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REGULATORY INSIGHT

The Real Stock on a New Rail: The SEC's Innovation Exemption and Europe's Tokenization Question

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On 17 September 2026, the US Securities and Exchange Commission did something that a year ago would have seemed unlikely: it created a supervised route for blockchain versions of US-listed shares to be traded on chain, outside the traditional stock exchange system, using the same automated trading pools that power decentralised finance. The order, which the SEC calls the "Innovation Exemption", is narrow by design. But its direction is clear, and it arrived two days after Congress failed, again, to pass a law on digital asset markets.

For European firms, it raises an uncomfortable question. Tokenized shares fall outside MiCA, and the EU's dedicated regime for trading securities on blockchains has attracted few participants in three and a half years. This article explains, in plain terms, what the SEC has allowed, why it matters, how Europe's rules compare, and what operations and compliance teams at European firms should be watching.

First, the Key Terms

- **Tokenized share.** A digital token, recorded on a blockchain, that represents a share in a company. Depending on how it is built, it may carry the full rights of the share, or it may only track the share's price.
- **Blockchain (distributed ledger).** A shared, tamper-resistant record of who owns what, kept in sync across many computers instead of in one central database. EU legislation calls this distributed ledger technology, or DLT.
- **Smart contract.** A program stored on a blockchain that runs automatically when its conditions are met, for example settling a trade.
- **Automated market maker (AMM).** A smart contract that holds a pool of two assets, for example a tokenized share and a stablecoin, and sets the price by formula as people trade against the pool. There is no order book and no human market maker.
- **Liquidity provider.** A firm or person that deposits assets into a pool so that others can trade against it, earning fees in return.
- **Stablecoin.** A crypto-asset designed to hold a stable value, usually one US dollar or one euro.
- **Permissioned.** Open only to approved participants, as opposed to anyone with a wallet.

What the SEC Approved

The order grants two conditional exemptions under the Commission's general power to exempt firms from securities rules.¹ The first creates a new kind of platform, a "tokenized securities venue", where buyers and sellers of tokenized listed shares can trade without the venue counting as an "exchange". In practice, that means it does not need to register as a stock exchange or as an alternative trading system, and Regulation NMS, the set of rules that links US stock markets together and requires trades to get the best available price, effectively does not apply to it.² The

second exemption allows firms that supply liquidity to those venues, trading only for their own account and holding no customer assets, to do so without registering as dealers.

The order took effect immediately and runs for five years, to 17 September 2031. The Commission has asked for public comment on all of it, and Chairman Atkins has described it as a bridge to permanent rules rather than a substitute for them.³ In a Bloomberg Television interview on 22 September, Jamie Selway, Director of the SEC's Division of Trading and Markets, was reported as putting the reasoning plainly: "If we allow tokenization to continue to grow offshore, that is true fragmentation, so we bring it home."⁴

How Trading Works: Automated Pools, Behind a Gate

The most striking feature of the exemption is how trades happen. On a conventional exchange, buy and sell orders meet in an order book. On a tokenized securities venue, a client trades against an automated market maker: a pool holding, say, tokenized Apple shares on one side and a dollar stablecoin on the other, with the price moving as the balance of the pool changes. This is the model used by decentralised crypto exchanges. The order requires the smart contracts that run the pools to be public and auditable, and to operate on a public blockchain that anyone can read.⁵

Access to the pools, however, is restricted. Only participants the venue has verified, through identity and eligibility checks, may trade or supply liquidity. This is enforced technically, through lists of approved wallets or restrictions built into the token itself, so that an unapproved wallet simply cannot hold or trade it. The Commission did not limit who can be approved, so verified retail investors, institutions and broker-dealers may all take part.⁶

There are firm limits on what can trade against what. Tokenized shares may be paired only with other tokenized shares, payment stablecoins, other crypto-assets that are not securities, or tokenized money market funds. Borrowing and leverage are prohibited. And a protocol with no identifiable operator cannot qualify: someone

must be accountable for the venue. As Commissioner Peirce put it in her accompanying statement, "This order is not about decentralized finance."⁷ The technology is borrowed from DeFi; the supervision is not.

The Real Stock, Not a Lookalike

The exemption applies only to tokens that are, in substance, the share itself. A qualifying token must give its holder the same rights as a shareholder: the same stake in the company, the same dividends, the same votes and the same share of what is left if the company is wound up.⁸ The token can be issued by the company or on its behalf, or by an unrelated third party. Tokens that only track the share price, without the rights of ownership, are excluded. Where a third party tokenizes a stock, it must pass shareholder communications and voting materials through to token holders at no cost to the company or the investor.

This distinction is the core of the SEC's approach, and it is worth understanding clearly because both kinds of product are sold to investors:

- **A full-rights tokenized share** is ownership. The holder is, legally, a shareholder or holds an entitlement to a share kept by a custodian. If the token issuer fails, the holder's claim is to the share.
- **A price-tracking token or certificate** is a contract. The holder gains or loses as the share price moves, but has no vote, may not receive dividends directly, and is exposed to the issuer of the product if it fails.

Selway's concern about growth offshore refers to the second kind: platforms outside the United States offering blockchain products that track the price of US shares without the rights of a shareholder. The exemption does not compete with that market by allowing more of the same. It competes by offering what those products cannot, which is ownership of the real stock, on a new kind of infrastructure. Commentators note that it is not yet clear which legal structures will satisfy the equivalence test, other than tokens representing entitlements held through a custodian of the underlying shares.⁹ That question will shape which firms can use the exemption first.

A Controlled Test

The exemption is deliberately small. Eligible shares are divided into two tiers:¹⁰

- **Tier 1** covers the largest US companies, those in the S&P 500 and Russell 1000, plus certain high-volume exchange-traded products. A venue may offer at most 75 of them, and its trading in each is capped at 0.25% of that stock's average daily volume across US markets in the previous month.
- **Tier 2** covers other listed shares. A venue may offer up to 250, with a cap of 2.5% of average daily volume.

To put the Tier 1 cap in perspective: if a stock trades USD 1 billion a day across US markets, a venue's trading in it is limited to about USD 2.5 million a day. A venue that breaches a cap a second time must stop trading that stock for three months.

Transparency is the other half of the bargain. Venues must publish every trade, free and in machine-readable form, within ten minutes, including price, size, direction and the addresses of the pool contracts. They must halt trading in a stock whenever its main listing exchange halts it. Issuing new shares through a venue is prohibited, and the exemption gives no relief from the rules on public offerings or investment funds.¹¹ In short, this is a supervised experiment in trading existing shares, kept small while the Commission watches how it works.

Regulating Without Congress

The timing matters. On 15 September, the Senate failed to advance the CLARITY Act, the bill that would set out how digital asset markets are regulated in the United States. It fell short of the sixty votes needed to end debate, amid disputes over ethics provisions, stablecoin rewards and safeguards against illicit finance.¹² Two days later, the SEC acted on its own authority.

That sequence carries a message. Tokenizing traditional securities does not need new legislation, because the instruments are already securities and the SEC already regulates them. The Commission has chosen to use the tools it has, within limits it

controls, rather than wait for a law that may not come. The signal to the market is that tokenization is coming, and that the United States intends it to happen under US rules, on US venues, run by US persons, which the order requires.

Europe: Outside MiCA, Inside the Pilot Regime

In the European Union, the starting point is different, and it is a common source of confusion. MiCA, the EU's crypto rulebook, does not apply to crypto-assets that qualify as financial instruments.¹³ A token that gives its holder the rights of a shareholder is, legally, a share. It is regulated in the same way as any other share: under MiFID II for trading and investment services, under the Central Securities Depositories Regulation for settlement and record-keeping, and under the Prospectus Regulation for public offers. Being on a blockchain does not change what it is.

The difficulty is that those rules were written for conventional infrastructure, with central depositories and intermediaries that a blockchain may replace. To allow securities to be traded and settled on a blockchain within the existing framework, the EU adopted the DLT Pilot Regime, which has applied since 23 March 2023.¹⁴ It creates three types of licensed blockchain market infrastructure:

- **A DLT multilateral trading facility**, a trading venue for tokenized securities.
- **A DLT settlement system**, which records ownership and settles trades on the blockchain.
- **A DLT trading and settlement system**, which combines both.

Each can receive targeted exemptions from rules written for conventional market infrastructure, for example the requirement to involve an intermediary or to settle in a traditional depository. In concept, the Pilot Regime is a much closer match to the SEC's exemption than anything in MiCA.

In practice, uptake has been limited. ESMA's review of the regime, covering the period to 31 May 2025, found three authorized infrastructures, CSD Prague, 21X and 360X, and very little live trading. ESMA identified restrictive size limits, problems

connecting with other systems, and limited access to settlement in central bank money as the main obstacles.¹⁵

A Regime Built for the Other End of the Market

The size limits are the starkest point of comparison. Under the Pilot Regime, shares may be admitted only if the company's market value is below EUR 500 million; bonds only if the issue is below EUR 1 billion; and investment funds (UCITS) only if they manage less than EUR 500 million. Each infrastructure is capped at EUR 6 billion in total.¹⁶ The SEC's Tier 1, by contrast, is made up of the largest and most traded companies in the US market. The American test is built around blue-chip shares; the European regime, as it stands, excludes them.

Europe is aware of the gap. In its December 2025 Market Integration and Supervision Package, the Commission proposed removing the per-instrument limits and raising the total ceiling to EUR 100 billion.¹⁷ Member States are still negotiating, and Council documents from September 2026 show a proposal from the Council Presidency for an even higher starting ceiling of EUR 300 billion, with several Member States still holding reservations.¹⁸ The reform would make the regime far more usable, but it will not be in force for some time.

Meanwhile, much of the retail demand in Europe for tokenized US shares is met by products of the kind the SEC excluded. Since September 2025, for example, EU clients of a major crypto exchange have been able to buy blockchain-based certificates that track the price of US shares such as Apple and Meta.¹⁹ These products may be lawful and useful, but they track prices; they are not shares. The United States has now drawn a clear line between the two, and built its supervised route on the side of ownership.

What This Means for European Firms

- **Classify the token before anything else.** A full-rights tokenized share, a price-tracking certificate and a crypto-asset under MiCA are three different instruments under three different sets of rules. Look at the rights the holder actually receives: ownership, votes and dividends point to securities law; price exposure alone points to a derivative or certificate, which is also outside MiCA; only a token that is neither is likely to fall under MiCA. Getting this wrong means applying for the wrong licence and giving clients the wrong disclosures.
- **Follow the Pilot Regime negotiations.** The final limits will decide whether the regime can host tokenized trading in large companies. Firms planning blockchain market infrastructure should model their plans against both the current limits and the proposed ones.
- **Assess the US route on its own terms.** A tokenized securities venue must be a US person, and the order gives no relief to registered firms trading on it. A European firm with US ambitions will need a US structure and US registrations; an EU licence or passport does not carry over.
- **Review price-tracking products against the new benchmark.** Issuers and distributors of tracker certificates on US shares should expect supervisors and investors to compare them with tokens that carry full shareholder rights. Client documents should state plainly what the holder does and does not own, and who they are exposed to if the issuer fails.
- **Plan for rules that will change.** The SEC's exemption is temporary and subject to comment and later rulemaking; the EU regime is mid-reform. Projects built on either should be designed so they can adjust without starting over.

Conclusion

The Innovation Exemption is a small, cautious and temporary order. Its caps are low, its conditions are strict, and it allows nothing in the issuance of new shares. But it sets a principle that will outlast its terms: tokenized share trading should happen onshore, under domestic supervision, in instruments that carry the full rights of the shares they represent. The United States has turned that principle into a working

route with a single order. Europe has the legal framework for the same outcome in the DLT Pilot Regime, but in a form that, until the current reform is finished, cannot accommodate the companies investors most want to trade. The competition for tokenized markets has started. The question for Europe is no longer whether it has a regime, but whether that regime will be ready in time.

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