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November 16, 2026

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

Re: Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934, from the Definitions of "Exchange" and "Dealer" for Tokenized NMS Stocks, and Request for Comment (the "Innovation Exemption"), Release No. 34-106402; File No. 4-927[1]

Dear Secretary Countryman:

Nasdaq believes that tokenization technology could become a foundation of U.S. capital markets. Nasdaq is working constructively with many industry participants to confirm that market-driven tokenization solutions can safely and effectively support $80 trillion of exchange-listed equity securities issued by companies that are the economic engine of the U.S. and global economies. The Commission has a rare and valuable opportunity to guide the adoption of innovative tokenization technology prudently while still protecting issuers and investors, building on decades of similar, successful migrations, including from paper shares to electronics, and on to decimals, algorithms, cloud, and now, tokenization.

In the last year, the Commission has taken important steps toward tokenization by, for example, granting the Depository Trust Company ("DTC") authority to leverage tokenization in the clearance and settlement infrastructure, and by approving Nasdaq's proposal to leverage tokenization in its trading systems in conjunction with DTC and other forward-looking institutions – a proposal other exchanges have embraced. The Commission has issued guidance on the classification of digital assets that incorporate tokenization. Through Commissioner speeches,[2] the SEC Crypto Task Force, and staff-level guidance from multiple Commission divisions, the Commission has seeded a clear digital assets taxonomy, relaxed restrictive digital assets custody and handling rules, and redefined how asset managers and owners approach digital assets holdings. The Commission has worked closely with the Commodity Futures Trading Commission to harmonize the agencies' approaches to tokenization and the potential for new instruments and processes.

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1 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, Exchange Act Release No. 106402, 91 Fed. Reg. 60,168 (Sept. 22, 2026), https://www.sec.gov/files/rules/exorders/2026/34-106402.pdfhttps://www.sec.gov/files/rules/exorders/2026/34-106402.pdf [hereinafter Order].

2 See Paul S. Atkins, Chairman, SEC, Statement on the Innovation Exemption: A Bridge Toward Durable Rulemaking (Sept. 17, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-innovation-exemption-bridge-toward-durable-rulemaking-091726; Mark T. Uyeda, Comm'r, SEC, Statement on the Innovation Exemption (Sept. 17, 2026), https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-innovation-exemption-091726.

Applauding each of these steps, Nasdaq believes a crucial next step is for the Commission to adopt regulations supported by notice-and-comment rulemaking to incorporate tokenization technology into the National Market System ("NMS"). The SEC's Innovation Exemption does not accomplish that goal. Rather than integrating tokenized securities into the NMS, the Innovation Exemption establishes a separate system that is not linked to the NMS that the Commission has spent 50 years fostering, refining, and modernizing for the benefit of issuers and their shareholders. Nasdaq respectfully submits that the Innovation Exemption risks fragmenting liquidity across isolated tokenized security venues ("TSVs"), reducing price consolidation and transparency, and diminishing the hallmark investor protections of our National Market System. It also is distracting market participants and others from many positive efforts to integrate tokenization into the National Market System.

Nasdaq supports tokenization. However, the Innovation Exemption, as an individual use case for tokenization, does not clearly deliver the benefits of tokenization that appear possible. As a steward of the National Market System and a conduit for concerns expressed by issuers and their shareholders, Nasdaq offers the following constructive feedback designed to improve and strengthen the Innovation Exemption:

(1) ***Inform and Protect Issuers***. Issuers need a voice in whether and where their stocks are tokenized because tokenization is new and issuers need to understand how it will affect them and their shareholders.[3] Until they understand it better, issuers need the ability to opt ***into*** a tokenization experiment, rather than a brief opportunity to opt ***out***. Additionally, whether through an opt-in or the current opt-out structure, communication to issuers needs to reach corporate decision makers quickly and in a modern format; physical mail to corporate mailrooms is inadequate in serving as proper notice to an issuer of a venue's intent to introduce its stock on its venue.

(2) ***Protect U.S. Financial Borders***. The Innovation Exemption can better address the risk that tokenized U.S. equities will reach terrorists, money launderers, and human traffickers. The Innovation Exemption invokes OFAC and cybersecurity concerns, but it requires little of substance from TSVs. TSVs must ensure that tokenized equities not leave their ecosystem and fall into the hands of evildoers, but a vague and non-specific requirement for TSVs to have anti-money laundering programs does not suffice to provide the same protections that other types of financial markets and broker-dealers must provide – something which is particularly important given that digital assets have become a preferred vehicle for illicit finance. The SEC's anti-money laundering requirements must be clear and specific to be enforceable to consistently protect U.S. investors, as well as U.S. national security interests.

(3) ***Protect Investors.*** The Innovation Exemption will not provide as much protection to investors who trade on TSVs as do the Exchange Act and SEC rules when investors trade stocks on national securities exchanges or ATSs. For example, TSVs are exempt from Reg NMS, Reg SCI and

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[3] See Letter from John A. Zecca, Nasdaq, to Vanessa Countryman, Sec'y, SEC, Re: Digital Assets Sandbox 3, 6 (June 6, 2025), https://www.sec.gov/files/digital-assets-sandbox-comment-060625.pdf [hereinafter Sandbox Letter] (urging that issuers "have the right to opt in or out"); Press Release, SEC, SEC Issues "Innovation Exemption" to Facilitate the Trading of Tokenized NMS Stock and Request for Comment (Sept. 17, 2026), https://www.sec.gov/newsroom/press-releases/2026-90-sec-issues-innovation-exemption-facilitate-trading-tokenized-nms-stock-request-comment [hereinafter Press Release] (requiring written notice to, and an opportunity to object by, the issuer before a TSV trades third-party Tokenized NMS Stock); see also Letter from John A. Zecca, Nasdaq, to Vanessa Countryman, Sec'y, SEC 1–3 (Apr. 25, 2025), https://www.sec.gov/files/ctf-written-input-nasdaq-042525.pdf [hereinafter April 2025 Letter] ("treat like assets alike"); Letter from Brett M. Kitt, Nasdaq, to Sec'y, SEC, Re: SR-NASDAQ-2025-072, at 4–5 & attach. at 11 (Dec. 29, 2025), https://www.sec.gov/comments/SR-NASDAQ-2025-072/srnasdaq2025072-688227-2139934.pdf [hereinafter December 2025 Letter] (fungibility principle; quoting Comm'r Hester M. Peirce: "[t]okenized securities are still securities"); Nasdaq, Digital Assets at Nasdaq (Sept. 5, 2025), https://www.nasdaq.com/newsroom/digital-assets-nasdaq.

multiple other obligations that all other registered trading venues must meet. Additionally, TSVs are not required to make their tokens interoperable with other tokens or with other trading venues, which will drive fragmentation of liquidity and potentially significant price dislocations. There is also no exit ramp to transition tokens elsewhere if a TSV become insolvent or otherwise halts its trading.

(4) ***Preserve the National Market System***. For five decades, the Commission described consolidated data as the "oxygen" of the National Market System that serves and protects U.S. issuers and investors. This "oxygen" is just as important now, if not more so, as trading becomes fragmented into more venues and asset classes. Yet, the current Innovation Exemption does not require that any trading activity be reported, consolidated, or disseminated in a manner comparable to the consolidated data feeds that inform investors and underpin the U.S. equities markets. Likewise, there will be no reporting to or comparable to the Consolidated Audit Trail, which is the foundation of the SEC's, FINRA's and the exchanges' surveillance and investor protection responsibilities.

(5) ***Adopt Durable Rules Through Standard Rulemaking***. Nasdaq believes in the value of notice-and-comment rulemaking and the multilateral dialogue that it fosters. Suggestions made here and elsewhere for improving the Innovation Exemption could have been addressed through transparent, multilateral dialogue of traditional notice-and-comment rulemaking, rather than the compartmentalized dialogue that produced the Innovation Exemption.

We explain each of these suggestions in further detail below.

I. Inform and Protect Issuers

Nasdaq applauds the Commission for heeding calls that issuers not be made involuntary participants in an experiment involving their stock,[4] and for including in the Order an issuer opt-out provision. Tokenization technology is new to many issuers and their shareholders and it is not well understood. In fact, in Nasdaq's interactions with issuers about the Innovation Exemption, including an October 8, 2026 webinar attended by hundreds of listed companies, it is abundantly clear that most issuers understand neither tokenization technology nor the Innovation Exemption. The burden is on regulators and gatekeepers, like the Commission, Nasdaq, and TSVs themselves, to explain it better. The Innovation Exemption places an undue burden on issuers to discover, understand, and respond to opt-out notices before they expire, and to bear the consequences of not opting-out.

Nasdaq continues to believe that affirmative issuer consent is the better rule. Historically, issuers have had significant control over where and how their securities trade, including the choice between private and public markets and between over-the-counter and exchange listing. An issuer that lists on a national securities exchange makes a deliberate choice based on a set of known conditions.[5] When those conditions are to change, an opt-in provision would preserve this issuer autonomy, ensure that issuers understand the new trading environment, and place the burden on the venue that seeks a new opportunity

[4] See Sandbox Letter, supra note 3, at 3, 6.

[5] See id. at 3 & n.11 (citing Exchange Act § 12(b), 15 U.S.C. § 78l(b)); Ludlow Corp. v. SEC, 604 F.2d 704, 711 nn.7–8 (D.C. Cir. 1979) (reproducing former Exchange Act § 12(f)(4)–(5), which afforded the issuer notice and an opportunity to be heard, and standing to seek termination, when unlisted trading privileges were extended to its securities).

rather than the issuer that does not. Nasdaq suggested this approach before the Order issued, and we believe most issuers prefer it.[6]

The opt-out provision of the Innovation Exemption also has practical drawbacks and unanswered questions, and even issuers that understand tokenization technology are confused by it. Since the SEC published the Innovation Exemption, Nasdaq's issuer outreach revealed that, by and large, issuers do not know and recognize TSV operators, are not expecting communications from them, and may not properly understand the impact of failing to respond to them. It is difficult for issuers and the public to determine how many TSV applications exist, which ones have chosen their stocks, and the dates on which they become operative. The existing process does not address fully how issuers can stay abreast of TSV formation and activity, whether opt-outs are permanent or temporary in effect, how issuers can opt-out efficiently across TSVs, what to do if TSV opt-out notices to issuers are delayed or do not arrive at all, and what recourse issuers have if the TSVs trading their stocks change their business models materially or if they fail to comply with the terms of the Exemption or their Public Notices.

If the Commission decides to preserve the issuer opt-out, Nasdaq recommends that the Innovation Exemption be modified to do the following:

(1) ***Establish a "Do Not Tokenize" list,*** to be hosted by the SEC, that allows issuers to easily opt out of participation in all current and future TSVs without having to respond to individual solicitations;

(2) ***Allow issuers to revoke TSV approvals*** – ideally at any time, but at the very least after certain time periods elapse or upon the occurrence of certain events of potential concern to issuers (e.g., fraud or manipulation in TSV markets, or a material change to TSV operation)[7];

(3) ***Clarify how long opt-outs are effective.*** Restrict how often and under what circumstances TSVs may re-solicit issuer consent to prevent harassment and overburdening issuers;

(4) ***Prescribe a reasonable method of notice delivery and confirmation***, rather than permitting a TSV to satisfy its obligation through a generic mailing or other passive form of communication that provides no assurance the issuer received or reviewed the notice;[8] and

(5) ***Provide for the 30-day opt-out period to begin upon receipt of a notice from the TSV***, rather than upon the date when a TSV mails the notice.

Additionally, Nasdaq notes that the issuers with which it engaged have also raised questions around how the Innovation Exemption will ensure that they retain visibility into ownership of their company (including visibility into the accumulation of ownership stakes on TSVs and to address insider trading risks), how tokens will address proxy voting and dividends, and how they will address corporate actions. Issuers also shared the same concerns that Nasdaq expresses elsewhere in this letter as to investor protection, liquidity fragmentation, market integrity, and price dislocations.

These recommendations are intended constructively; issuers do not oppose the concept of tokenization once they are educated about its purposes and benefits. Our issuer outreach shows that they can appreciate tokenization's long-term potential. At the same time, however, our outreach also shows that issuers struggle to appreciate why participating in TSVs will help them or their shareholders. The

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6 See Sandbox Letter, supra note 3, at 6 (urging that participants "obtain an issuer's consent before tokenizing its securities or listing and trading its tokenized securities"); cf. N.Y. Stock Exch. LLC v. SEC, 962 F.3d 541 (D.C. Cir. 2020) (vacating the Transaction Fee Pilot, which applied to issuers' securities without their consent).

7 TSVs would need to provide an orderly exit for token holders.

8 See Sandbox Letter, supra note 3, at 6; Order, supra note 1, at 19–22.

Commission and the TSVs have more work ahead to provide compelling use cases for issuers if they want the Innovation Exemption to succeed.

II. Ensure that TSVs Protect U.S. Financial Borders

The U.S. Treasury Department has found that illicit actors – including ransomware criminals, scammers, and Democratic People's Republic of Korea ("DPRK") cyber actors – use decentralized finance ("DeFi") services to move and launder proceeds, and that the most significant vulnerability is DeFi services that do not comply with anti-money laundering ("AML") and sanctions obligations.[9] Treasury's 2026 reporting describes DPRK actors swapping stolen tokens on decentralized exchanges, mixing and bridging them, and parking them in self-hosted wallets "with limited interdiction opportunities."[10] Such concerns about tokenization are not unique to the Innovation Exemption, and they are addressable. In its current form, however, the Innovation Exemption leaves these risks insufficiently addressed, potentially exposing U.S. equity securities, carrying full voting and dividend rights, into that environment.

The Order's framework requires that a TSV be a U.S. person subject to sanctions obligations administered by the Office of Foreign Assets Control ("OFAC") and that it disclose its participant verification procedures and sanctions-screening controls.[11] But it does not establish a comprehensive AML framework, does not address how the Bank Secrecy Act applies to TSVs, liquidity providers, or participants. It imposes no customer identification, suspicious activity reporting, or AML program requirements comparable to those that govern broker-dealers under Rule 17a-8 and FINRA Rule 3310.[12] Covered Firms, by design, are not registered dealers. Know-your-customer ("KYC") standards are thus left largely to each TSV's discretion and disclosure, rather than to enforceable minimums.

Three features of the TSV model compound the gap. ***First***, blockchain transactions are pseudonymous: a wallet address is not an identity, and permissioning that relies on onboarding checks is vulnerable to fraudulent or stolen identities – precisely the technique DPRK workers have used to access U.S. financial services.[13] ***Second***, the Order requires smart contracts to be deployed on public, permissionless ledgers, and it does not require tokens to carry transfer restrictions; permissioning may govern access to a TSV's pool without controlling where Tokenized NMS Stock goes once it leaves, including to unhosted wallets of unknown or sanctioned persons. The Order also does not limit the type of non-security crypto asset that may be paired with Tokenized NMS Stock, opening a channel to acquire U.S. equities with crypto assets of illicit provenance.[14] ***Third***, OFAC enforcement is difficult in decentralized or semi-decentralized environments. The Fifth Circuit has held that immutable smart

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9 U.S. Dep't of the Treasury, Illicit Finance Risk Assessment of Decentralized Finance 1–3 (Apr. 2023), https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf; Press Release, U.S. Dep't of the Treasury, Treasury Releases 2023 DeFi Illicit Finance Risk Assessment (Apr. 6, 2023), https://home.treasury.gov/news/press-releases/jy1391.

10 U.S. Dep't of the Treasury, Report to Congress on Innovative Technologies to Counter Illicit Finance Involving Digital Assets (Mar. 2026), https://home.treasury.gov/system/files/246/GENIUS-Act-Illicit-Finance-Innovation-Congressional-Report-March-2026.pdf; see also U.S. Dep't of the Treasury, 2026 National Proliferation Financing Risk Assessment, https://home.treasury.gov/system/files/246/2026-NPFRA.pdf.

11 Order, supra note 1, at 15–21, 38, 44; Atkins, supra note 2.

12 Order, supra note 1, at 31–35, 44–46; 31 U.S.C. § 5311 et seq.; 17 C.F.R. § 240.17a-8; FINRA Rule 3310; see December 2025 Letter, supra note 3, at 7 (KYC/AML functions belong with regulated intermediaries).

13 See United States v. Virtual Currency Associated with N. Korean IT Worker Money Laundering & Sanctions Evasion Conspiracies, No. 25-cv-1769 (RC), slip op. at 1–3 (D.D.C. Sept. 3, 2026).

14 See Order, supra note 1, at 8–9 & n.24.

contracts are not "property" that OFAC can block under the International Emergency Economic Powers Act, observing that targeted wrongdoers "are not actually blocked from retrieving their assets."[15] Although IEEPA reaches "any interest" in property, an effective block ultimately depends on an accountable intermediary that can freeze assets and halt transfers.[16] If an AMM pool or token contract is, or becomes, immutable, no one may be able to do so. The result could be that a sanctioned person or terrorist organization holds an issuer's shares, votes them, and receives dividends – with the issuer unaware.

The Commission can take concrete steps to address the foregoing and strengthen the Exemption in coordination with Treasury, FinCEN, and OFAC: (i) require TSVs and Covered Firms to maintain AML programs, customer identification, recordkeeping, and suspicious activity reporting equivalent to broker-dealer requirements, or require that participants access TSVs only through registered broker-dealers; (ii) require Tokenized NMS Stock traded on TSVs to be transferable only among verified, screened wallets; (iii) require that tokens trading on TSVs retain the technical ability to freeze and claw back assets in response to OFAC and law-enforcement orders; and (iv) limit pairing assets to fiat currency, tokenized bank deposits, and payment stablecoins issued by permitted issuers under the GENIUS Act.[17] These conditions are protective, not promotional; they would bring TSVs closer to the baseline that every registered market already meets.

III. Investors Deserve Protection

One of the Commission's key missions is to protect investors.[18] Within the National Market System, the Commission accomplishes this mission through a mix of gatekeeper registration, disclosures and clear rules that compel or constrain issuer, broker-dealer, and trading venue behaviors in the interest of investor protection. Investors deserve these baseline protections regardless of the format of stock they own. The Innovation Exemption departs from that approach; it relies principally on disclosures and disclaimers, including disclosures about the low level of protections that exist in TSVs, while exempting TSVs from the affirmative and clear rules to which other trading venues adhere. The Order offers little evidence that this approach will protect investors, especially retail investors.

A. Disclosure Is No Substitute for Substantive Protection

The Order's investor protection conditions are, at their core, disclosures and disclaimers. A TSV must publish a Public Notice spanning some 30 categories – among them a disclaimer of its registration status, its pricing models, its settlement arrangements, and its material risks – and must state whether it has any policies to address front-running through maximal extractable value; but the Order prescribes no comprehensive policies-and-procedures framework, no clearance and settlement framework, and no substantive protection against front-running.[19] Investors who self-custody tokenized shares may also fall outside the protections of the Securities Investor Protection Corporation.[20] In effect, the Order shifts the burden of protection from the venue and the regulator to the retail investor.

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15 Van Loon v. Dep't of the Treasury, 122 F.4th 549 (5th Cir. 2024).

16 See Holy Land Found. for Relief & Dev. v. Ashcroft, 333 F.3d 156, 162–63 (D.C. Cir. 2003).

17 See Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, §§ 2–3, 139 Stat. 419 (2025).

18 See 15 U.S.C. §§ 77b(b), 78c(f), 78k-1(a)(1)(C).

19 See Order, supra note 1, at 38, 44–46.

20 See April 2025 Letter, supra note 3, at 7 & n.8.

These risks are acute on TSVs. A retail investor reaching a TSV through a mobile application may be technologically savvy, but this says little about their financial literacy. Such investors, maybe most investors, are unlikely to read a 30-category notice describing AMM pricing curves, smart contract audits, liquidity provider incentives, and settlement mechanics – and still less likely to translate that notice into an understanding of how and when a price may diverge from the NBBO. Disclosure serves those who least need it and fails those who most do. Thus, the disclosures required of the TSVs are not sufficient to protect investors.[21]

The National Market System is the clearest example of that judgment in equity trading. It protects retail investors by operation of rule, whether or not they read anything: consolidated data gives investors "of all types" real-time access to the best prices, and the duty of best execution obligates brokers to seek "the most favorable terms reasonably available," a duty that evolves as technology changes.[22] A framework that substitutes disclosure for these protections would, in Nasdaq's view, sit uneasily with the purposes of the securities laws. Nor can a disclaimer, standing alone, satisfy the requirement that an exemption be "consistent with the protection of investors" – a statutory mandate.[23] All investors deserve the protection of enforceable standards of execution quality, surveillance, custody, and settlement.

B. **Interoperability and Liquidity Risks**

The Order does not require that Tokenized NMS Stock traded on one TSV be transferable to, or sellable on, any other TSV or any national securities exchange or ATS, and it is silent on custody and on how tokens may be converted back into the actual security.[24] In juxtaposition to the single, unified, standardized share traded on national security exchanges and ATSs, TSVs can create 3 or 5 or 10 different versions of Apple stock or Alphabet stock, none of which can easily interact with one another.

The consequences for retail investors are best understood by a simple example. A retail investor purchases a tokenized share of a large, widely traded company on a TSV, at a price close to the NBBO. Months later, she decides to sell – only to discover that the token cannot be sold on any other venue. It resides on the TSV's chosen blockchain and smart contracts; other TSVs do not accept it; and it cannot be routed to an exchange or ATS. She is effectively locked into a single venue. At that moment, her share of one of the most liquid securities in the world has become functionally illiquid. Her only exit is the AMM pool on that TSV, whose price is set by formula and whose depth depends on what liquidity providers have chosen to commit – and can withdraw. If the pool is thin, if liquidity providers step back during market stress, if the TSV is halted, or if repeated breaches of the per-TSV volume cap trigger a three-month trading pause in the symbol, she may be unable to sell at a price anywhere near the market-

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21 Cf. Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031, 84 Fed. Reg. 33,318, 33,318–19 (July 12, 2019) (codified at 17 C.F.R. § 240.15l-1) (adopting Exchange Act Rule 15l-1 and stating that it "establishes a standard of conduct under the Exchange Act that cannot be satisfied through disclosure alone").

22 Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266, 270 (3d Cir. 1998) (en banc) (duty of best execution requires broker-dealers to seek "the most favorable terms reasonably available under the circumstances" and evolves with changes in technology and market structure); NetCoalition v. SEC, 615 F.3d 525, 529 & n.8 (D.C. Cir. 2010) (quoting Regulation NMS, Exchange Act Release No. 34-51808, 70 Fed. Reg. 37,496, 37,503 (June 29, 2005)) (consolidated data gives "investors of all types" access to the best prices, and retail orders are "especially likely to execute at the NBBO price or better"); 15 U.S.C. § 78k-1(a)(1)(C)(iii)–(iv).

23 15 U.S.C. § 78mm(a)(1); see Cboe Futures Exch., LLC v. SEC, 77 F.4th 971 (D.C. Cir. 2023) (holding that Section 36 required the Commission to consider the protection of investors and to explain why it dispensed with a protection it had previously found necessary).

24 See Order, supra note 1, at 44–45, 57–59; December 2025 Letter, supra note 3, at 5–6 (interoperability principle).

wide price of the underlying security, or unable to sell at all.[25] Additionally, if the TSV ceases operations, then her token could become permanently illiquid, if not worthless, insofar as the Exemption requires no contingency mechanism to facilitate transitioning tokens from defunct TSVs to other markets. For this investor, the true executable price of her token may deviate substantially from the price of the very same share trading in the National Market System.

This dynamic undermines the liquidity and price discovery guarantees that Congress sought for issuers and investors in the National Market System. Congress directed the Commission to assure "the practicability of brokers executing investors' orders in the best market" and to link "all markets for qualified securities"; the premise is that a share of an NMS stock can be sold wherever the best price is available.[26] Even before 1975, a share of stock in paper form was freely alienable and carried the same rights wherever it was bought or sold; a market structure of non-interoperable venues could leave investors worse off than the fragmented markets that Congress set out to reform.[27] The Innovation Exemption undermines the National Market System and contradicts Congress' intent by exempting TSVs from this linkage, interoperability, and consolidation.[28] Cannot the technology of the future support the same consolidation and linkage that has flourished via lesser technologies for five decades?

Disclosure of this risk at the time of purchase does not adequately protect retail investors. The harm is latent: it is realized only when the investor attempts to sell, often in a falling or stressed market, when liquidity matters most. At purchase, the investor sees a familiar ticker symbol and a price near the NBBO; a statement that the token "may not be transferable to other venues" does not convey that her shares may be unsalable at a fair price or at all when she needs to exit. Retail investors assume salability – the Commission's own investor testing found that investors consider information about whether they can sell their securities at any time, and at market value, to be absolutely essential.[29] Nasdaq has previously urged that any such limitations be prominently disclosed; it continues to view disclosure as a floor; it is not a cure.

Nasdaq respectfully recommends that TSV tokens be fungible with, and freely convertible into, the traditional security and be transferable to other venues and into the National Market System without unreasonable delay or cost – as is the case under the tokenization framework the Commission approved for Nasdaq earlier this year.[30]

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25 See Order, supra note 1, at 8–9, 24–28 (AMM prices set by the ratio of assets committed to a pool; volume-threshold breaches may require trading pauses).

26 15 U.S.C. § 78k-1(a)(1)(C)(iv), (D); see Bradford Nat'l Clearing Corp. v. SEC, 590 F.2d 1085, 1094 (D.C. Cir. 1978).

27 See December 2025 Letter, supra note 3, at 6.

28 A perverse consequence of the lack of interoperability will be to create some of the very same distortive market structure dynamics that the Commission now seeks to correct by proposing to eliminate the Order Protection Rule. For example, the Commission has argued that OPR's mandate for market participants to connect to exchanges for enabling those exchanges to charge participants supra-competitive access fees (and thus, in the Commission's view, necessitated it imposing access fee caps). By that same logic, a TSV trading non-interoperable tokenized stocks would have an opportunity to exploit the captive nature of its token holders in a similar manner with respect to access fees.

29 See Staff of the U.S. Sec. & Exch. Comm'n, Study Regarding Financial Literacy Among Investors xviii–xix (Aug. 2012) [hereinafter Section 917 Study].

30 See Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Amend the Exchange's Rules to Enable the Trading of Securities on the Exchange in Tokenized Form, Exchange Act Release No. 105047 (Mar. 18, 2026), https://www.sec.gov/files/rules/sro/nasdaq/2026/34-105047.pdf [hereinafter Nasdaq Tokenization Order]; December 2025 Letter, supra note 3, at 4–5 & attach. at 4 (tokenized shares trade on the same order book, with the same CUSIP and symbol, as their traditional counterparts).

IV. Prioritize the National Market System

The U.S. securities markets are the most liquid, trusted, and reliable in the world. That status reflects decades of industry innovation and investment, and it is the product of the National Market System – the statutory framework that links disparate listing and trading venues into a single market and sets standards for integrity, transparency, fairness, competition, and resiliency. The Innovation Exemption allows TSVs to trade NMS stocks outside that System altogether. It is unclear whether the Commission has either the authority or the record to support this exemption.

The Order identifies several features of TSVs and automated market makers that it believes are incompatible with National Market System requirements such as trade reporting and consolidated pricing.[31] Those discrete concerns do not explain why TSVs need be exempt from all of Regulation NMS,[32] or why the National Market System must bend to accommodate TSV business models rather than the reverse. Section 36 of the Act, which is the authority the Commission invokes,[33] requires the Commission to show that its design is necessary or appropriate in the public interest and consistent with the protection of investors – including how it will address the risks of fragmented liquidity, degraded price discovery, and weakened investor protection. That showing must be especially compelling here, because in Section 11A Congress itself determined that the public interest requires a National Market System and directed the Commission to establish and maintain one.[34]

A. Congress Mandated a National Market System

In the Securities Acts Amendments of 1975, Congress undertook "the most searching reexamination" of the securities markets since the 1930s in response to "operational breakdowns and economic distortions" that had plagued a fragmented trading environment.[35] Congress found that the securities markets "are an important national asset which must be preserved and strengthened," and that "[t]he linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and

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31 See Order, supra note 1, at 8–9, 22, 24–28.

32 See Morgan Lewis, SEC Grants Temporary 'Innovation Exemption' for Trading Tokenized NMS Stocks on Distributed Ledger Venues (Sept. 29, 2026), https://www.jdsupra.com/legalnews/sec-grants-temporary-innovation-9640064/ (TSVs not treated as trading or market centers under Regulation NMS); Sullivan & Cromwell LLP, SEC Issues "Innovation Exemption" for Tokenized Securities, Harv. L. Sch. F. on Corp. Governance (Sept. 25, 2026), https://corpgov.law.harvard.edu/2026/09/25/sec-issues-innovation-exemption-for-tokenized-securities (citing Rules 611 and 602(e)).

33 15 U.S.C. § 78mm(a)(1); see also id. §§ 78c(f), 78w(a)(2).

34 Id. § 78k-1(a)(1)(A), (C), (a)(2) (finding that "[t]he securities markets are an important national asset which must be preserved and strengthened," declaring it "in the public interest" to assure efficient execution, fair competition, market-information availability, best-market execution practicability, and investor order-execution opportunities, and directing the SEC to "facilitate the establishment of a national market system for securities"); id. § 78b (declaring securities transactions to be affected with a national public interest and requiring regulation "to remove impediments to and perfect the mechanisms of a national market system for securities"); Development of a National Market System, Exchange Act Release No. 34-14410, 43 Fed. Reg. 4,354, 4,355–56 (Feb. 1, 1978) (quoting S. Rep. No. 94-75 for the proposition that "rapid attainment of a national market system" was important to maintain a "strong, effective and efficient capital raising and capital allocating system," and describing Congress's belief that development of such a system was "not only desirable but necessary"); Regulation NMS, 70 Fed. Reg. at 37,503 (quoting H.R. Rep. No. 94-229 that consolidated market-data systems would "form the heart of the national market system").

35 Bradford, 590 F.2d at 1091 (quoting H.R. Rep. No. 94-229, at 91 (1975) (Conf. Rep.)); see Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 97.

investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders."[36] Congress then "directed" the Commission to facilitate a National Market System "in accordance with the findings and to carry out the objectives" it had set forth, and amended Section 2 of the Exchange Act to declare that regulation is necessary "to remove impediments to and perfect the mechanisms of a national market system for securities."[37]

Courts have read these provisions as a legislative mandate, not a policy option. The goal of the system is "to link all securities markets nationwide" so that information is equally available and fair competition exists among all markets, wherever located; the drafters described it as the "centraliz[ation of] trading of securities in the interest of both efficiency and investor protection."[38] Consolidated core data "form[s] the heart of the national market system."[39] As Commissioner Loomis observed while Congress deliberated, "[p]erhaps the cornerstone of a national market system is the creation of a mechanism by which all, or at least most, of the orders for securities traded in the system are channeled into the system rather than being fragmented and dispersed."[40]

Congress gave the Commission "intentionally broad" and "clear power" to shape that system, and the D.C. Circuit recently reaffirmed that Section 11A confers "broad, discretionary" authority to regulate it.[41] That breadth gives the Commission ample tools to modernize Regulation NMS for all markets and all technologies, including tokenization. It does not authorize the Commission to stand up parallel markets for NMS stocks outside the System altogether. The Commission is not an "economic czar" under Section 11A; its powers there are "necessarily constrained by Congress's purposes in authorizing the Commission to foster that system."[42]

B. Section 36 Does Not Authorize Parallel Market Structure

Section 36 permits the Commission to exempt "any person, security, or transaction" from any provision of the Exchange Act "to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[43] Nasdaq does not dispute that this authority is broad or that it supports targeted relief, including to spur innovation.[44] But Section 36 is an authority to tailor how the Exchange Act applies, not to supplant the market structure Congress mandated in Section 11A. A general exemptive provision added in 1996 is an unlikely vehicle for authorizing the Commission to create, by order, a new category of unregistered markets for NMS stocks outside the very system Congress directed it to build. Congress does not "alter the fundamental details of a regulatory

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36 15 U.S.C. § 78k-1(a)(1)(A), (D).

37 Id. §§ 78b, 78k-1(a)(2); see Credit Suisse First Bos. Corp. v. Grunwald, 400 F.3d 1119, 1147 (9th Cir. 2005).

38 Bradford, 590 F.2d at 1094 & n.12 (quoting S. Rep. No. 94-75, at 2 (1975)); NetCoalition, 615 F.3d at 528.

39 NetCoalition, 615 F.3d at 529 (quoting Regulation NMS, 70 Fed. Reg. at 37,503).

40 Philip A. Loomis, Jr., Comm'r, SEC, The Central Market System, Remarks Before the Regional Member Firms 'Round Table' 6–7 (May 29, 1974), https://www.sec.gov/news/speech/1974/052974loomis.pdf; see also Statement on Signing the Securities Acts Amendments of 1975 (June 5, 1975), https://www.presidency.ucsb.edu/documents/statement-signing-the-securities-acts-amendments-1975.

41 Bradford, 590 F.2d at 1095; Nasdaq Stock Mkt. LLC v. SEC, 38 F.4th 1126, 1131 (D.C. Cir. 2022) (quoting S. Rep. No. 94-75, at 7); Cboe Glob. Mkts., Inc. v. SEC, No. 24-1350, slip op. at 3, 7 (D.C. Cir. Oct. 14, 2025).

42 Bus. Roundtable v. SEC, 905 F.2d 406, 416–17 (D.C. Cir. 1990) (quoting S. Rep. No. 94-75, at 12).

43 15 U.S.C. § 78mm(a)(1); National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, § 105(b), 110 Stat. 3416, 3424.

44 See Sandbox Letter, supra note 3, at 6 (exemptive discretion "is not unbounded" and should be exercised "narrowly and with a clear justification and purpose").

scheme in vague terms or ancillary provisions," and a power to "modify" statutory requirements does not authorize "basic and fundamental changes in the scheme."[45] Likewise, "[c]ategorical exemptions from the clear commands of a regulatory statute, though sometimes permitted, are not favored," and an agency seeking to deviate from an explicit statutory design bears an "especially heavy" burden of justification.[46] After Loper Bright, courts will exercise independent judgment to ensure the Commission has stayed within those bounds.[47] At a minimum, Section 36 requires a compelling demonstration that a structural departure from the National Market System is necessary and serves the public interest better than operating within it. That is not a formality: in Cboe Futures Exchange, LLC v. SEC, the D.C. Circuit vacated a Section 36 exemptive order that rested on a conclusory competition rationale and failed to grapple with the harm to investors of discarding a protection the Commission had previously found necessary.[48]

Trading Tokenized Securities Does Not Require Broad Exemptions from Reg. NMS. Trading tokenized stocks does not require exemption from the National Market System. Nasdaq has proposed several ways for the System to accommodate tokenized trading,[49] and the Commission approved one this year, under which tokenized and traditional shares of the same stock trade on the same order book, with the same priority, subject to Regulation NMS.[50] Recording ownership on a blockchain does not inherently or necessarily affect the ability to comply with Regulation NMS.[51]

The Innovation Exemption Erects Barriers to Fair Competition. The Exchange Act requires the Commission to consider whether its action will promote competition, and it prohibits unnecessary or inappropriate burdens on competition. The Innovation Exemption introduces a new category of trading venue on unequal terms relative to exchanges and ATSs, conferring artificial regulatory advantages on one category of venue. Conclusory competition rationales do not satisfy the

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45 West Virginia v. EPA, 597 U.S. 697, 723 (2022) (quoting Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468 (2001)); Biden v. Nebraska, 600 U.S. 477, 494 (2023) (quoting MCI Telecomms. Corp. v. AT&T Co., 512 U.S. 218, 225 (1994)); see also FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 160 (2000).

46 Ala. Power Co. v. Costle, 636 F.2d 323, 358–59 (D.C. Cir. 1979) (per curiam) (addressing implied exemption authority).

47 See Loper Bright Enters. v. Raimondo, 603 U.S. 369, 395, 412 (2024); Cboe Glob. Mkts., slip op. at 6.

48 See Cboe Futures Exch., 77 F.4th at 980.

49 See April 2025 Letter, supra note 3, at 6–9; Sandbox Letter, supra note 3, at 2–3, 7–8; December 2025 Letter, supra note 3, at 2–5.

50 Nasdaq Tokenization Order, supra note 30; see December 2025 Letter, supra note 3, attach. at 4.

51 See Sandbox Letter, supra note 3, at 2–3.

Act.[52] If elements of Regulation NMS impair competition, the Commission could reconsider them for all markets through rulemaking, rather than for one category of venue.[53]

The Innovation Exemption Risks Fragmenting Liquidity. Chairman Atkins, in the context of the Commission's reconsideration of Rule 611, has acknowledged that liquidity fragmentation is a problem driven by the proliferation of trading venues.[54] The Innovation Exemption increases that potential concern in two ways. First, *token fragmentation* will exist where TSV tokens are not interoperable with each other. As described above, rather than the single version of Apple stock we trade today, tomorrow there may be five or eight or ten versions of Apple stock that cannot easily trade with each other. Second, *venue fragmentation* will exist because TSVs are neither required to trade with existing exchanges and ATSs nor with each other. It is difficult to square these outcomes with the Chairman's previously-expressed concerns.

The Volume Caps Set Ineffective Limits. The Order's volume caps apply per TSV – up to 75 Tier 1 symbols at 0.25% of prior-month average daily volume and 250 Tier 2 symbols at 2.5% – with no market-wide cap.[55] Ten TSVs each trading 2.5% of total consolidated volume ("TCV") in a Tier 2 stock would move 25% of TCV outside the National Market System, concentrated in the smaller, thinner-liquidity stocks least able to absorb that diversion. These caps do not provide safe limits for the experiment. Nasdaq recommends an aggregate, market-wide volume cap across all TSVs for each symbol. Nasdaq also recommends that the SEC re-examine the appropriateness of a 2.5% cap per TSV for Tier 2 stocks. Tier 2 stocks already have less robust liquidity characteristics based on their sizes and share counts. Accordingly, they have higher risks of liquidity fragmentation harming their price discovery as well as institutional engagement in the stocks.

The Innovation Exemption Risks Undermining Price Discovery. TSVs are not trading centers under Regulation NMS, so they need not respect protected quotations or contribute quotes to consolidated data.[56] AMM prices are set by formula from the ratio of assets in a pool, not by competing orders, and transaction data need only be published within 10 minutes.[57] TSV prices will therefore reflect pool imbalances and arbitrage rather than market-wide supply and demand; the Order acknowledges the possibility of price dislocation but offers little guidance on addressing it.[58] Liquidity

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52 See 15 U.S.C. §§ 78c(f), 78w(a)(2), 78mm(a)(1); Bus. Roundtable v. SEC, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (describing the Commission's obligation to consider the effect of a rule on efficiency, competition, and capital formation); Am. Equity Inv. Life Ins. Co. v. SEC, 613 F.3d 166, 177–78 (D.C. Cir. 2010) (holding that the SEC must assess the specific rule's effect on competition); see also Bloomberg L.P. v. SEC, 45 F.4th 462, 477–79 (D.C. Cir. 2022) (discussing Section 3(f) and competition analysis). For example, in Cboe Futures Exchange, a similarly thin exemption for SPIKES futures was vacated because it rested on a conclusory competition rationale. Cboe Futures Exch., 77 F.4th at 974; see also Sandbox Letter, supra note 3, at 6 n.14. Cf. N.Y. Stock Exch., 962 F.3d at 546 (vacating the Transaction Fee Pilot as beyond the Commission's statutory authority).

53 See December 2025 Letter, supra note 3, at 4; Sandbox Letter, supra note 3, at 7.

54 See Paul S. Atkins, Chairman, SEC, *Remarks at the Roundtable on Trade-Through Prohibitions* (Sept. 18, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-091825-remarks-roundtable-trade-through-prohibitions ("[A] rule intended to strengthen liquidity has instead splintered it among an unprecedented number of venues. The result is a marketplace with more trading platforms than ever, but fewer broker-dealers and traditional market makers to knit it together.").

55 Order, supra note 1, at 24–26.

56 See Morgan Lewis, supra note 32.

57 See Order, supra note 1, 91 Fed. Reg. at 60,168, 60,176–77.

58 See Order, supra note 1, at 22, 28, 31.

committed to AMM pools is also inaccessible to orders in the National Market System, reducing displayed depth, widening spreads, and weakening the national best bid and offer ("NBBO") – the "price decoherence" Nasdaq warned of when exemptions from Regulation NMS were first proposed.[59] And because TSVs may trade around the clock, outside the Limit Up-Limit Down ("LULD") protections the industry is extending to overnight trading.[60] The Commission should (i) prohibit TSV executions outside LULD price bands or materially away from the NBBO, and (ii) require TSVs to use real-time NMS data at the point of execution, which would help integrate markets and mitigate the two-tiered market data system the Order implies.

The Innovation Exemption is Incompatible with Best Execution. By designing TSVs to operate without contributing to consolidated market pricing or timely reporting of trades, broker-dealers cannot participate in these venues while complying with their obligation to provide best execution to their customers. Best execution is a fundamental protection that should be available to all investors on all trading venues. It should not be treated as a design flaw for a market to avoid. Accordingly, Nasdaq recommends that the Commission revise the design of TSVs to accommodate best execution by requiring them to ingest consolidated market data, to report trades in a more timely manner, and to avoid locking and crossing markets for NMS stocks.

V. Other Recommendations

Adopt Durable Rules Through Standard Rulemaking Rulemaking is the proper vehicle for major market structure initiatives, even experimental ones. When the Commission last created a new category of venues exempt from the definition of "exchange," it did so through Regulation ATS, a formal rulemaking that was proposed for public comment, refined via those comments, and adopted with a full statement of basis and purpose.[61] Multiple market structure experiments followed the same path. The access fee pilot – the Transaction Fee Pilot for NMS Stocks – was proposed for notice and comment and adopted as Rule 610T of Regulation NMS only after the Commission received and responded to the public's views.[62] The Tick Size Pilot likewise proceeded only after Congress directed the Commission to act, and through a National Market System plan subject to public notice and comment before the

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59 See Sandbox Letter, supra note 3, at 9; see also Letter from Cboe Global Markets to Sherry R. Haywood, Assistant Sec'y, SEC (Nov. 26, 2025), https://www.sec.gov/comments/sr-nasdaq-2025-072/srnasdaq2025072-679147-2087615.pdf; SIFMA, Additional Input to the SEC Crypto Task Force on the Regulation of Tokenized Securities Markets (Dec. 16, 2025), https://www.sec.gov/about/crypto-task-force/written-submission/cft-written-sifma-digital-assets-12-16-2025-0.

60 See Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.10, 91 Fed. Reg. 60,165, 60,165–67 (Sept. 22, 2026), https://www.govinfo.gov/content/pkg/FR-2026-09-22/pdf/2026-19296.pdf.

61 See Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760, 63 Fed. Reg. 70,844 (Dec. 22, 1998), https://www.federalregister.gov/documents/1998/12/22/98-33299/regulation-of-exchanges-and-alternative-trading-systems; Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 39884, 63 Fed. Reg. 23,504 (May 4, 1998) (proposed rule), https://www.sec.gov/files/rules/proposed/34-39884.pdf; see also Domestic Sec., Inc. v. SEC, 333 F.3d 239, 242 (D.C. Cir. 2003) (describing Regulation ATS).

62 Transaction Fee Pilot for NMS Stocks, Exchange Act Release No. 82873, 83 Fed. Reg. 13,008 (Mar. 26, 2018) (proposed rule), https://www.federalregister.gov/documents/2018/03/26/2018-05545/transaction-fee-pilot-for-nms-stocks; Transaction Fee Pilot for NMS Stocks, Exchange Act Release No. 84875, 84 Fed. Reg. 5202 (Feb. 20, 2019) (final rule), https://www.sec.gov/files/rules/final/2018/34-84875.pdf. The D.C. Circuit later vacated Rule 610T as beyond the Commission's authority, N.Y. Stock Exch., 962 F.3d at 546, but it did so on a full rulemaking record that the public helped to build.

Commission approved it, with modifications.[63] The Innovation Exemption, by contrast, which creates a new category of trading venue for NMS stocks, removes it from the definition of "exchange" and from Regulation NMS, and will govern an open class of venues for five years – took effect immediately, with public comment invited only after the fact.

While rulemaking would have been slower than issuing exemptive relief, speed is not a measure of sound market structure. Public notice, comment, and deliberation would have allowed issuers, investors, market operators, and other regulators to identify the gaps described in this letter before, rather than after, TSVs begin trading – and would produce a more refined, balanced, and durable framework than an order that is the product of the agency alone, without the benefit of broad public input. As Justice Douglas observed, agencies "are not always repositories of ultimate wisdom; they learn from the suggestions of outsiders and often benefit from that advice."[64] Nasdaq supports Chairman Atkins, who described the Order as an interim measure that "must be followed by durable rulemaking."[65] Nasdaq respectfully views this comment as part of a proposal-and-adoption cycle.

Strengthen the Innovation Exemption through active Commission scrutiny of TSV Public Notices, monitoring TSV compliance with the terms of those Public Notices and applicable laws, and holding TSVs accountable for non-compliance – including through remedies beyond suspending their ability to trade certain stocks for several months. A TSV may begin operations 30 days after self-publishing a Public Notice, without Commission review.[66] Respectfully, prior Commission review of Public Notices and continuous monitoring of TSV compliance – through examinations, loss of the exemption, or enforcement action – would send the right investor protection message.

Consider the benefits of an exit ramp. At times, the SEC describes the Innovation Exemption as an experiment, but at other times, it characterizes the Exemption as a precursor to rulemaking. We respectfully ask the Commission to clarify its intentions. If the Innovation Exemption is intended as an experiment, it would benefit from a clear statement of what is being tested, how success will be measured, and what consequences will follow if the experiment fails. Moreover, the exemption could include a "ripcord": objective, published triggers – such as sustained price dislocations, material fraud or manipulation, or sanctions violations – upon which the Commission can and will suspend or terminate the relief well before its five-year sunset.[67]

Conclusion

Nasdaq shares the Commission's goal of ensuring that U.S. markets lead the world in adopting new technology. Tokenization has the potential to strengthen the National Market System, and Nasdaq

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63 See Jumpstart Our Business Startups Act, Pub. L. No. 112-106, § 106(b), 126 Stat. 306, 312 (2012); Order Approving the National Market System Plan to Implement a Tick Size Pilot Program, Exchange Act Release No. 74892, 80 Fed. Reg. 27,514 (May 13, 2015), https://www.federalregister.gov/citation/80-FR-27514; 17 C.F.R. § 242.608(b); see also N.Y. Stock Exch., 962 F.3d at 546 (contrasting the Tick Size Pilot, which rested on a congressional directive, with the Transaction Fee Pilot, for which there was "no such congressional directive").

64 NLRB v. Wyman-Gordon Co., 394 U.S. 759, 777–78 (1969) (Douglas, J., dissenting).

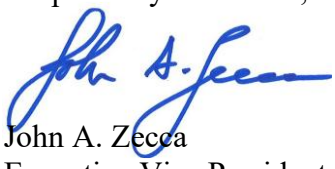
65 Atkins, supra note 2.

66 Order, supra note 1, at 19–21; see also SEC, Order Granting Temporary Conditional Exemptive Relief for Trading of Tokenized NMS Stock on Tokenized Securities Venues: Fact Sheet 2 (Sept. 17, 2026), https://www.sec.gov/files/34-106402-fact-sheet.pdf.

67 See Sandbox Letter, supra note 3, at 7 (two-year pilot limit; three-year DSS and DLT Pilot terms); Order, supra note 1, 91 Fed. Reg. at 60,168; Press Release, supra note 3 (stating that the exemptions are set to expire five years after publication).

has shown how. The Innovation Exemption, however, carves a parallel market for NMS stocks out of that System, by order rather than through rulemaking, on the strength of an analysis that does not yet carry the burden Sections 11A and 36 impose. For the Commission to succeed in promoting innovation, while protecting the interests of issuers, investors, and the markets, we urge it to address the issues we raise herein – liquidity fragmentation, sanctions and illicit finance risk, the absence of substantive investor protection, and the absence of meaningful issuer consent. Nasdaq appreciates the Commission's consideration of these comments and would welcome the opportunity to discuss them.

Respectfully submitted,



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cc: The Honorable Paul S. Atkins, Chairman
The Honorable Mark T. Uyeda, Commissioner
Jamie Selway, Director, Division of Trading and Markets