



October 22, 2026

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 Ladies and Gentlemen:

Better Markets¹ appreciates the opportunity to comment on the above-referenced Order ("Order").² While Better Markets does not have threshold objections to modernizing requirements under the Securities Exchange Act of 1934 ("Exchange Act") in order to facilitate innovation, we believe it should be done in a thoughtful, considered manner, subject to full notice and comment rulemaking according to the Administrative Procedure Act ("APA"). The changes contemplated by the Order – which are effective before the Securities and Exchange Commission ("SEC" or "Commission") even receives feedback on the questions it asks – are significant and have the potential to threaten the trust in U.S. capital markets, earned over the past century.

The market structure changes permitted in the Order raise significant concerns, as outlined below, related to:

- Transparency and procedural issues;
- Commission oversight;
- Trading protections and market integrity;
- Investor protection;
- Market infrastructure; and

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

² 91 Fed. Reg. 60168 (September 17, 2026).

- Issuers.

In other words, this Order would reshape every corner of the U.S. capital markets. Indeed, the introduction of Tokenized Securities Venues (“TSVs”) and the exemption from the definition of dealer (for “Covered Firms”) represent the largest rewrite of the rules governing secondary market trading in equities since Regulation National Market System (“Reg NMS”) more than 20 years ago. It is inconceivable that the Commission would adopt such wholesale and drastic changes in an adjudicatory “order,” rather than the notice and comment rulemaking that the APA requires. We are far from the only organization warning the Commission against dispensing with notice and comment rulemaking as part of its initiatives to tokenize the equity markets.³ And yet the Commission has not only done so here but has utterly failed to even acknowledge the deviation from prior practice, let alone provide a sufficient justification for doing so. The stakes are simply too high to proceed with such key changes in such an ad hoc manner, and we urge the Commission to, at a minimum, withdraw the Order and propose any potential changes to the manner of trading of NMS stocks (or their equivalents) consistent with the requirements of the APA.

I. Transparency and Procedural Concerns

The Order issues sweeping exemptions from the definition of “exchange” in section 3(a)(1) and the definition of “dealer” in section 3(a)(5) of the Exchange Act, with minimal conditions attached, each of which will be difficult to enforce. This upends the regulatory regime that has long protected investors. Exchange registration “brings increased stability and enhanced customer protections.”⁴ It “better provides for the detection and deterrence of market manipulation and other trading abuses.”⁵ And registration “better allows the SEC to monitor and eventually limit the use of tokens in illicit activity.”⁶ By exempting TSVs from the exchange definition with the stroke of a pen, the Commission eliminates nearly a century of secondary market trading protections without so much as consideration of a single public comment.

This action is unlawful. The Commission may not simply redefine entire categories of market participants through a Section 36(a)(1) exemptive order, which authorizes the Commission to grant exemptive relief “by rule, regulation, or order[.]”⁷ While the Commission has discretion to determine whether to proceed through rulemaking or adjudication, that discretion is not limitless. Indeed, courts have not hesitated to vacate agency “rules” disguised as “orders” where the agency failed to provide the notice and comment the APA requires. Take

³ See, e.g., Citadel Securities, Letter re: Tokenized U.S. Equity Securities & DeFi Trading Protocols (Dec. 2, 2025), <https://www.sec.gov/files/citadel-securities-120225.pdf>, at 12.

⁴ Ethan D. Trotz, *Tangled Up in Blue: Adapting Securities Laws to Initial Coin Offerings*, 39 N. Ill. U. L. Rev. 428, 444 (2019).

⁵ *Id.*

⁶ *Id.* at 445.

⁷ 15 U.S.C. § 78mm(a)(1).

Safari Club Int'l v. Zinke.⁸ There, the Court vacated the Fish and Wildlife Service's "findings" that justified an import ban on sport-hunted elephant trophies because the agency failed to "adher[e] to the notice-and-comment rule-making requirements of the APA."⁹ "An agency," the Court held, "may not escape the requirements of §553 by labeling its rule an 'adjudication.'"¹⁰

By exempting entire classes of market participants from the Exchange Act's "exchange" and "dealer" definitions from this point forward, the Order fits the definition of a rule "to a tee."¹¹ It is a statement "of general or particular applicability and future effect" that implements or prescribes law or policy.¹² Like "most legislative rules," the Order is "generally applicable."¹³ And as a legislative rule, the Order has "only 'future effect'"—unlike an "adjudicati[ve]" order, which "immediately bind[s] parties by retroactively applying law to their past actions."¹⁴

That is why, when it sought to provide similar wholesale exemptions to important Exchange Act requirements in the past, the Commission engaged in notice and comment rulemaking.¹⁵ And that is why the Commission did so even for exemptions of far less magnitude and scope than the far-reaching exemptions for TSVs and Covered Firms.¹⁶ The Order fails to acknowledge this deviation from prior practice (even while informally soliciting feedback on key aspects of the Order), and, as such, fails to even satisfy the most minimal showing to survive arbitrary-and-capricious review.¹⁷

Moreover, by not engaging in proper rulemaking to adopt these dramatic, wholesale changes, the Commission has not only failed to allow the public to comment on the exemptions, it has also failed to engage in a host of analysis Congress has mandated when the SEC engages in rulemaking—in particular the rigorous, quantitative cost-benefit economic analysis required by Section 3(f), 15 U.S.C. § 78c(f).¹⁸

⁸ 878 F.3d 316 (D.C. Cir. 2017).

⁹ *Id.* at 320.

¹⁰ *Id.* at 332.

¹¹ *Id.* at 321.

¹² 5 U.S.C. §551.

¹³ *Safari Club*, 878 F.3d at 332.

¹⁴ *Id.* at 333.

¹⁵ *See, e.g.*, Regulation ATS, 63 Fed. Reg. 70844 (Dec. 22, 1998).

¹⁶ *See, e.g.*, Amendment to Single Issuer Exemption for Broker-Dealers, 84 Fed. Reg. 27708 (June 14, 2019).

¹⁷ *See, e.g.*, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

¹⁸ *See Bus. Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011).

Further, the Commission likewise erred in not conducting a Paperwork Reduction Act analysis, which requires agencies to estimate the burden created by new obligations for the collection of information.¹⁹ The Act defines “collection of information” to include when the government requires the dissemination of information to another private party.²⁰ That is precisely what this new exemption contemplates by requiring issuers to monitor and respond to tokenization requests from unaffiliated third-parties looking to tokenize their stock. In other words, while the Commission is creating a broad exemption from applicable rules for certain trading venues and firms acting as dealers, it is creating new burdens for others – namely, public companies. At least one public company has already written to the Commission expressing concerns about the new burdens being placed upon their operations.²¹ The Order fails to grapple with these added burdens. For a longer discussion of the duties imposed on issuers by the Order, please see section VI.

In short, the Commission must follow the law and do its homework before attempting to force such a sea-change on the nation’s market structure. The only option the Commission has at this point is to rescind the Order, engage in the required analysis, and propose these changes through a proper rulemaking under the APA.

II. Concerns Related to Commission Oversight

Tokenized Securities Venues

The Order provides that TSVs may begin operating after providing notice of registration to the Commission,²² which shall occur roughly 30 days after the TSV posts a notice of intent to begin operating on their website. Unlike with National Securities Exchanges (“NSEs”) or broker-dealers operating as Alternative Trading Systems (“ATs”), the TSV framework does not require a trading venue to seek or secure affirmative approval by the Commission or by FINRA prior to the commencement of its operations. As such, neither the Commission nor FINRA will conduct any threshold due diligence of trading venues nor have an ongoing supervisory relationship with any TSV, unless the TSV is otherwise a registrant.

With this Order, the SEC seeks to replace the longstanding registration-based regime for intermediary oversight with one that is purely disclosure-based. And that disclosure may not even be meaningful. In fact, various provisions of the Order allow TSVs to simply disclose that they have no procedures in place – and that disclosure that nothing exists is enough to begin facilitating investor trades. Such categories include those related to handling of complaints and disputes,

¹⁹ 44 U.S.C. §§ 3501–3521.

²⁰ *Id.*

²¹ Comment letter on SEC Release No. 34-106402, File No. 4-927, Order Granting Temporary Conditional Exemptive Relief, Computershare, October 2, 2026. Available at: <https://www.sec.gov/comments/4-927/4927-1082279-3760507.pdf>

²² Order, 60173.

confidentiality of users' information, and systems safeguards and surveillance. In other words, the Commission is gambling the future of the stock market on trading venues that can disclose away their lack of procedures for execution errors, policies to protect personally identifiable information, and business continuity and disaster recovery plans, to name just a few issues.

This lack of oversight will make it extremely difficult – if not impossible – for regulators to catch noncompliance before it metastasizes into harm to investors or market integrity. The SEC may well have to engage in years-long subpoena enforcement litigation before even being able to inspect books and records, identify persons trading on the TSV, or inquire about irregular trading activity. This level of opacity for the crown jewel of American capital markets is unthinkable. It also puts NSEs and ATSS at a competitive disadvantage relative to TSVs, who can conduct economically and legally similar activity with far less scrutiny and oversight.

The Order likewise does not contemplate any sort of iterative process between the registrant and its regulator, including consultations to remediate practices before escalating to an enforcement action. The Commission's only legal tool, as outlined in the Order, is to rescind the ability of the TSV to rely on the exemption entirely—in other words, the Commission would have to bring an enforcement action for being an unregistered exchange if the TSV fails to adhere to one or more conditions of its exemption from the definition of exchange. This raises the difficult issue of whether the Commission would require the TSV to shut down immediately, since it was operating as an exchange without registration or a valid exemption, or continue operating if the Commission gave it time to cure its status. Inevitably, the result will be the Commission facing difficult choices in the face of noncompliance: yank the ability of the TSV to operate and risk market disruptions or allow the TSV to continue operating in the face of noncompliance.

Covered Firms

The Order raises similar concerns with regard to exempt dealers, or Covered Firms that engage in automated market maker (“AMM”) liquidity pool (“LP”) activity. Such dealers will not be subject to SEC or FINRA registration or reporting requirements. While the Order seeks to circumscribe this exemption only to firms that do not handle customer orders, this condition will be difficult to enforce if the SEC and FINRA have no threshold oversight of such firms.

III. Concerns Related to Trading and Market Integrity

Circumventing the National Market System, Exacerbating Fragmentation

In 1975, seeing increasing fragmentation in the stock market and worrying that such a system would not be equipped to support a growing economy, Congress amended the Exchange Act to “remove impediments to and perfect the mechanism of a free and open market and a national market system.”²³ The amendments sought to build a more centralized market system, though not

²³ 15 U.S. Code § 78k-1.

based “on a centralized auction mechanism, but on composite quotation and transaction data.”²⁴ Through decades of refinement, culminating with the adoption of Reg NMS in 2005, the SEC has built a national market system that endeavors to provide investors with the National Best Bid and Offer (“NBBO”) in securities trading, with prices of those transactions calculated and disseminated on a current and continuing basis through the Securities Information Processor (“SIP”).

While Reg NMS was controversial when adopted, we believe this Order takes us further away from the goal supported even by its detractors: “enhanc[ing] connectivity among markets and market participants.”²⁵ The Order will undoubtedly cause an explosion of new trading venues for NMS stocks. While that per se may not be problematic, these market centers will have no responsibility to communicate prices to one another and no regulatory overlay to ensure investors receive the best prices for their trades. This represents a massive step backward for the deep, liquid, and national equities market that has made U.S. capital markets the envy of the world.

Though the SEC takes no steps to explain its rationale, we imagine that the Commission believes that decentralized AMMs will supplant the role of regulation under a national market system by providing centralized price discovery through the convergence of cross-market arbitrage. Perhaps. But the U.S. stock market is too important for an experiment of this scale, done without creating scaffolding through a notice-and-comment rulemaking. The Commission has instead decided to wager the U.S. stock market on clunky and unproven arbitrage processes, and increased opportunity for slippage, failed transactions, and poor execution prices. Compounding the harm, the Commission has taken no steps to quantify the scale of the harm and on whom it will fall through a mandated economic analysis.²⁶

Finally, it is important to note that the Commission undertakes this activity while simultaneously considering amendments to repeal Rule 611 under the Exchange Act, known as the Order Protection Rule.²⁷ The Commission acknowledges that “a TSV using an AMM Liquidity Pool may be unable to comply with the trade-through requirements of Rule 611 under Regulation NMS.”²⁸ Although these requirements exist to protect investors, the Commission has apparently decided that the solution to the inability of TSVs to comply with these requirements is to eliminate them. Indeed, it appears that the real motivation for the Commission’s proposed

²⁴ See Hester M. Peirce, “Rethinking the National Market System,” 43 J. Corp. L. 649 (2018). Available at: https://jcl.law.uiowa.edu/sites/jcl.law.uiowa.edu/files/2021-08/Peirce_Final_Web_0.pdf.

²⁵ See Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins to the Adoption of Regulation NMS, June 9, 2025. Available at: <https://www.sec.gov/files/rules/final/34-51808-dissent.pdf>

²⁶ *Business Roundtable*, 647 F.3d 1144.

²⁷ 91 Fed. Reg. 36656 (June 17, 2026).

²⁸ Order, 60171.

rescission of Rule 611 is to facilitate the trading of tokenized securities.²⁹ When making market structure changes of this magnitude, the Commission should take a holistic approach and conduct this exercise through APA rulemaking rather than the Order. Changing trade-through protection for certain markets immediately and potentially others down the line is the kind of disjointed approach that avoids considering the interaction of various rule changes that commissioners have previously cautioned the Commission against and is the epitome of arbitrary and capricious decision-making.³⁰

Cybersecurity and Theft Vulnerabilities

Cyber vulnerabilities in crypto markets are well-known, and decentralized finance (or “defi”), in particular, is notoriously exposed to bugs, hacks, and theft. As one report in *Forbes* notes, “in October 2025 [defi] held close to \$173 billion, within a whisker of its 2021 record... By the following summer, more than half of it was gone.”³¹ Explaining that drastic drop in value, *Forbes* points to a report from Chainalysis, which “counted more than \$3.4 billion [in stolen crypto via defi] in 2025.”³² Further, Chainalysis estimated that “scams and fraud took roughly four times as much, though most of it came from individuals, not institutions.”³³

Experienced crypto traders, knowledgeable about the risks of self-custody, may bring to the market a certain level of awareness of the vulnerabilities inherent in participating in that market. But investors in Reg NMS securities, even those that choose to self-custody tokenized assets, are more likely to be lulled into a false sense of security because U.S. markets have traditionally come with the certainty of knowing that market intermediaries are themselves self-regulatory organizations (“SROs”) or are overseen by SROs, and are subject to the oversight of the SEC. Not only is the level of oversight of TSVs substantially less than of traditional national securities exchanges or broker-dealers, but the surface area of attack is potentially greater and certainly less policed. One crypto security blog warns users of reentrancy attacks, flash loan

²⁹ See Better Markets, Letter re: The Trade-Through Rule and Locked and Crossed Markets Provisions of Regulation NMS (Aug. 17, 2026), <https://www.sec.gov/comments/S7-2026-20/s7202620-1005119-3201347.pdf>, at 6.

³⁰ See Commissioner Mark T. Uyeda, “Remarks at the Practising Law Institute’s 55th Annual Institute on Securities Regulation,” November 7, 2023. Available at: <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-practicing-law-institute-110723>.

³¹ Green, Jemma. “DeFi’s Honest Protocols Are Paying For Its Lemon.” *Forbes*, October 6, 2026. Available at : <https://www.forbes.com/sites/jemmagreen/2026/10/06/defis-honest-protocols-are-paying-for-its-lemons/>.

³² *Id.*

³³ *Id.*

attacks, oracle manipulation, impermanent loss exploitation, overflow/underflow bugs, front-running attacks, sandwich attacks, and logic flaws in smart contracts.³⁴

The Order implies that traders will self-custody their tokenized stocks and that the lack of intermediary custody somehow mitigates the risks of loss, theft or misappropriation. Essentially: caveat emptor for the retail trader. But the Order fails to grapple with the vulnerabilities inherent in self-custody, including a recent episode where a firmware bug compromised \$116 million worth of crypto that investors believed to be safe from intermediary risk.³⁵ The Commission mitigates this risk by requiring TSVs to be permissioned. But again, the lack of threshold registration and exams creates fragilities that could be exploited by bad faith actors. This places not only the crypto market at risk – but the Reg NMS stocks and the foundation of American capital markets dominance as well.

Additionally, these risks are exacerbated by the fact that TSVs may operate on any number of blockchains. AMM vulnerabilities are compounded by increasing the attack surface as value travels between networks. For arbitrage to work across markets, market participants will have to use bridges, which allow users to pass value between blockchains. Bridges are a known cybersecurity vulnerability in crypto markets. For example, in the Wormhole bridge incident, traders were subject to a \$320 million hack when a signature verification bug allowed an attacker to mint wrapped Ethereum tokens on the Solana blockchain without locking a commensurate amount of Ethereum on the Ethereum blockchain.³⁶

In other words, even if the Order contemplates self-custody on the part of traders, the Commission fails to tackle the issues inherent in exposing the Reg NMS system to the myriad cybersecurity and operational risks associated with crypto.

Trading Pairs

The Order notes that TSVs may make available for trading Tokenized NMS stock trading in a pair either with another Tokenized NMS stock, a tokenized money market fund share, or a non-security crypto asset.³⁷ On the last category, the Order provides the example of a payment stablecoin issued by a permitted payment stablecoin issuer (“PPSI”) but does not restrict trading in non-security crypto assets to PPSI-issued stablecoins. This raises a number of legal questions that the Order simply ignores.

³⁴ Zyphernix Security. “Common Vulnerabilities in Automated Market Maker (AMM) Protocols.” *Medium*, January 13, 2025. Available at: <https://medium.com/@zyphernixsec/common-vulnerabilities-in-automated-market-maker-amm-protocols-197da34c9b79>

³⁵ TRM Labs. “The Largest Hardware Wallet Exploit of 2026: Inside the USD 116 Million Coldcard Hack.” August 5, 2026. Available at: <https://www.trmlabs.com/resources/blog/the-largest-hardware-wallet-exploit-of-2026-inside-the-usd-116-million-coldcard-hack>

³⁶ “Wormhole Attack: Lessons from the Wormhole Exploit.” *Chainalysis*, February 2022. Available at: <https://www.chainalysis.com/blog/wormhole-hack-february-2022/>

³⁷ Order, 60170.

For example, the Commission does not cite any legal authority to allow non-securities to trade alongside securities on venues that fall within the jurisdiction of the Exchange Act. To that end, commenters in past SEC rulemakings have noted that the Commission’s authority on this question “is not clear” and have cautioned the SEC to defer “to Congress on the question of where non-securities may be traded.”³⁸ The SEC must explain whether it believes that TSVs are affirmatively permitted to make available to trade non-securities under the Exchange Act, especially beyond PPSI-issued stablecoins, or that TSVs’ status as a non-registrant operating pursuant to an exemption under the Exchange Act somehow renders this question moot.

Further, the GENIUS Act does not ban other types of stablecoins, such as non-GENIUS Act compliant stablecoins or algorithmic stablecoins (or stablecoins that use complex mathematical models to endeavor to maintain a stable value).³⁹ Stablecoins extant as of the day of enactment are “grandfathered” in and are permitted to continue to trade, subject to a three-year transition period. The Order does not contemplate if such stablecoins can be used as a trading pair with Tokenized NMS stock in the years until the prohibition in the GENIUS Act becomes effective.

Beyond stablecoins, nothing in the Order would stop a TSV from offering trading pairs of Tokenized NMS stocks with other non-security crypto assets such as Bitcoin. The result could inject the volatility of Bitcoin into the stock market.

Liquidity Pool Tokens

The Order also fails to grapple with LP tokens, which are receipt tokens issued to traders who deposit assets into liquidity pools. LP tokens are created, or “minted,” when a trader deposits funds into the pool and are destroyed, or “burned,” when a trader wants to reclaim the underlying assets in the pool plus any fees earned. Whether LP tokens qualify as securities raises attendant issues around net capital calculations, possession-or-control requirements, and treatment under the Investment Company Act of 1940. The Order inexplicably sidesteps this issue entirely.

IV. Concerns Related to Investor Protection

The Order notes that TSVs may elect to have different parameters for who can access the trading venue. Some TSVs may orient themselves for straight-to-retail trading venues that seek to reach investors without an intermediating party; others may target institutional market participants or brokers, though that seems unlikely given the complete lack of clarity around broker

³⁸ See Comment Letter on the Re-Opening of Comment Period for Amendments to Exchange Act Rule 3b-16 Regarding the Definition of “Exchange” Submitted by Payward, Inc., File Number S7-02-22, June 13, 2023. Available at: <https://www.sec.gov/comments/s7-02-22/s70222-219739-461102.pdf>.

³⁹ 12 U.S.C. § 5901.

requirements when interacting with a TSV.⁴⁰ In cases where no broker intermediates the transaction with the investors (likely most TSV transactions), the loss of investor protections cannot be overstated. Investors will lose core protections available in the Reg NMS market, including the customer protection rule, Securities Investor Protection Corporation (“SIPC”) insurance coverage, a requirement for best execution of trades, Regulation Best Interest protections, order quality reports, and the net capital rule, to name just a few.

What’s more, though the Commission requires TSVs to disclose to investors that they are not registered broker-dealers, it does not foreclose the entity from otherwise stating that they are operating pursuant to an exemption from registration with the Commission, implying (correctly) that the SEC has blessed their operations. Investors may come to understand that such a Good Housekeeping seal of approval from the Commission does not come with the attendant protections they’ve come to enjoy in the traditional NMS market.

V. Concerns Related to Market Infrastructure

Section 31 Fees

The SEC’s operations are subject to congressional appropriation. The Commission then collects fees on securities’ filings and sales to offset those appropriations, with amounts returned to the U.S. Treasury General Fund. A large portion of the SEC is funded via fees assessed pursuant to Section 31 of the Exchange Act, which requires national securities exchanges and FINRA to pay fees to the SEC based on the dollar volume of securities transactions on their platforms. Transactions on TSVs will not be subject to these fees. By structuring the system in such a manner, TSVs benefit from the imprimatur of SEC oversight with none of the costs. Meanwhile, registered market participants pay full freight for the costs of regulating, examining, and enforcing the market for NMS stock even while economically identical behavior occurs without charge.

Consolidated Audit Trail

The Consolidated Audit Trail (“CAT”) was established by the SEC after the 2010 “Flash Crash” to enable regulators to track all order and trading activity across U.S. markets. Recently, the Commission issued a concept release “soliciting public comment in support of a comprehensive review of the CAT” including costs, governance, and funding. Meanwhile, the TSV activity contemplated by the Order would operate entirely outside of the CAT, with trades not reported to the CAT and the CAT not supported by funding of TSVs that are otherwise benefitting from U.S. equity market infrastructure. Like with Section 31 fees, the regulated market is left paying the cost of creating the real stock market upon which TSVs will rely.

VI. Concerns Related to Issuers

⁴⁰ It is unclear if the Commission seeks to apply Regulation NMS to TSV participants that are broker-dealers. The Commission asks commenters to submit feedback on the appropriate legal framework. Asking a question this broad and consequential *after* an exemption is already granted concretely demonstrates the need for APA rulemaking.

The Order specifies that TSVs must provide notice to issuers before making available for trading any tokenized stock in the issuer.⁴¹ Such notice shall be provided 30 days before the commencement of trading in the issuer's stock. While we support the notion that unaffiliated third parties and TSVs should not be able to tokenize, or make available for trading, NMS stocks without the consent of the issuer, we believe that requiring affirmative approval of the issuer, rather than non-objection, would be appropriate in the public interest. The process as specified in the Order leaves open substantial questions, including whether issuers will have sufficient time to receive tokenization requests, conduct due diligence on unaffiliated third parties and TSVs who wish to tokenize their stock, route information to the appropriate decision-makers at the issuer firms (including, in some cases, potentially requiring a vote of the Board of Directors) and communicate a decision to the TSV. Issuers presumably will also have to update insider trading policies, rules on blackout trading windows and Rule 10b5-1 trading plans to address the existence of potentially myriad forms of tokenized shares. Finally, issuers may have to navigate questions about how to reconcile on-chain ledgers if tokenized shares trade on multiple blockchains.

Further, the process for issuer notification outlined in the Order is vague; for example, do electronic requests to random employees or offices satisfy the notice requirement? As one issuer stated in their comment on the Order, the Commission's framework and lack of public repository of such requests "place(s) the full monitoring burden on issuers and leave(s) investors without a centralized source of information."⁴² Issuers have substantial reputational risk on the line with the trading of their stock. Vetting, for example, the TSV's participant screening and verification requirements are essential in order to assure the issuer that sanctioned persons do not purchase their equity. Again, we emphasize that 30 days is not enough time to conduct the required due diligence.

The Order specifies that unaffiliated third parties that tokenize NMS stock must distribute or make available proxy materials and other issuer communications to tokenholders at no cost to the issuer or the holders.⁴³ In practice, it is not clear how this can be accomplished. Are unregistered third parties custodying shares yet not subject to any custody or capital requirements and not members of SIPC? What happens if these parties are hacked? If an entity holds tokenized stock, an unaffiliated third party simply needs to "make available" proxy and issuer communications. What does "make available" mean in this context? All of these questions remain unresolved.

Because the exemption is untested, we do not know if issuers will receive very few requests or dozens of requests. This is something that the Commission is required "to determine as best it can" so that interested parties can comment on such an estimate during the mandated APA process.⁴⁴ It seems impossible that 30 days would be sufficient to vet proposals, especially if they

⁴¹ Order, 60173.

⁴² *Supra* note 17.

⁴³ Order, 60174.

⁴⁴ *Chamber of Commerce v. SEC*, 412 F.3d 133, 143-44 (D.C. Cir. 2005).

come in multiples. As such, we recommend that the Commission require affirmative consent of the issuer in order for trading in tokenized stocks to begin. This could be implemented during the rulemaking that the Commission initiates after rescinding this Order and engaging in the notice-and-comment process that the law requires.

VII. Conclusion

We hope this letter has been informative as you consider comments submitted in response to the Order. Better Markets is not de facto opposed to updating federal securities rules to accommodate changes in technology, including those involving blockchains. But changes of this magnitude should be done through notice-and-comment rulemaking, with ample opportunity for public engagement. As such, the Commission should rescind the Order and commence with such a rulemaking subject to the APA.

Sincerely,

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