SEC's "Innovation Order" for Stock Tokenization Creates New Obligations for Public Companies

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The Securities and Exchange Commission ("SEC") issued an order on Sept. 17, 2026, which facilitates the ability of third-party trading platforms to create and execute trades of tokenized equity securities and places the burden on public companies to prevent unwanted third-party tokenization of their equity securities.

The order, which SEC Chairman Paul S. Atkins referred to as the "Innovation Exemption," permits parties unrelated to public companies to operate blockchain-based Tokenized Securities Venues (each a "TSV") exempt from the definition of "exchange" under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for five years. Under the Innovation Exemption's notice-and-objection framework, a TSV must provide written notice to the issuer (the "Issuer Notice") of any of its stock which the TSV desires to tokenize and list on its trading platform, and that issuer has 30 days from receipt of the Issuer Notice to opt out of having its stock tokenized and traded on the TSV's platform. Numerous prominent public companies have already objected to Issuer Notices, utilizing the opt-out framework to prevent tokenization of their company securities.

New Role for TSVs in the Equity Trading Market

In a press release, the SEC described the Innovation Exemption as a temporary measure meant to serve as an interim policy bridge to facilitate and lightly regulate tokenization of National Market System ("NMS") stock. When a party "tokenizes" stock, it creates a digital version of that stock—a "token"—so that ownership records are maintained and change hands through distributed ledger technology, rather than by instructing a broker, transfer agent or clearing agent. The Innovation Exemption only covers TSVs that create and trade NMS shares that carry the same economic and voting rights as the underlying shares, excluding tokens that are merely pegged to track share price. Effectively, tokenization does not alter the share itself but does change how ownership and transfers are recorded and effectuated.

The order allows third parties unrelated to public companies to tokenize U.S.-listed securities and allows designated TSVs to offer those tokens for trading, subject to certain per-platform volume limitations and other conditions. Before a TSV can list a company's stock, it must send an Issuer Notice to the company, and the company has 30 days from receipt of the Issuer Notice to object and opt out of the TSV's listing. If the company fails to object to an Issuer Notice, the TSV that sent the notice may list and allow trades of that company's token.

While having a company's securities tokenized can allow for more demand for its securities, doing so is not without risk to the company, and companies are not otherwise compensated for taking on this risk. A company can be subject to reputational risk if a TSV suffers a smart contract hack or liquidity crisis or becomes subject to a regulatory enforcement action. TSVs, by their nature, could also siphon off trading volume, risking widening bid-ask spreads on primary trading markets. Further, the integration of TSVs into the corporate governance and voting process further may make it more difficult for holders of tokenized shares to vote their securities, raising the possibility of

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disputes during proxy season. Over 50 well-known public companies have objected to Issuer Notices, including Amazon, Apple, Dell, Intel, Nvidia, Tesla, Verizon and Walmart.

Obligations and Considerations for Public Companies

The order-imposed 30-day response framework has several practical implications for public companies. While the order requires TSVs to make Issuer Notices public, there is no centralized SEC repository that tracks Issuer Notices or company objections (though the SEC does list all TSVs operating under the exemption order on its website).

To avoid unwanted or unexpected consequences, companies should:

- **Review the Mailing and Email Addresses on Exchange Act Reports:** Under the order, a TSV must send an Issuer Notice to the physical or email address for the company's principal executive office listed on the cover page of the company's Exchange Act reports. The 30-day clock starts as soon as an Issuer Notice arrives via mail or email at the listed address, even if it takes additional time to reach a company employee authorized to issue an objection. Accordingly, public companies should ensure that Exchange Act filings reflect an address sufficient for Issuer Notice intake.
- **Adopt Intake and Evaluation Processes in Advance:** Because the Innovation Exemption order operates on a TSV-by-TSV basis and one-time, industry-wide blanket opt-outs are not permitted, public companies may receive multiple Issuer Notices from different TSVs. Accordingly, companies should formulate a reusable decision framework ahead of time to determine whether the company will object to the Issuer Notice. In addition, the company should inform its officers, directors, in-house counsel and mailroom staff of Issuer Notices and the 30-day opt-out window.

Key Impact on Issuers

The Innovation Exemption creates a high-risk potential for unintended third-party tokenization, which could expose public companies to uncompensated risks. The main takeaway for public companies is that the 30-day response window limits the timeframe for directors and officers to make informed decisions. Companies must therefore determine their views on tokenization on an expedited basis, be aware of the presence and risks of Issuer Notices and calibrate their mailroom and intake policies accordingly.

For more information about the SEC's Innovation Exemption order, TSV Issuer Notices and their implications for your company, please contact a member of the Haynes Boone Capital Markets and Securities Practice Group.

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