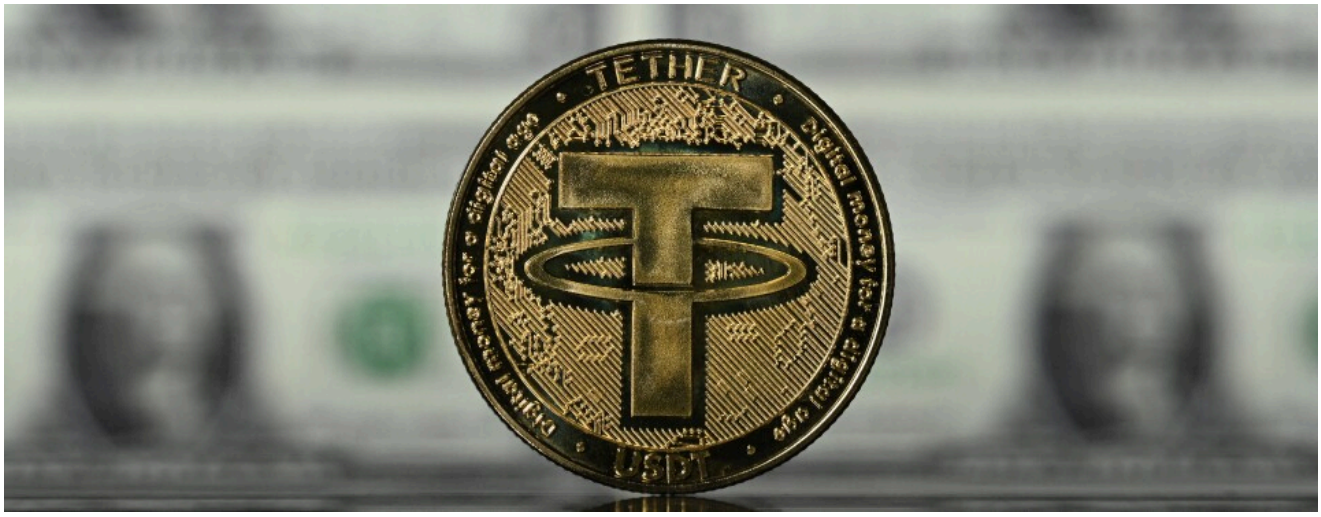

The GENIUS Act poses intense near-term challenges for financial regulators, lawyers, compliance professionals, and code writers. Predictions about a developed stablecoin financial sector are premature, but market participants will need to respond, in an interdisciplinary fashion, to this regulatory tectonic shift.

The law will go into effect on either Jan. 18, 2027, or 120 days after regulators adopt final regulations over stablecoins—whichever comes first. Given that runway, the general view is that market participants have ample time to prepare. The law simply grafts existing real-world regulation of banks and non-banks onto stablecoin providers, including related concepts of Know Your Customer, anti-money laundering, and consumer protection.

However, getting the implementation of the GENIUS Act right is important because of how fast stablecoins have become an economically significant asset class. The total market capital in stablecoin is estimated to have reached more than $300 billion, and global stablecoin transfer volume last year reportedly was about $27.6 trillion—more volume than Visa and Mastercard combined.

These monumental figures illustrate how the GENIUS Act’s regulatory framework must be implemented quickly and carefully for the large amounts of capital already circulating within this market space.

When considered in the context of historical financial regulation, the rate at which GENIUS Act implementation by market participants must progress is nothing short of hyper-speed.

For example, following the 1929 securities market crash, the first of the federal securities laws took four years to pass with the Securities Act of 1933, and Congress didn't finish the job until the passage of the Investment Company Act in 1940. The GENIUS Act's modern tempo of regulatory implementation comports with the evolution of legal principles to apply to web- and crypto-based technology generally.

Luckily, applying age-old legal principles to new, quickly developing technology is something lawyers and compliance professionals have been doing for centuries. As Harvard Law School professor Larry Lessig wrote in "Code Version 2.0" in 2006, the speed with which legal principles need to be updated in the modern era rendered his update on "Code Version 1.0"—after only seven years—an act of "translating an ancient text." Indeed, most technologists believed at the time of "Code Version 1.0" that the internet was simply not regulable, a view "Code Version 1.0" sought to rebut.

Not only has that view failed the test of time but so too has our understanding of what purposes "law" serves and how it can be used to stop bad actors. Ironically, almost exactly 100 years before Lessig's first observation, another Harvard legal scholar, Oliver Wendell Holmes Jr. wrote, "[i]f you want to know the law and nothing else, you must look at it as a bad man," meaning that legislators and judges should design statutes and render decisions to provide clear rules that demarcate what consequences the "bad man" could expect from any specific act.

Lessig's idea that "code is law" had something in mind other than a written legal regulation. Instead, he meant that computer code could be used to design information technology systems to assist Holmes' "bad man" of law—helping ensure that bad actors are disincentivized or prevented from causing harm without even the need to resort to legal strictures. As an example, while Section 47 et. seq. of Title 10 of the Texas Penal Code prohibits sports betting, it is DraftKings Inc.'s geofencing code that actually prevents a Texan from placing a bet on the upcoming Dallas Cowboys game.

A few predictions about the GENIUS Act's implications have gained traction. Some observers note that it will permit large traditional banks to gain a competitive advantage over existing startups involved in blockchain. Others theorize that the economies of developing countries will benefit most from the GENIUS Act because of increases in the efficiency of their existing monetary transfer systems.

In fact, it isn't possible to foresee what form global monetary transfers in a blockchain environment will take and what unique risks they pose. But working with the laws we have already grown to trust is a sensible first step. What remains to be seen is how the software engineers—tasked with ensuring that technological innovations align with the regulatory framework and protect the massive amounts of capital currently locked up in stablecoin markets—implement all requirements.

A stablecoin monetary environment enabled by blockchain technology is arriving at an unprecedented speed and scale. That same technology is critical to an effective compliance program implementing the GENIUS Act.

Regulatory actors and compliance professionals must work swiftly and seamlessly with systems architects to face the challenges presented by the massive stablecoin market, and half-resolved by the GENIUS Act.

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