COIN CENTER

Comment of Coin Center to the Securities and Exchange Commission on Order Granting Temporary Conditional Exemptive Relief [1]

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To whom it may concern:

Coin Center is an independent nonprofit research and advocacy center focused on the public policy issues facing cryptocurrency technologies such as Bitcoin and Ethereum. Our mission is to build a better understanding of these technologies and to promote a regulatory climate that preserves the freedom to innovate using open blockchain networks. We do this by producing and publishing policy research from academics and experts, educating policymakers and the media about blockchain technology, and by engaging in advocacy for sound public policy.

We thank the Securities and Exchange Commission for the opportunity to comment on its *Order Granting Temporary Conditional Exemptive Relief*, referred to here as the "Innovation Exemption" or the "Exemption." We welcome the Commission's efforts to accommodate innovation in securities markets. To fulfill that objective, the Commission should also clarify where its jurisdiction ends. The open-source development on which these markets depend should not require registration or exemptive relief merely because others could theoretically use the resulting software to conduct securities transactions.

This comment makes two recommendations. First, the Commission should issue formal guidance recognizing the First Amendment limits on its authority over software publication and neutral blockchain infrastructure, supported by the Commission's internal procedures that respect those limits during investigations and enforcement. Second, it should clarify that an independent developer does not become part of a Tokenized Securities Venue (TSV) merely because the venue later adopts the developer's published software. Neither protection should depend on another party's eligibility for or compliance with the Innovation Exemption.

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[1] 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

I. Clarify the Commission's jurisdictional boundary between publication of open-source software and regulated conduct.

An effective step the Commission can take to foster innovation in the United States is to clarify and publicly articulate that merely developing and publishing open-source software does not require registration or exemptive relief under federal securities laws. The Innovation Exemption may help market participants build securities businesses on open networks, but those networks depend on a more foundational class of innovators: developers who publish software that anyone can inspect, use, modify, and improve. These developers should not have to invoke an exemption to exercise their First Amendment rights.

The Commission's own explanation of the Exemption demonstrates why protecting that work matters. The Innovation Exemption identifies "fairness, efficiency, and transparency" as regulatory objectives and requires smart contracts to be auditable and public, deployed on a "public, permissionless distributed ledger."[2] It also explains that this openness enables participants and third parties to identify vulnerabilities and assess risks.[3] The Commission thus recognizes the benefits of open development to justify its approach to investor protections and should give the people who produce those benefits a clear statement that publishing these tools does not make them regulated intermediaries.

Then-Commissioner Hester Peirce articulated the appropriate boundary: "People who do nothing more than write open-source code for other people to use should not have to register with the SEC."[4] In her statement accompanying the Exemption, she likewise explained: "An investor does not need an exemption to avail herself of permissionless smart contracts that mediate peer-to-peer trading."[5] The Commission should adopt this distinction. Developers should have clear guidance that the Commission recognizes the limits of its jurisdiction. They should not have to establish those limits at their own expense in an enforcement action brought by a future Commission.

Without that clarification, the Exemption could compound the uncertainty facing the developers whose work makes innovation on a blockchain possible. A future Commission might

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[2] *Order Granting Temporary Conditional Exemptive Relief, Securities Exchange Act Release No. 34-106402*, at 17–18 (Sept. 17, 2026), https://www.sec.gov/files/rules/exorders/2026/34-106402.pdf .
[3] *Id*. at 18–19.
[4] Hester M. Peirce, Commissioner, U.S. Sec. & Exch. Comm'n, *Base Case: Remarks at the IC3 Blockchain Camp* (June 2, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-ic3-blockchain-camp-060226.
[5] Hester M. Peirce, Commissioner, U.S. Sec. & Exch. Comm'n, *Slumber Number: Statement on the Innovation Exemption* (Sept. 17, 2026), https://www.sec.gov/newsroom/speeches-statements/peirce-slumber-number-innovation-exemption-statement-091726. .

cite a business's reliance on the Exemption and demand to know why an independent software developer failed to do likewise. The Innovation Exemption appropriately states that reliance on it creates no presumption that a TSV is an exchange.[6] It should also state that another person's reliance on the Exemption creates no inference that developing or publishing the underlying software requires registration or relief.

The relevant distinction is between publishing tools and undertaking regulated activities. Blockchain node clients, smart contracts, and user interfaces allow people to transact without entrusting their affairs to an intermediary. The publication of these tools, on their own, does not establish that the developer operates a securities business, even when the tools are designed for securities transactions. Where a publisher separately undertakes potentially regulated activities, the Commission should identify those activities and the statutory basis for any resulting obligations. Formal guidance would recognize the constitutional limits that already constrain the Commission's authority and give its staff a framework for respecting them.

Coin Center's April 2026 letter to the Commission offers a framework for identifying this constitutional boundary through two specific principles: "First, that the First Amendment protects the publication of software, data, technical designs, and neutral communications tools. Second, that registration requirements are only constitutionally permissible as prior restraints where a person takes another's financial affairs in hand in the traditional sense of an agent, principal, custodian, advisor, or manager who is exercising client-specific discretionary authority."[7]

In the letter, Coin Center makes three specific recommendations to the Commission:

- First, "that the Commission issue formal guidance stating that the First Amendment limits SEC jurisdiction over neutral software publication and neutral web and blockchain infrastructure, and that ordinary securities regulation becomes more plausible only where agency, custody, client-specific discretion, or similar professional conduct is present."
- Second, "that the Commission state that [deterministic validation, consensus and network processing, presentation of public information, and publication or

[6] *Order Granting Temporary Conditional Exemptive Relief*, Securities Exchange Act Release No. 34-106402, at 13 n.37 (Sept. 17, 2026), https://www.sec.gov/files/rules/exorders/2026/34-106402.pdf.
[7] Coin Center, *Letter to the SEC Regarding First Amendment Limits on Jurisdiction* (Apr. 2026), https://coincenter.org/letter-to-the-sec-regarding-first-amendment-limits-on-jurisdiction/. .

deployment of user-directed transaction tools][8] are presumptively ministerial or communicative and therefore presumptively protected absent additional facts showing client-specific professional conduct."

- Third, "that the Commission adopt an internal checklist and written-review process for investigations and Wells notices implicating software publication, web services, or blockchain infrastructure."[9]

Coin Center's April letter also provides an analytical framework for determining when the Commission's jurisdiction is limited by the First Amendment and when it is not. The framework poses three questions:

- "First, does the person have custody of, or unilateral control over, the securities or funds of others? If the answer is yes, the First Amendment limit is much weaker and ordinary regulation may apply because custody or unilateral control is a strong marker of conduct rather than publication, as a person who can seize, redirect, hold, or dispose of another's assets is in a very different posture from a publisher or infrastructure provider."
- "Second, even without custody, does the person *retain ongoing discretionary power* over how securities transactions are facilitated *after or alongside publication*? If not, and the person is publishing software or providing tools of general use, the activity is firmly protected by the First Amendment. Mere publication of tools that investors choose to employ to perform securities transactions does not become regulated conduct just because the tools are useful for conducting transactions that once would have required an intermediary. This includes publishing new versions of software, recommending updates, or attempting to persuade users to adopt improved or modified tools. Those activities remain speech, even where they are effective in influencing user behavior."

[8] Coin Center's April 2026 letter outlines four categories of activities that are "presumptively ministerial or communicative": 1. Deterministic integrity and validation functions: "Those activities that consist of deterministic integrity and validation functions." 2. Consensus ordering and network processing: "Those activities that consist of consensus ordering and network processing, as these are incidents of network operation and communication, not agency." 3. Repackaging or reorganizing public information: "Those that consist of repackaging or reorganizing public information, which remain protected so long as the service does not provide individualized financial advice in light of a client's specific objectives, risk tolerance, or circumstances per Lowe." 4. Publishing or deploying general transaction tools: "Those activities that consist of publishing or deploying general transaction tools." *Id*.

[9] *Id*.

- "Third, where some ongoing discretionary role is retained, is that role merely ministerial or communicative, or is it part of an agency, fiduciary, or client-specific advisory relationship of the sort described in *Lowe v. SEC*?"[10]

By issuing formal guidance that confirms the Commission's jurisdiction within the First Amendment, and by adopting internal procedures for identifying its jurisdiction, the Commission can better foster innovation while enforcing against actual persons or entities that engaged in conduct subject to federal securities laws. Software developers, and ultimately the Commission's staff, would have clear guidance on what is protected speech and what is regulated conduct.

II. Separate and protect independent software developers from being encompassed into a "group of persons" under the definition of a Tokenized Securities Venue.

The Innovation Exemption explains that a TSV may provide an Automated Market Maker (AMM) Liquidity Pool by exercising control over it, including through deployment of an AMM smart contract. However, the Exemption does not distinguish deployment undertaken as part of operating a venue from publication of a smart contract by an independent software developer that an unrelated venue later adopts. That distinction matters: another person's subsequent selection of publicly available software should not make its publisher part of the venue's "group of persons."[11]

The Commission does later clarify that "[a] person that solely performs the administrative act of encoding a smart contract to whitelist an AMM Liquidity Pool would not be providing an AMM Liquidity Pool."[12] However, this particular clarification is specific to one activity: "encoding a smart contract to whitelist an AMM liquidity pool." Therefore, where an independent software developer merely deploys a smart contract for an AMM liquidity pool that a separate TSV later selects and designates as the pool for its operations, the developer is at risk of being encompassed into the "group of persons" because the Exemption leaves that matter unresolved..

The Innovation Exemption provides qualifying TSVs with temporary, conditional relief from the definition of exchange. It does not, however, resolve the status of an *independent* software developer whose previously published or deployed smart contracts are subsequently adopted by

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[10] *Id.*
[11] *Order Granting Temporary Conditional Exemptive Relief*, Securities Exchange Act Release No. 34-106402, at 1 (Sept. 17, 2026), https://www.sec.gov/files/rules/exorders/2026/34-106402.pdf.
[12] *Id.* at 9 n.29.

a TSV. The Commission should clarify that such adoption does not make the developer part of the TSV's "group of persons" without additional facts establishing the developer's participation in operating the venue. This clarification should apply regardless of whether the venue qualifies for or complies with the Innovation Exemption.

III. Conclusion

Coin Center urges the Commission to complement the Innovation Exemption with formal guidance recognizing First Amendment limits on its authority over software publication and neutral blockchain infrastructure, which is supported by internal procedures that apply those limits during investigations and enforcement. That guidance should also address software designed for or used by TSVs and clarify that an unrelated TSV's subsequent adoption of a developer's already-published smart contract does not make the developer part of that venue. Protection for publication should not depend on temporary exemptive relief or another party's compliance with its conditions. These steps would provide lasting clarity for software developers and foster innovation in the United States while preserving the Commission's authority over separately identifiable regulated conduct.

Sincerely,

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