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VIA ELECTRONIC SUBMISSION

Commissioner Hester M. Peirce and Members of the Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, DC 20549-0213

Re: *Why Third-Party Tokenization of Publicly Traded Securities Should Not Require Issuer Approval*

Portability of tokenized securities through decentralized protocols represents the future of capital markets. Once enabled, U.S. investors will be able to engage in the peer-to-peer transfer and trading of securities without the need of a broker intermediary, as has always been statutorily permitted, but was previously inhibited by the lack of technological solutions.

The forthcoming innovation exemption is the crucial enabling and evidentiary tool for the U.S. to establish an appropriate regulatory framework. But it can only be successful if it allows a level of market activity sufficient to inform future rulemakings (i.e. an empirical baseline necessary for robust, APA-compliant economic analyses). This includes permitting both issuer and third-party tokenization models outlined in the Commission staff statements published in January.

However, it has come to our attention that use of the forthcoming innovation exemption may be gated by an issuer-consent requirement, requiring separate registration for third-party tokenization. Incumbent market participants are representing that third-party tokenization would impose costs and risks that could not be managed effectively and should therefore require issuer consent.

Such assertions are false and their aims are anticompetitive. And such a requirement would be inconsistent with federal statute and decades of Commission precedent. As we explain below, if the innovation exemption imposes requirements that impede peer-to-peer portability in favor of closed systems architecture for transfer and trading, onchain innovation will remain offshore, away from U.S. regulatory oversight, thereby limiting the Commission's ability to assess and define the future of global market infrastructure.

1. Issuer consent is contrary to long-standing legal precedents

Requiring issuer consent for tokenization would introduce a level of issuer control unprecedented in modern public equity markets. Historically, once a security is issued into the public secondary market, the issuer does not maintain a 'veto' over the infrastructure used for its transfer or custody. Mandating issuer consent would effectively grant issuers the power to restrict the portability and fungibility of an investor's private property—a departure from the current

framework in which secondary market trading of public equities, governed by the federal securities laws and Commission rules rather than issuer preference, ensures efficient trading and settlement across market

Format does not change legal character.

- The Commission staff's own statement on tokenized securities expressly acknowledges that "the format in which a security is issued or the methods by which holders are recorded (e.g., onchain vs. offchain) does not affect application of the federal securities laws." If format does not change legal character or application of the federal securities laws, then it follows that issuer consent should not be introduced for tokenized securities where it is not currently required.

Rule 17Ad-20 and Section 17A prohibit issuer restrictions on holding form.

- Rule 17Ad-20 prohibits transfer agents from transferring securities if the issuer has imposed restrictions on ownership by a securities intermediary. The Commission's adopting release stated in forceful terms: "The effort by some issuers to restrict ownership of publicly traded securities by securities intermediaries can result in many of the inefficiencies and risks Congress sought to avoid when promulgating Section 17A of the Exchange Act."[1]

- In its comment supporting the rule, the DTC stated that "issuers do not have continuing ownership rights in shares they have sold into the marketplace" and that "attempts by issuers to continue to exercise control over shares that have been sold to the public is improper and may well constitute conversion."[2]

The exemptive right to freely resell belongs to the holder, not the issuer.

- Section 4(a)(1) of the Securities Act exempts from registration "transactions by any person other than an issuer, underwriter, or dealer."[3] We are unaware of any statutory authority under the Securities Act that would permit the Commission to alter this exemption, absent Commission rules or rulemaking conducted pursuant to the Administrative Procedure Act (the "APA"). To do so would effectively convert a holder's Section 4(a)(1) right – a right that belongs to the holder – into a permission that flows from the issuer.

Unsponsored ADRs are analogous and don't require issuer consent.

- The SEC already allows banks to create American Depositary Receipts (ADRs) without issuer consent. The Commission explicitly considered and rejected consent requirements for ADRs in 2008, noting any such consent requirement would run counter to the goal of

[1] Release No. 34-50758, *Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries* (Dec. 7, 2004).
[2] DTCC, Release No. 34-49809, File, No. S7-24-04, Issuer Restriction on Prohibition on Ownership by Securities Intermediaries (Jul. 8, 2004).
[3] 15 U.S.C. § 77d(a)(1).

streamlining the rule for the benefit of investors.[4] Unsponsored ADRs are structurally analogous to third-party tokenization. If depositary receipt programs can operate without issuer consent for cross-border equity access, the same principle should apply to domestic tokenization that grants full shareholder rights and protections.

Tokenizing an existing ownership interest doesn't constitute the creation of a new security requiring registration.

- Where, upon third-party tokenization, an investor's interest remains unchanged and provides full shareholder rights and protections, no new security is being issued, and thus issuer consent is not required.[5] This remains true independent of whether the record is kept on a local or a decentralized database.

Exchange Act Section 36 does not permit the creation of new requirements.

- While the Commission's broad exemptive authority under Exchange Act Section 36 allows the Commission to create exemptions from Exchange Act provisions, it does not authorize the Commission to impose conditions that would modify or limit rights under the Securities Act absent rulemaking pursuant to the Securities Act.

- Section 4(a)(1) of the Securities Act is an exemption from registration for secondary market transactions by non-issuers. If the Commission were to condition Exchange Act relief on issuer consent for tokenization, it would grant issuers a veto right over the transferability of unrestricted registered classes of equity securities in an unprecedented manner that abrogates investor access to Section 4(a)(1) without any concomitant Securities Act rulemaking.

Recent Commission and staff actions don't require issuer consent to tokenized trading.

- The Commission's approval of Nasdaq's tokenized securities proposal was issued without requiring issuer consent as a condition.[6] Under the approved framework, DTC Participants, not issuers, decide whether to trade in tokenized form by selecting a tokenization flag at order entry.

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[4] Release No. 34-58465, *Exemption From Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers* (Sep. 10, 2008).

[5] This principle is consistent with four decades of SEC Staff depository no action letters, under which the Staff have confirmed that custodial receipts representing beneficial ownership of underlying securities do not constitute the issuance of a new security, without requiring issuer consent. See *Financial Security Assurance Inc.*, SEC No-Action Letter (Mar. 30, 1988); *Merrill Lynch, Pierce, Fenner & Smith Inc.*, SEC No-Action Letter (Sept. 26, 1990); *Bear, Stearns & Co.*, SEC No-Action Letter (Jan. 28, 1992); *CRT Government Securities, Ltd.*, SEC No-Action Letter (Aug. 04, 1992).

[6] Release No. 34-105047, 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 (Mar. 18, 2026).

- Similarly, the Staff's DTC no-action letter launched the DTCC Tokenization Services pilot without conditioning relief on issuer consent.[7] If these recent regulatory actions found consistency with the Exchange Act's requirements without issuer consent, any exemptive order (or proposed rule) imposing such a requirement in direct contravention with the stated policy goals underlying Exchange Act Rule 17Ad-20 would need to explain what changed and why the Commission's own recent findings as it relates to tokenized securities and statements in support of the adoption of Rule 17Ad-20 were incorrect or otherwise distinguishable.[8]

2. Requiring issuer consent is anticompetitive

Mandating issuer consent would stifle competition by favoring incumbent exchanges over decentralized innovation. Issuers have natural incentives to avoid switching costs associated with technological migration – even if tokenization would clearly benefit their shareholders. This creates an insurmountable collective action problem: coordinating thousands of issuers to simultaneously adopt tokenization is impracticable.

Granting issuers a veto right over tokenization would also entrench legacy exchanges, who can leverage their existing issuer relationships to maintain closed-loop market structures. Preventing third-party sponsored tokenized securities that entail the same shareholder rights as issuer-sponsored tokenized securities would stifle market competition by denying decentralized protocols the opportunity to reach competitive scale.

Accordingly, the Commission must ensure that the forthcoming innovation exemption remains technologically neutral and free from issuer-consent mandates. By prioritizing the autonomy of the secondary market over the preferences of individual issuers, the Commission will facilitate a competitive landscape where infrastructure is judged by its ability to provide superior execution, transparency, and investor protection. This approach avoids regulatory favoritism, solves the collective action problem, and enables the generation of empirical data necessary to fulfill the Commission's statutory rulemaking obligations.[9]

3. Third-party tokenization does not impose undue risk

The gateway to an end state of issuer-led native onchain issuance is third-party infrastructure bridges that preserve full shareholder rights while quantifying market demand. This technology neutral, phased approach would be consistent with the envisioned permissibility of tokenized securities in the January staff statement by the three Commission divisions.

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[7] Division of Trading Markets, No Action Letter Request Related to The Depository Trust Company's Development of the DTCC Tokenization Services (Dec. 11, 2025)(the "DTC Letter").
[8] Release No. 34-50758, Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries (Dec. 7, 2004).
[9] After the Commission considered and rejected consent requirements for ADRs in 2008, more than 1,000 unsponsored ADR programs were created in the final three months of 2008 alone, allowing the Commission to gather valuable data.

Market incumbents have asserted the following risks of third-party tokenization: (i) contagion risk between DeFi and traditional markets, (ii) investor confusion and reputational harm to issuers, and (iii) loss of shareholder visibility. Each such assertion is false.

- First, contagion risk does not justify issuer consent, it justifies structural safeguards. The concern that disruptions in tokenized secondary markets on DeFi venues could spill over into traditional markets through liquidity shocks and broader investor concern is a market structure concern, not an issuer-consent concern. The solution to contagion risk is to ensure that appropriate trading-related safeguards are in place.

- Second, incumbents assert that investors may conflate DeFi infrastructure failures with problems at the issuer itself. Trading infrastructure affecting how an issuer's stock trades is already the reality of multi-venue trading. Issuers can't prevent their stock from trading on dark pools, OTC venues, or foreign exchanges that might experience disruptions. The reputational "spillover" risk from venue problems already exists and is not, and cannot be, managed through issuer consent today.

- Third, incumbents claim that third-party tokenization leads to issuers losing visibility into their shareholder base, which could complicate corporate governance, proxy voting, dividend distribution, and shareholder communications. This incorrectly assumes that issuers currently have such visibility today. Under the current DTC/street-name system, issuers use the NOBO/OBO process to request beneficial owner information through layers of intermediaries. Innovators have proposed solutions to manage each of these processes, independent of issuer consent or involvement.

4. Questions for the Commission Regarding Issuer Consent and Tokenization

As the Commission considers its innovation exemption, it must be able to answer the following questions to ensure that its actions are consistent with its statutory authority, adherence to technology neutrality, and promoting innovation without favor to incumbent practices.

Investor Protection Rationale

- What specific investor harms does the Commission believe an issuer-consent requirement would address? Are there particular concerns about third-party tokenization structures conferring full shareholder rights in a manner consistent with long-standing SEC NAL precedent that are not already resolved by existing law?

- What evidence or data would the Commission find helpful in evaluating the benefits and risks of third-party tokenization, and, given the collective action problem we have highlighted with respect to native issuances, how would the forthcoming innovation exemption generate sufficient empirical data to inform future rulemaking if third-party tokenization is excluded from its scope (or issuer consent to tokenization is a prerequisite)?

Consistency with Existing Legal Framework

- How is an issuer-consent requirement consistent with existing investor rights under Section 4(a)(1) of the Securities Act to freely resell unrestricted registered classes of publicly-listed equity securities? How would conditioning tokenization on issuer consent not effectively give an issuer a veto right over aftermarket transfers of unrestricted registered classes of publicly-listed equity securities in a manner that amounts to rulemaking under the Securities Act?

- How does an issuer-consent requirement fit within the framework of Rule 17Ad-20, which prohibits transfer agents from effectuating transfers where an issuer has imposed restrictions on ownership by securities intermediaries? Note the policy rationale underlying that rule—that issuer restrictions on intermediary holdings create the very inefficiencies Congress sought to avoid through Section 17A—cuts hard against an issuer-consent requirement here. How does the Commission plan on addressing any 180 degree policy turn on the same issues addressed in the adoption of Rule 17Ad-20 that would result from an issuer consent requirement?

- The Commission staff's own statement on tokenized securities acknowledges that "the format in which a security is issued or the methods by which holders are recorded (e.g., onchain vs. offchain) does not affect application of the federal securities laws." If format does not change legal character, what is the basis for introducing an issuer-consent requirement for tokenized securities where no such requirement currently exists?

- Given that Exchange Act Section 36 authorizes the Commission to grant exemptions from Exchange Act provisions but does not authorize it to impose new conditions that modify or limit rights under the Securities Act, why does the Staff believe it can condition Exchange Act exemptive relief on issuer consent without undertaking Securities Act rulemaking to abrogate or modify investor access to Section 4(a)(1) of the Securities Act?

Precedent and Consistency

- How does the Staff reconcile a potential issuer-consent requirement with the Commission's 2008 approach to unsponsored ADRs, where issuer consent was explicitly considered and rejected as contrary to investor interests? Unsponsored ADRs are structurally analogous to third-party tokenization—if depositary receipt programs can operate without issuer consent for cross-border equity access, why should the same principle not apply to domestic tokenization that grants full shareholder rights? Note too the rapid adoption and troves of empirical data that followed the Commission's approach to unsponsored ADRs in 2008, which, if replicated with tokenization, would provide the Commission with valuable empirical data to inform future rulemakings.

- The Commission's approval of Nasdaq's tokenized securities proposal and the Staff's DTC no-action letter both proceeded without conditioning relief on issuer consent. If these recent regulatory actions were found to be consistent with the Exchange Act's

requirements absent issuer consent, what has changed to justify imposing such a requirement now?

- As part of the innovation exemption, is the plan that the Commission will abandon its Staff's long-standing guidance and NALs regarding custodial receipt letters since in all of these letters SEC Staff supported a no separate security outcome for depository receipts and did not condition any such relief on issuer consent?

Competitive and Market Structure Concerns

- Issuers have natural incentives to avoid the switching costs associated with technological migration, even where tokenization would clearly benefit their shareholders. How does the Staff plan on avoiding an insurmountable collective action problem that effectively prevents tokenization from reaching competitive scale where issuer consent is a prerequisite?

- How would an issuer-consent requirement that entrenches legacy exchanges—who can leverage existing issuer relationships to maintain closed-loop market structures—foster innovation and competitiveness in US capital markets in a manner that is consistent with the Commission's mission and statutory mandates?

Efficacy of Issuer Consent as a Risk Mitigation Tool

- Market incumbents have cited contagion risk, reputational harm, and loss of shareholder visibility as justifications for issuer consent. How would issuer consent effectively address any of these concerns? Wouldn't they persist regardless of whether an issuer has approved of tokenization?

- With respect to contagion risk specifically, isn't that a market structure concern best addressed through structural safeguards rather than an issuer-consent mechanism?

- On shareholder visibility, isn't it the case that issuers already lack direct visibility into their shareholder base under the current DTC/street-name system and instead must rely on the NOBO/OBO process through layers of intermediaries?

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