

September 19, 2026

Via email to rule-comments@sec.gov

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: [File No. 4-927](#); [Release No. 34-106402](#); Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934, from the Definition of "Exchange" in Section 3(a)(1) of the Exchange Act for the Use of Certain Distributed Ledger Trading Venues for Tokenized NMS Stocks and from the Definition of "Dealer" in Section 3(a)(5) of the Exchange Act for Certain Liquidity Providers for Tokenized NMS Stocks, and Request for Comment

Dear Ms. Countryman:

I submit this letter in response to the Commission's request for comment on the order cited above (the "Order"). I write in my personal capacity, and the views expressed are my own and not necessarily those of any client or of any company with which I am affiliated.

By way of background, I am a corporate and securities lawyer who has worked on the tokenization of securities since 2018, when I published "[Tokenizing Corporate Capital Stock](#)," an early treatment of how a corporation may issue and record its stock on a blockchain. I am the founder and chief executive officer of MetaLeX Labs, Inc., which builds software (the cyberCORPs protocol) enabling issuers to tokenize their own securities on public blockchains, whether as onchain stock ledger entries, as instruction tokens directed to an offchain register, or as issuer authorized scrip, and I am a partner of MetaLeX Pro LLP, in which capacity I advise issuers, funds and protocols on tokenization structures. I have also written at some length on when a blockchain system should be regarded as decentralized or autonomous for legal purposes ("[Defining Decentralization for Law](#)," 2020; "[Autonomy vs Decentralization](#)," 2023), and in 2020 proposed a [token safe harbor](#) in an [open letter to Commissioner Peirce](#), all of which bears on Part 2 of this letter.

I support the Order. By conditioning relief on the token conferring "the same rights and privileges" as the stock, by excluding synthetic exposure, and by requiring smart contracts that are "auditable, public, and deployed on a public, permissionless distributed ledger," the Commission has chosen the right principles. However, the Order's drafting is in several places incomplete, and in a few places it will produce results that I doubt the Commission intends. In the interests of the staff's time, this letter does not march through every condition of the Order, and instead focuses on five issues:

1. The Order makes the pool transparent and leaves the token opaque. The tokenization documents should be published, the Notice should state what the token legally is, and the exemption should be unavailable where the token's connection to the stock rests on extraordinary offchain trust.
2. "Public" is undefined and "permissionless" is defined as "read or write," which admits ledgers that the Commission's own rationale excludes, and nothing in the Order tests whether a ledger continues to qualify.
3. Request 4 should be answered yes: the framework should reach issuer tokenized securities of companies that are not NMS issuers.
4. The definition of a TSV leaves open who 'provides' a pool, and the Order should say plainly that it draws no negative inference about pools that have no TSV.
5. The Commission's statement that liquidity provision alone is trader activity should be made general and durable.

1. The tokenization documents should be published, and the Notice should say what the token is

Section II.E requires a TSV to "verify" that each Tokenized NMS Stock "provides holders the same rights and privileges as does traditional NMS stock of an equivalent class." The Notice then requires the TSV to describe "the processes used for tokenizing" each stock and the "procedures the TSV uses to evaluate the legal status, technical soundness, and operational integrity" of the token and of "the distributed ledger system on which that security is issued and transferred" (item (h)), and to describe "the steps (e.g., audits, certifications, attestations)" it took to verify the holder's rights (item (i)). These are useful disclosures, but they are the TSV's own account of its own diligence. Thus, a TSV Participant is told that someone checked, and by what procedure, and is not shown what was checked. Meanwhile, the transparency condition of Section II.A (that smart contracts be "auditable, public, and deployed on a public, permissionless distributed ledger") applies by its terms to the distributed ledger applications "used by a TSV" (i.e., to the pool), and does not clearly reach the token's own contract, much less the legal documents that give the token whatever legal function it has. In my opinion this is the largest gap in the Order, because the pool is the easy part. Anyone can read a constant product formula, whereas no one can read from the chain what the token is.

That is a legal question, and it has a well developed answer. As the Permanent Editorial Board for the Uniform Commercial Code recently explained, "a token is not itself a security under Article 8," and its legal significance derives entirely from the function it performs. The PEB accordingly takes a "strictly functional approach," under which the transfer of control of a token in the direct holding system may operate as an "Instruction Token" (constituting an instruction to the issuer to register the transferee as owner) or as a "Control Agreement Token" (establishing a control agreement among the issuer, the registered owner and the transferee) (*Report of the Permanent Editorial*

Board for the Uniform Commercial Code, The "Tokenization" of Securities Transfers Under the Uniform Commercial Code, Aug. 10, 2026, available at <https://www.ali.org/sites/default/files/2026-08/PEB-Report-Tokenization-of-Securities-Transfers.pdf>). By the same reasoning, a token may be made part of the issuer's register itself where the issuer's governing documents and the applicable corporate statute so provide, or, in the indirect holding system, may record a security entitlement or generate an "entitlement order" to a securities intermediary. Alternatively, the token may be a separate instrument representing a contingent claim to the securities (as with scrip under [DGCL §155](#), or a fully backed redeemable token on the model of a payment stablecoin). Or, of course, it may do none of these things and be a souvenir. Which of these a given token is depends on documents (the issuer's charter, bylaws and board resolutions, its transfer agent agreement, the token terms and, in the custodial case, the account agreement and the custody agreement), and cannot be determined from the bytecode, since the same ERC-20 contract on the same chain could be any of them.

Accordingly, I ask the Commission to add the following conditions.

Publication. Every document on which the token's legal function depends should be published at a stable public location linked from the Notice, including the governing document provisions and resolutions that designate the token's role, the transfer agent or tokenization agent agreement, the token terms, and (for third party tokens) the account agreement, the custody agreement and any trust or SPV documents. The token's own smart contracts should be held to the same "auditable, public" standard as the pool's. A verification which participants cannot check is merely an assertion, and every other transparency condition in the Order proceeds from the premise that participants should be able to check for themselves.

Ontology. The Notice should state, for each Tokenized NMS Stock: whether the holder is in the direct or the indirect holding system; which Article 8 function the token performs or, if the token is instead a claim to the securities or their proceeds, the nature of the claim, the obligor, the backing and the terms of presentment or redemption; what event constitutes registration of transfer (or acquisition of the security entitlement) and when it occurs relative to the onchain transfer; how and when a purchaser obtains "control" and with it protected purchaser status under [UCC §8-303](#) (or the protection of [§8-502](#)), including how the design addresses what the [PEB report](#) calls "gap period risk" between the onchain transfer and registration; which record prevails if the token ledger and the legal register diverge; and the governing law. The Notice should also answer a question which AMM trading makes unavoidable and which the Order never asks: while a token sits in the pool's contract, who is the registered owner or entitlement holder of the underlying shares, and who votes them and receives their dividends?

Transfer agent policies and systems. Where the token is an instruction token or a control agreement token (or otherwise depends for its effect on a transfer agent or other agent of the issuer acting upon it), the legal consequence of an onchain transfer is whatever the agent does next. (The Order, for its part, does not mention transfer agents at all.) Article 8 obliges an issuer to register a

transfer upon a proper instruction ([UCC §8-401](#)), but it also contemplates demands that the issuer not register ([§8-403](#)) and liability for wrongful registration ([§8-404](#)), and an agent standing between those provisions will have policies about when it acts and when it does not. Those policies are in substance terms of the token, and a TSV Participant cannot evaluate the token without them. Accordingly, the agent's policies and procedures relating to the token should be published, including the conditions on which it will treat a transfer of the token as an effective instruction; every ground on which it may decline or delay registration, reverse a registration, or freeze, force transfer, burn or reissue a token (e.g., lost keys, legal process, sanctions, stop transfer demands, error, or suspected theft); who makes each such decision, by what process and within what time; and what recourse the affected holder has.

Moreover, where the token's ontology makes the agent's own systems part of the picture (as with an instruction token mirrored to an offchain master securityholder file, which is the second of the issuer sponsored models in the [staff's January 28, 2026 statement](#)), the Notice should describe those systems and the internal controls over them as they relate to the token: how onchain events are ingested and reconciled to the master file, and how often; the expected interval between a transfer of the token and registration, and what becomes of transfers while the agent's systems are unavailable; which record prevails in the event of a discrepancy; how the keys holding administrative powers over the token's contract are secured and who may use them; and whether those controls have been independently assessed. None of this should be burdensome. Registered transfer agents already obtain an annual study of their internal controls under [Rule 17Ad-13](#), and the Commission's pending transfer agent proposal ([Release No. 34-106246](#)) would require written policies and procedures covering turnaround, posting and risk management. My request is simply that the portions bearing on the token be made public, since in these models the token is no better than the agent behind it.

No extraordinary offchain trust. I would not have the Commission prescribe a single model of tokenization. A token may be the issuer's ledger entry. It may be an instruction token or control agreement token of the kind the PEB describes, with the register of record remaining offchain in the hands of a transfer agent. It may record a security entitlement. Or it may be a separate instrument on the model of scrip or a payment stablecoin (i.e., a fungible token fully backed by the securities and redeemable for them or for their proceeds). Each of these involves some trust in offchain facts (e.g., that a transfer agent will act on an instruction it has bound itself to honor, that an intermediary holds the financial assets it has credited, or that a redemption agent holds the shares backing the tokens), and I do not suggest that such trust is disqualifying. What should be disqualifying is trust that is not bounded by any enforceable, published commitment. Accordingly, the exemption should be unavailable where (a) the token does not represent, under published documents binding an identified obligor, at least one of the following: record ownership of the securities, an instruction or control agreement which the issuer or its transfer agent has bound itself to honor, a security entitlement, or a contingent claim to the securities themselves or to the proceeds of the securities on a 1:1 basis; (b) any person holds a power to mint, burn, freeze, force

transfer or sever the token from the securities which has not been published together with who holds it and on what conditions; or (c) the token is a claim against a person holding the securities, and that person is unidentified or participants cannot verify at regular intervals that the securities are held 1:1 against the tokens outstanding.

I recognize that the Order as drafted would exclude a token of the last kind, and on two grounds. First, "Tokenized NMS Stock" is defined as "an NMS stock" that has been tokenized, whereas scrip or a redeemable token is a separate instrument, and where a third party issues it, the definition's exclusion of "a crypto asset representing its own security that provides synthetic exposure to an underlying security" might be read to reach it. Second, such a token does not itself carry "the same rights and privileges" as the stock under Section II.E until it is presented or redeemed. In my opinion both draw the line in the wrong place. Such a token is quite different from the tokenized linked securities and security-based swaps which the Order gives as its examples of synthetic exposure, and which it rightly excludes: a linked note or a swap is an unbacked promise referencing a price, whereas a fully backed, redeemable token gives its holder an enforceable path to the security itself (and thus to every right of a holder of the security) or to its proceeds. The Commission should accordingly clarify that exposure is 'synthetic' where it is not backed 1:1 by securities held for the benefit of the token's holders and redeemable by them, and should admit fully backed, redeemable tokens as an eligible category, with the Notice disclosing what the holder lacks until presentment or redemption. The line should be drawn at backing and enforceability, and should not depend on the form of the claim.

That path must, however, be real for the person who actually holds the token. Among payment stablecoins it is common for redemption to be available only to a small class of direct customers of the issuer, often subject to high minimums, such that the ordinary holder's 'claim' consists in practice of the hope that some privileged redeemer will find it profitable to arbitrage the token back toward par. A token of that kind does not give its holder a contingent claim to anything, and should not qualify. Accordingly, the right of presentment or redemption should run to any holder of the token who satisfies objective, published eligibility conditions, and should not be confined to a closed or discretionary class of authorized redeemers. I have no objection to conditions of the ordinary kind (e.g., identity verification, anti-money laundering and sanctions screening, the collection of tax forms, and compliance with any transfer restrictions applicable to the underlying securities), nor to reasonable published fees and processing times, since a holder can satisfy such conditions by its own efforts. What should be disqualifying is a redemption right which the obligor may grant or withhold at its discretion, which is subject to minimums that exclude the ordinary TSV Participant, or which may be suspended other than on published conditions.

The Commission's stated reason for requiring a public permissionless ledger is that participants and third parties can see for themselves how the system works, and that rationale is defeated if the token's connection to the stock is a PDF in someone's drawer. Put differently, a token whose transfer has no legal consequence for anyone (i.e., which neither moves record ownership, nor instructs anyone to move it, nor carries an enforceable claim to the securities or their proceeds) is a

souvenir, and is not 'tokenized' stock in any sense worth exempting.

2. "Public" and "permissionless" should be defined by who holds power over the ledger, with continuing quality control

Section II.A requires the TSV's smart contracts to be "deployed on a public, permissionless distributed ledger," and then offers that "[p]ermissionless" generally means that anyone can read or write to the distributed ledger without authorization." "Public" is not defined at all. As someone who once spent many thousands of words attempting to define "decentralization" for legal purposes (["Defining Decentralization for Law,"](#) 2020), I sympathize with the difficulty. Nevertheless, this sentence will not do.

Because the "or" can be read disjunctively, a consortium ledger with a public block explorer (i.e., one that anyone can read and only members can write to) is, on the literal text, 'permissionless'. The Commission presumably means "read and write" and should say so.

More fundamentally, the definition asks about the wrong thing. I should be clear about what is at issue. The TSV's pool is permissioned by design, and must be, since permissioned access is the premise of the exemption. My concern here is solely with the ledger beneath the pool. The Commission's stated rationale for requiring that ledger to be public and permissionless is that participants and third parties can "audit and report vulnerabilities" and "understand how their trades are effected." Taken alone, that rationale requires only publication, since anyone can audit code that has been published, whoever controls the system on which it runs. However, an audit is only as good as the assurance that what was audited is what will execute. If some person or group can, at its discretion, change the rules of the ledger, suspend it, reorder or exclude transactions, or deny access to it, then a participant who has read every line of the pool's code still does not know how its trades will be effected, because the code's behavior depends on a substrate which someone else may alter or withhold at will. Thus, the transparency the Commission wants presupposes a property which the Order does not name, and which I have elsewhere called autonomy: the state of being resistant to extrinsic exercises of power, such that no government, intermediary or other interested party can halt the system, mutate it, or censor its users (["Autonomy vs Decentralization,"](#) 2023). Autonomy cannot be conferred on a system directly. It is achieved by decentralizing the powers that are intrinsic to the system's operation, so that there is no one upon whom extrinsic pressure can usefully be brought and no one in a position to act arbitrarily. It follows that a legal definition of a 'permissionless' ledger should ask who holds those intrinsic powers, whereas the Order's definition asks only about two permissions enjoyed by end users and is silent as to who holds power over the ledger itself.

In my earlier work I itemized five forms of power over a blockchain system, each of which bears on whether a ledger is 'public' and 'permissionless':

- *Validation power* is the ability of any person to read the ledger's data and independently verify the validity of its state changes, which requires that the data be freely accessible, that

the ledger's client software be free and open source, that all relevant contract code be published and verifiable against the deployed bytecode, and that verification be feasible without enterprise grade equipment. This is what "public" ought to mean.

- *Consensus power* is the ability to write to the ledger, which in practice means the power to propose blocks or, on a layer 2, to sequence transactions (the "means of block production"). A ledger on which anyone may submit a transaction, but on which a single person or affiliated group decides whether and in what order it is included, is permissionless in name only.
- *Protocol/client power* is the ability to change the rules. The question is whether any person can push a change to the network (or, on a layer 2, upgrade the bridge and rollup contracts), or whether node operators must voluntarily adopt it.
- *Economic power* is the ability to influence the system through ownership of a sizable share of the ledger's native token or control of the capital that funds its development. It is the most potent of the five because it overlaps with the others: in a proof of stake system it converts directly into consensus power, and he who controls the purse strings for the protocol and its clients will ordinarily control the protocol and its clients as well.
- *User power* is the ability of those without the other forms of power to resist those who have them, whether by adversarial fork or, on a layer 2, by forcing inclusion of a transaction and withdrawing to the underlying ledger without the operator's cooperation.

The Commission has a particular reason to care about this, quite apart from transparency. Whoever holds consensus power or protocol power over the ledger holds greater power over the TSV's market than the TSV itself: such a person can reorder trades, extract value from participants through that ordering, censor a participant, freeze the pool, or halt the chain. The Order subjects the TSV to a long list of conditions and subjects that person to none. Thus, if 'permissionless' admits ledgers controlled by a person, the Order will have created an unexamined co-operator of every TSV deployed on such a ledger, and where that person is the TSV's own affiliate, a ready means of doing through the chain what the conditions forbid the TSV to do through the pool. Regulatory law is paranoid and proactive, and rightly so. It does not wait for the powerful to abuse their power before requiring disclosure of structural conflicts, and it should not do so here.

Finally, "generally means" is not a definition, and footnote 54 invites each TSV to ask the staff whether its ledger qualifies. The practical result will be a list of approved chains, maintained informally by the staff and never published, such that a TSV choosing a chain cannot consult the list and a developer whose chain was left off cannot learn why.

The best legal regimes pair a flexible standard with a bright line, non-exclusive safe harbor (as Section 4(a)(2) of the Securities Act is paired with Regulation D), and I propose that the Commission do the same here.

The standard. A distributed ledger is public and permissionless if no single person or group of affiliated persons controls any material component of it or, where a person or group does control a

material component, control over the other components is distributed among unaffiliated persons in a manner that substantially limits that person's or group's power to censor, reorder, halt or rewrite transactions. The following should be rebuttable presumptions that a ledger fails the standard:

- a person or affiliated group controls enough of the means of block production to violate the 'honest majority' assumption applicable to the ledger's consensus protocol;
- a person or affiliated group can push a protocol change to the network without the voluntary adoption of node operators;
- a person or affiliated group owns or controls more than 20% of the ledger's native token (or, in a proof of stake system, of the stake), or controls the capital on which development of the protocol and its dominant client depends;
- reading or verifying the ledger's state requires an account, an agreement, a fee, or software which is not published under an open source license;
- in the case of a layer 2, the ledger's state is not both published to and proven on an underlying ledger which itself satisfies the standard, such that users must take the operators' word for what the state is; or
- in the case of a layer 2, a person or affiliated group can, at its discretion and without meaningful delay, upgrade or override the contracts on which the layer 2 depends, or can prevent users from transacting on it or withdrawing from it (as where a sole sequencer may censor and users have no means of forcing inclusion through the underlying ledger).

These presumptions are rebuttable in principle, though some will be easier to rebut than others. It is hard to see how a ledger which a small group can rewrite or freeze at will could be shown to be permissionless, whatever that group's present intentions. By contrast, a layer 2 which lacks a conventional proof system, or which publishes its data somewhere other than the underlying ledger, might in a particular case be able to show that its users are adequately protected in some other way, and the staff should be free to consider such a showing on its merits.

The safe harbor. A ledger should be conclusively treated as public and permissionless if (a) its client software is free and open source and its full state and history are available to and verifiable by any person; (b) block production is open to any person who satisfies conditions that are defined by the protocol and do not depend on who that person is (as in a proof of work or proof of stake system, and in contrast to a proof of authority system or any other system in which block producers are admitted by identity or membership), and no person or affiliated group controls enough of it to violate the honest majority assumption; (c) no person can compel node operators to adopt a protocol change; (d) the ledger's sole native source of identification and permissioning is public key cryptography; and (e) in the case of a layer 2, it publishes its data to and proves its state on a ledger satisfying clauses (a) through (d), and its operation (including withdrawals and upgrades) is governed by code and not by the discretion of any person or group, save for narrow interventions to correct demonstrable bugs and upgrades which take effect only after users have had ample time

to exit. Clause (d) also clarifies footnote 55: identity based permissioning in the pool or the token, which the Order requires, is an application built on the ledger and does not make the ledger permissioned, whereas identity based permissioning of who may transact on, validate or read the ledger itself does.

Layer 2 networks deserve a further word, because many TSVs will be deployed on them and because they differ from one another far more than their shared label suggests. The useful question is how much of a given layer 2's operation rests on code and how much on the continuing good behavior of a small group of people. At one pole are systems in which code governs everything that matters and no one retains a discretionary override, and these plainly belong within the safe harbor. At the other are systems whose operators can upgrade the contracts or block withdrawals whenever they choose, and these are permissioned ledgers with better marketing. Between the poles lie systems in which code governs ordinary operation but a council retains emergency powers, and whether such a system qualifies ought to depend on the details: how many members the council has and how independent they are of one another and of the TSV, what threshold they must reach in order to act, what precisely they are able to do, and whether users retain a genuine opportunity to exit before any change that does not come from the council takes effect. I would not attempt to reduce these details to a formula, and I would not ask the Commission to. They are matters for the standard, for disclosure in the Notice, and for the staff's judgment. (The Ethereum community's own 'stages' taxonomy for rollups, as maintained by [L2BEAT](#), asks substantially these questions, and the staff may find it a useful reference point.)

I would also commend to the staff a useful intuition pump, adapted from [Professors Henderson and Raskin](#): if the ledger's sponsor fled to the Bahamas tomorrow, would the ledger continue to produce blocks, and could the TSV's participants still withdraw their assets? If the answer is no, the ledger is someone's product and should not be called permissionless.

Quality control. A definition is of little use without continuing quality control, because a ledger's properties are not fixed. Validator sets concentrate, sequencers remain centralized long after decentralization was promised ("progressive decentralization," as a strategy, has a poor record), and upgrade keys change hands. As drafted, the condition is tested once, informally, by whoever at the TSV chooses the chain. Moreover, item (n) of the Notice requires the TSV to describe the distributed ledger on which its applications are deployed and to identify who can "upgrade, modify, suspend, override, or cease" the TSV's distributed ledger applications, but says nothing about who holds the same powers over the ledger beneath them. I therefore ask that (a) the Notice state the facts on which the TSV relies in concluding that its ledger is public and permissionless, organized by the forms of power described above, and state whether the TSV or any affiliate holds any of them; (b) a material change in any of those facts trigger a revised Notice; (c) a TSV whose ledger ceases to qualify have a fixed period in which to migrate or wind down, after which the exemption lapses; and (d) the same requirements apply to the ledger on which the token's contract is deployed, since Section II.A as drafted reaches only the pool and item (h) asks only for the TSV's procedures for evaluating that ledger. This would replace an unpublished staff whitelist with

published facts which anyone, including the staff, can check and contest.

I have no illusions that this is a perfect test, and would encourage the staff and other commenters to fork it and improve upon it. It does, however, ask the right question, which is who holds power over the ledger and what prevents them from using it.

3. Request 4: extend the framework to issuer tokenized securities of companies that are not NMS issuers

Request 4 asks whether a TSV should be permitted "to trade securities other than Tokenized NMS Stock." My answer is yes as to securities tokenized by or on behalf of their issuer, and I would go further: that category is a better fit for the Order's architecture than the listed stocks for which the Order was written.

The conditions that are hardest to satisfy for listed stock exist because a national market already trades that stock. The symbol and volume caps guard against dislocation from the consolidated tape, the halt condition follows the primary listing exchange, and the Regulation NMS discussion in Section I.B explains the difficulty an AMM would have in complying with Rules 602(a), 611 and 612. Because a private company's stock has no consolidated tape and no listing exchange, the caps, the halt condition and the Regulation NMS relief have nothing to which to attach.

The conditions that remain, meanwhile, are ones which issuer tokenized private securities already meet. Section I.A expressly allows access standards to be enforced in the token, such that the security "could be encoded with criteria to only allow transfers" to credentialed wallets. That is how a private issuer's transfer restrictions work today on the cyberCORPs protocol mentioned above: the ledger simply refuses a transfer that the company's bylaws, a stockholder agreement, or the conditions of a resale exemption would prohibit. The issuer objection process is unnecessary because the issuer has tokenized the stock itself, and the "same rights" test is met by construction, because the person who controls the issuer's token is (or upon registration becomes) the registered owner of the shares, and there is no second instrument against which to compare the first.

Of course, the Order gives no Securities Act relief (footnote 48), and I do not ask for any here. Resales of restricted securities in a permissioned pool would still require an exemption (e.g., Section 4(a)(7), Rule 144 or Rule 144A), and the token's transfer logic would have to enforce that exemption's holding period, purchaser qualification and information conditions. Those are burdens for the issuer and the venue to carry. My request is only that a venue which carries them be eligible for the same relief from the "exchange" definition as a venue trading a custodial claim on a listed stock. It would be a strange policy that treats a stranger's wrapper of a listed company's shares more favorably than a company's own shares, tokenized by the company and trading among holders the company has approved.

A natural first step would be to admit equity securities tokenized by or on behalf of the issuer where (a) the issuer has consented in writing to trading on the TSV, (b) transfer restrictions are

enforced at the token, and (c) the TSV's Notice identifies the resale exemptions on which participants are expected to rely and how the token enforces their conditions. The same should hold for scrip that the issuer has authorized against such securities (i.e., a fungible token which is not itself stock, but which an eligible holder may present to the issuer in order to be registered as owner of the underlying shares), since scrip is the form in which a registered position is most naturally made available to a pool.

I also ask for one related confirmation. Much secondary activity in private company stock is bilateral: one holder and one buyer negotiate a price, the issuer approves or waives its transfer restrictions, and the transfer settles. Software that lets those two parties document the trade and settle it atomically against the issuer's onchain ledger does not bring together "the orders for securities of multiple buyers and sellers" under "established, non-discretionary methods," and thus falls outside [Rule 3b-16\(a\)](#) for the same reason that bilateral negotiation systems always have. However, because footnote 28 describes user interfaces in broad terms, a statement that the footnote concerns only interfaces to a TSV's pools would prevent confusion.

4. The Commission should say who is a TSV, and that a pool may have none

The Order exempts a person, and it is worth being precise about which person. A TSV is "an organization, association, or group of persons" that (1) provides an AMM Liquidity Pool "for permissioned participants" and (2) sets "standards for persons to access trading." Meanwhile, the Order's own definition of a smart contract is a program that executes "without intervention, other than to provide data, by any entity or natural persons." It follows that the contract is never the TSV, and that the TSV is whoever stands behind the contract, if anyone does. I believe the same is true of the Exchange Act's definition of "exchange" (i.e., software that no person controls is simply not an "organization, association, or group of persons"), a position I have argued for some years and with which the Order is consistent. However, the Order leaves several questions open.

Deployment alone should not make a provider. Section I.A lists "deploying an AMM smart contract for trading a given pair of assets" among the acts of control by which a TSV 'provides' a pool, joined to the other examples by "and/or." On most AMMs, however, creating a pair is a single permissionless call to a factory contract which anyone on Earth can make. Read literally, the person who makes that call has 'provided' the pool in perpetuity, even though that person retains no keys, no fee switch and no ability to pause, and even though every condition of the exemption (halting with the listing exchange, revising the Notice, keeping records) assumes a continuing capacity to act which such a person lacks. This result is absurd. The Commission should confirm that a person who deploys a pool, retains no control over it, and does not designate it as a trading location does not 'provide' it.

Footnote 29 should be finished. "A person that solely performs the administrative act of encoding a smart contract to whitelist an AMM Liquidity Pool would not be providing an AMM Liquidity Pool." I read this as protecting an issuer or tokenizer that merely adds a pool's address to a token

level allowlist, and I agree with it. However, the footnote creates a case the Order does not address: one person sets access standards at the token, an unrelated person deployed the pool, and neither satisfies both prongs of the definition. Whether there is a TSV then depends on whether unaffiliated persons acting without agreement constitute a 'group of persons'. I submit that they do not. A 'group' requires concerted action, and the Order's own definitions of "affiliate" and "control" already supply a workable test for it.

The U.S. person condition does not fit a group. Section II.B provides that "a TSV must be a U.S. person." Yet the Notice must describe "both offchain and onchain governance mechanisms" and "any governance rights of LP tokens," so the Commission evidently expects that some TSVs will be governed by dispersed tokenholders, many of whom will be neither identifiable nor American. The Order does not say how such a group satisfies Section II.B. The Commission should confirm that a group may rely on the exemption through a U.S. legal entity which the group has designated to perform the TSV's obligations and which holds the powers needed to perform them (e.g., the pause control, the allowlist, the Notice). This is the structure I have elsewhere called a "BORG": a legal entity wrapped around defined onchain powers and accountable for their use.

No negative inference. Footnote 37 provides that reliance on the exemption creates no presumption that a TSV is an exchange. The Commission should state the converse as well. By its own account, the Order concerns permissioned pools because "certain market participants have expressed the desire" to operate them. Accordingly, the Order should say expressly that it draws no inference about the status of any pool that has no TSV (including a permissionless pool that no person controls), and that its conditions are not a statement of what the Exchange Act requires of such a pool. Absent that sentence, I have no illusions about what will happen: a later Commission, or an enterprising plaintiffs' firm, will cite the Order for the proposition that the Commission believes AMMs for stock must be permissioned, which the Order does not say.

5. Covered Firms, duration, and the rulemaking to come

Requests 8 to 10. In my opinion, the most important sentence in Section IV of the Order is one that sits outside the exemption entirely, being a general statement of law: "Liquidity provision alone does not constitute engaging in dealer activity, and the Commission anticipates that, absent other indicia of dealer activity, persons acting as liquidity providers in an AMM Liquidity Pool would typically be engaged in trader (and not dealer) activity." I agree, and ask the Commission to carry that statement into the dealer rulemaking noted in footnote 114 without limiting it to pools operated under the TSV Exemption. A person who deposits two assets into a contract and takes a pro rata share of the fees is trading for its own account: it has no customers and quotes prices to no one, and that description holds whether or not the pool happens to have a TSV.

Moreover, the Covered Firm Exemption should last as long as the facts that justify it. To the extent a Covered Firm loses the exemption because its TSV breached a condition which the firm had no means of observing (e.g., a missed Issuer Notice), the firm should have a reasonable period to

withdraw its liquidity before being treated as an unregistered dealer.

Requests 2 and 9. A venue that the mere expiry of the Order can end in 2031 is hard to finance, because anyone underwriting it must assume that the exemption lapses. Section V reserves to the Commission the power to modify the length of the exemptions, and I ask that it use that power now by committing that the exemptions will remain in effect until a final rule replacing them becomes effective, and that it propose that rule early enough for operators to plan around it. [Chairman Atkins's statement](#) that the Order "must be followed by durable rulemaking" is correct, and the Order should say so in its operative text rather than leaving it to a press statement.

I would welcome the opportunity to meet with the staff of the Division of Trading and Markets and the Crypto Task Force, and would be glad to demonstrate issuer level tokenization in practice, including the token level transfer restrictions discussed in Part 3.

Respectfully submitted,

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