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Update

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SEC Opens Up Five-Year Sandbox for Tokenized Trading of NMS Stocks

In lieu of registration and the regulatory framework that would otherwise apply, the SEC has substituted a prescriptive disclosure, transparency, and recordkeeping regime for trading tokenized securities.

On September 17, 2026, the SEC issued a five-year exemptive order, which it calls the “Innovation Exemption,” to enable on-chain trading of tokenized National Market System (NMS) stocks (which includes any stock trading on a national securities exchange) through automated market makers and liquidity pools (the Order).^[1] The Order provides two coordinated forms of relief, effective immediately: the “TSV Exemption,” which exempts qualifying tokenized securities venues (TSVs) from the definition of “exchange” under Section 3(a)(1) of the Exchange Act, and the “Covered Firm Exemption,” which exempts certain liquidity providers from the definition of “dealer” under Section 3(a)(5) of the Exchange Act.

In lieu of registration and the regulatory framework that would otherwise apply to venues and liquidity providers, the SEC has substituted a prescriptive disclosure, transparency, and recordkeeping regime for TSVs and liquidity providers. The ability to rely on the Order is all-or-nothing: every condition must be met. Neither exemption is available to bad actors subject to statutory disqualification under Exchange Act Section 3(a)(39).

The exemptions expire on September 17, 2031, which the Commission may shorten, extend, or modify at any time. The overall effect of the Order is to create a sandbox for experimentation, from which experience gained will inform future rulemaking. The Commission is soliciting comment on ten topics with no stated deadline, but market participants seeking to influence outcomes should submit promptly.

I. Tokenization

The Innovation Exemption does not grant any relief to the entity doing the tokenizing. The NMS Stock may either be tokenized by, or on behalf of, the issuer of the underlying NMS stock, or by a third party unaffiliated with the issuer, without the issuer's involvement. The tokenized security must represent actual underlying shares; synthetic products that merely provide exposure to an underlying security (e.g., tokenized linked securities and tokenized security-based swaps), as well as rights and warrants, cannot trade on a TSV. The tokenized stock must convey the same rights and privileges as the equivalent non-tokenized NMS stock, including dividends, voting and share of residual assets; a third-party tokenizer must make proxy materials and communications from the underlying company available to holders of the tokenized stock at no cost to the company or shareholders.

Before a TSV makes third-party tokenized stock available for trading, it must send written notice to the issuer (the Issuer Notice), which will have 30 calendar days after receipt to object in writing to the TSV. A timely objection bars that TSV from making the third-party tokenized stock available for trading, and the TSV must disclose the issuer's objection in a public filing. If the issuer does not object, then trading in its tokenized stock may proceed.

Importantly, the Order does not displace the registration requirements for offers and sales of tokenized securities under the Securities Act. Every offer and sale of Tokenized NMS Stock must be registered under the Securities Act or conducted under an exemption. No primary issuance or initial offering may occur on a TSV.

II. Volume and Symbol Limitations on the TSV

The TSV Exemption sets strict volume and symbol caps that limit any one TSV or set of affiliated TSVs to trading to only a fraction of a ticker's public float and to only a relatively small number of tickers. These caps are intended to limit market-integrity risk and pricing dislocations between Tokenized NMS Stock and conventionally traded NMS stock while preserving room for meaningful experimentation.

Because a TSV is exempt from Regulation NMS and may operate 24/7, prices, which are set by pool ratios, may diverge from exchange prices, especially outside regular U.S. trading hours or during thin liquidity. The volume and symbol caps vary based on whether a security is Tier 1 or Tier 2 under the NMS system as shown below, and are designed to mitigate, but will not eliminate, such pricing dislocations.

Tier 1	Tier 2
S&P 500, Russell 1000 and eligible ETPs.	All other NMS Stocks.
Max 75 Tickers	Max 250 Tickers
Max volume: 0.25% of that stock's prior-month average daily volume.	Max volume: 2.5% of that stock's prior-month average daily volume.

The first breach of a volume cap requires no pause, but the TSV must comply going forward. Each later breach will require the TSV and its affiliated TSVs immediately to pause trading in that stock for three months. This accommodation does not apply to symbol caps; exceeding a symbol cap means only that the TSV is outside the exemption's conditions and could be subject to SEC Enforcement action.

III. Key Observations

- More than 13,000 public issuers of Reg NMS securities are potentially impacted. Timely objecting to the Issuer Notice is the only way for an issuer to prevent a TSV from making a third party's tokenization of its securities available for trading.
- Third-party tokenization will require the offer and sale of those tokens to be registered under the Securities Act or qualify for an exemption from registration. Currently, third-party issuers of tokenized U.S. publicly registered equities are offering and issuing those securities abroad – for example, in the Abu Dhabi Global Market or the Island of Jersey, typically in reliance on Regulation S. Although the Order provides a pathway for secondary trading on a TSV, it does not itself provide Securities Act relief for the creation or distribution of the tokenized security, calling into question whether structures currently used for offshore tokenized equities can be replicated for U.S. investors.
- Trading on a TSV can be made available directly to retail investors without an intermediary, and those investors may self-custody the securities in their own digital wallet.
- The TSV Exemption attempts to encapsulate many of the regulatory provisions for oversight of national securities exchanges, broker-dealers and alternative trading systems through limited reporting and recordkeeping requirements and extensive disclosure requirements. In this regard, the Commission is returning to first principles, relying on disclosure to inform investors and markets of risks and potential benefits of trading on TSVs.
- A TSV must be a U.S. person required to comply with OFAC-administered sanctions requirements and maintain access-permissioning procedures, including identity verification and wallet controls, designed to address OFAC sanctions and applicable AML/CFT requirements.

- Under the TSV Exemption, TSVs are not subject to the fair access requirements applicable to registered national securities exchanges and ATSS, and accordingly may set their own permissioning criteria to determine which persons may access trading on the TSV—including by denying or limiting such access—and may differentiate among TSV Participants with respect to access, trading procedures, market data, and fees, with such denials, limitations, or differences in treatment not being subject to SEC review.

IV. Considerations for Public Issuers

Issuers should understand what to watch for and how to respond to an Issuer Notice.

Tokenization itself does not require the issuer's consent; the Issuer Notice signals only that a TSV intends to begin trading a third-party tokenized stock. The issuer's objection right runs to trading on the notifying TSV, not to the tokenization itself.

- **Monitor incoming mail.** The Issuer Notice will be delivered to the address appearing on the cover page of the issuer's Exchange Act reports. Personnel should be instructed to route any notice from a TSV to counsel immediately, because the 30-calendar-day objection period runs from the issuer's receipt of the Issuer Notice. A public company could receive Issuer Notices from multiple TSVs.
- **Inaction permits trading.** The Order allows issuers to block TSV trading of a third-party tokenization, but the issuer's consent is not required. If an issuer fails to deliver a written objection to the TSV on or before the 30th calendar day following receipt of the Issuer Notice, the TSV may make the third-party Tokenized NMS Stock available for trading.
- **Failing to object could be a one-way door.** The Order does not address late objections or withdrawal of a non-objection. An objection preserves optionality; an issuer can presumably reverse course and permit trading later, whereas once trading commences and TSV Participants have taken positions, there is no mechanism in the Order for the underlying NMS company to halt it.

Whether an issuer objects to or permits trading of a third-party tokenization on a TSV will depend on the mechanics and terms the TSV and the third-party tokenizer are willing and able to provide, including, among other factors:

- who custodies the underlying shares, where the shares sit in the DTC chain, and who is the record holder;
- how voting rights are actually passed through to token holders, the instruction deadlines that will apply, and what happens to shares underlying tokens if the tokenholder does not provide voting instructions (the Order requires equivalent voting rights but does not prescribe a mechanism);
- whether the issuer can identify or communicate directly with token holders;
- how corporate actions and record dates will be handled, including events occurring while the primary market is closed;
- how naming, branding, and disclaimer commitments will be handled, so that the token is not marketed in a way that implies a relationship with the issuer or endorsement; and
- whether token holders can redeem or detokenize into ordinary shares.

[1] The Order and the SEC's related press release and fact sheet are available at <https://www.sec.gov/newsroom/press-releases/2026-90-sec-issues-innovation-exemption-facilitate-trading-tokenized-nms-stock-request-comment>.

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Gibson Dunn's lawyers are available to assist with any questions you may have regarding the SEC's proposed rules, or federal securities laws and regulations more generally. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders of the firm's Securities Regulation & Corporate Governance practice group:

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