FAQ – SEC Innovation Exemption

Q: Does this exemption apply to private company stock?

A: No. The exemption is limited to Tokenized NMS Stock—that is, tokenized versions of equity securities listed on a national securities exchange and included in the National Market System. Private company stock, whether tokenized or not, is outside the scope of the Order.

Q: What should a public company do if it receives a third-party tokenization notice?

A: The issuer has 30 calendar days after receiving the notice to decide whether to object. During that period, the issuer may wish to understand: (1) the identity and background of the tokenizer; (2) how the token is structured and whether it represents a direct interest or a security entitlement; (3) how the underlying shares will be held and reconciled; (4) how voting, dividends, and other shareholder rights will be administered; (5) how the token may trade relative to the conventional shares; and (6) whether there are any disclosure, regulatory, operational, or reputational concerns that warrant an objection.

Q: Can a public company prevent its stock from being tokenized?

A: For stock tokenized by an unaffiliated third party, the Order gives the issuer the right to object to trading on a TSV under this exemption. An objection does not prohibit tokenization or trading generally; it prevents the TSV from relying on this particular exemption for the tokenized stock. A party seeking to proceed would need another valid legal basis for the activity.

Q: What is the process for establishing a TSV?

A: The Order does not require a TSV to apply for or obtain SEC approval before relying on the exemption. At least 30 calendar days before beginning operations, the TSV must publish a detailed public Notice describing its ownership, governance, participant standards, eligible assets, smart contracts, trading procedures, fees, and other required information. The TSV must also notify the Commission within one business day after publishing the Notice. After launch, the TSV must update the Notice when specified events occur and comply with ongoing disclosure, recordkeeping, and reporting requirements.

Q: Can a registered broker-dealer or exchange operate a TSV?

A: Potentially. The Order contemplates that a registered entity or an affiliate could participate in a TSV structure, but registered activities remain subject to otherwise applicable requirements and must be kept separate from TSV activity. The Order does not define the precise degree of operational, personnel, systems, or governance separation required, so firms considering this structure should evaluate how to maintain appropriate separation.

Q: What triggers the need for the Covered Firm Exemption?

A: The Commission states that supplying liquidity to an AMM does not, standing alone, constitute dealer activity. The Covered Firm Exemption is designed for firms whose proprietary liquidity activities may present a closer dealer question—for example, arrangements involving committed capital, providing pricing to customers, or control over pricing or inventory. Firms should evaluate whether their particular activities implicate dealer status and, if so, whether they can satisfy the Covered Firm conditions. Reliance on the exemption does not itself create a presumption that the firm is a dealer.

Q: Can companies use a TSV to issue new shares or raise capital?
A: No. The exemption permits secondary market trading but does not permit primary issuances or initial offerings of securities on a TSV. Offers and sales must also be registered under the Securities Act or qualify for an exemption.

Q: Does a company have to respond to a third-party tokenization notice?
A: No. The Order does not require an issuer to respond. If the issuer does not object within 30 calendar days after receiving the notice, the TSV may begin trading the tokenized stock after that period, provided all other conditions of the exemption are satisfied.

Q: Does the SEC approve or supervise a TSV like a registered exchange?
A: No. A TSV relying on the exemption is not registered with the SEC as an exchange, and the SEC does not approve the TSV or verify the accuracy of its public Notice. A TSV also is not subject to all requirements that apply to registered exchanges, including Regulation NMS and federal fair-access requirements. Other applicable laws, including anti-fraud and anti-manipulation requirements, continue to apply.

Q: Do tokenized shares have the same shareholder rights as conventional shares?
A: To qualify under the exemption, tokenized stock must provide the same rights and privileges as the equivalent conventional stock, including the same economic interest, dividends, voting rights, and rights upon liquidation. For third-party tokenization, related proxy materials and issuer communications must also be made available to token holders without cost to the issuer or its shareholders.

Q: What happens when the five-year exemption expires?

A: The exemptions are set to expire on September 17, 2031, unless modified earlier by the Commission. The Order solicits public comment on possible modifications, including whether to make the exemptions permanent, expand or narrow their scope, or impose additional conditions. The Commission has described the exemption as an interim measure intended to generate observable data and inform more durable rulemaking. Market participants should monitor the comment process and any subsequent Commission action as the expiration date approaches.