

Practical Implications Of SEC's New Crypto Staking Guidance

By **Gregory Strong and Jason Schwartz** (July 14, 2025)

On May 29, the U.S. Securities and Exchange Commission's Division of Corporation Finance issued a staff statement opining that routine, protocol-level staking of native tokens on public proof-of-stake blockchain networks, as well as many types of staking services, does not constitute an offer or sale of securities subject to SEC enforcement oversight.[1]

This commonsense clarification should provide significant comfort to businesses that wish to provide a variety of staking services, including node operators and custodial platforms. At the same time, the statement takes care to exclude similar-sounding yield-generation schemes from the categories of activities that the new guidance deems to be outside the purview of SEC regulations.

It bears noting that the statement only reflects the SEC staff's current interpretation of the law, does not represent a formal position taken by the SEC and does not change any current law.

Although not binding, the statement represents a significant shift from the prior administration's enforcement approach, which included settled SEC charges against Payward Ventures Inc. and Payward Trading Ltd., together, doing business as Kraken;^[2] enforcement actions against Coinbase Global Inc.^[3] and Binance Holding Ltd.^[4] alleging that custodial staking services were investment contract arrangements that involved the illegal sale of unregistered securities; and an enforcement action against Consensus Software Inc.^[5] alleging that noncustodial Ethereum staking similarly involved illegal sales of unregistered investment contract securities.

All three of the nonsettled actions have been dropped since the new administration took office.

Several key insights emerge from the statement, including that protocol staking does not constitute securities offerings when properly structured within the staff's framework, allowing U.S. staking service providers to support proof-of-stake security without the risk of being required to register their services as a securities offering with the SEC.

Second, the critical distinction is between administrative/ministerial activities versus entrepreneurial/managerial activities — to benefit from the staff's position, staking service providers must avoid discretionary decision-making and guarantees of staking rewards.

Last, the statement addresses three specific staking models with defined requirements, providing a clear road map for industry participants to structure their product offerings in compliance with securities law.

This article analyzes the statement's consideration of three specific staking models (solo/self-staking, delegated staking and custodial staking); examines the types of staking arrangements that fall outside the statement's scope; and discusses the practical implications for protocol developers, validators and exchanges. We also review the



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significant U.S. tax uncertainties that remain unaddressed.

Covered Staking Models

The staff clarified its view that there is no offer or sale of securities when all conditions below are met.

Practical Implications of the SEC Staff's New Staking Guidance

| | Who Performs Validation | Who Owns the Tokens | Role of Third Party | Staking Reward Source |
|--|--|---|--|---|
| Solo/Self-Staking | Token holder runs own node | Token holder | May include others acting together to operate a node | Direct protocol rewards |
| Delegated Staking | Independent node operator | Token holder | Validator provides ministerial tech service; fixed fee | Direct protocol rewards |
| Custodial Staking | Custodian or third-party node operator | Custodian has control of the staked tokens, but customer (of the custodian) retains ownership of tokens | Custodian stakes only per customer instruction; cannot rehypothecate; holds assets in a manner not subject to third-party claims | Direct protocol rewards collected by custodian on behalf of token owner |
| Providing Ancillary Services (e.g., slashing insurance, pooled minimums, early unbonding) | Independent node operator/custodian or third-party node operator | Token holder/custodian has control of the staked tokens, but customer retains ownership | Convenience only; no extra yield; no discretionary asset use | N/A |

Under the Howey test, derived from the U.S. Supreme Court's 1946 decision in SEC v. W.J. Howey Co., an "investment contract" security exists when there is an "investment of money in a common enterprise premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." In evaluating protocol staking, the staff focused on the final Howey prong — profits derived from the efforts of others — and determined it is not satisfied in the covered staking scenarios.

The staff opined that, under Howey, both solo stakers and participants in standard staking services do not rely on the entrepreneurial or managerial efforts of others, because: (1) any staking rewards received are determined by the protocol code, not a service provider; (2) any services provided to the user are appropriately considered administrative or ministerial, rather than entrepreneurial; and (3) no third party guarantees or enhances the amount of the user's returns.

In addition, in each covered model, the staff states that users maintain ownership of their crypto-assets — including in the case of custodial staking, where token holders are intended to retain ownership of their tokens. However, with respect to those staking programs where multiple users' tokens are pooled together at a single address, market participants should carefully consider whether users in fact continue to retain ownership of their tokens.

What the Statement Does Not Cover

It should be noted that the statement does not address all forms of staking, including the following examples of popular staking-related arrangements that do not fall under the scope of the covered staking model:

- So-called liquid staking arrangements where users receive a separate and transferable asset representing their staked position — such as stETH or rETH — often with its own market value, entitling the holders of the liquid staking token to the underlying staking rewards;
- Emerging concepts like restaking — reusing staked assets as collateral to secure other protocols or to earn additional yields — which typically involves more complex arrangements, potentially with multiple layers of risk arising from multiple layers of blockchain-based protocols;^[6]
- Any staking program advertising a fixed interest rate or guaranteed return, for example, a crypto exchange offering a staking program with a guaranteed 10% annual yield regardless of network conditions;
- Cross-chain staking arrangements where tokens from one network, such as bitcoin, are used to secure different protocols; and
- Crypto-assets that have "intrinsic economic properties" like passive yield, or rights to the future income, profits or assets of a business, independent of whether the assets are staked to secure a blockchain network.

In addition, the staff's analysis does not specify whether the source of staking rewards affects its conclusions, particularly for networks where rewards are derived from transaction fees rather than token inflation that is a component of the protocol, such as Layer 2 sequencer operations, where validators earn processing fees that fluctuate with network usage.

Practical Implications for Crypto Companies

Protocol Developers

Protocol developers should consider implementing transparent, programmatic and algorithmic reward distribution systems that avoid built-in yield enhancement mechanisms, and allocate rewards directly to addresses that have staked or delegated assets.

In addition, they should consider minimizing discretionary parameters in smart contract architecture while ensuring governance mechanisms do not affect individual staking rewards.

Furthermore, they should consider providing clear delegation features for third-party validators, with network economics that are clearly documented and predictable, alongside building protocol documentation to support compliance analysis by clearly defining the administrative nature of validation activities.

Validators/Staking Infrastructure Providers

Validators and other staking infrastructure providers should consider limiting operations to technical validation functions while maintaining detailed records that demonstrate their ministerial role. Their service scope may focus on implementing robust security and uptime measures with transparent reporting on validator performance.

They should also consider clearly disclosing all fees up front, structured as fixed percentages or flat rates while avoiding performance-based arrangements, and emphasizing network participation over returns, focusing on technical capabilities and reliability while avoiding language that suggests investment management.

Exchanges and Custodians

Exchanges and custodians should consider implementing clear customer asset segregation with detailed records of beneficial ownership and real-time visibility into staking positions, while avoiding the use of customer assets for platform operations or other purposes. They should consider clearly defining ownership rights in user agreements with comprehensive risk disclosures explaining unbonding periods and potential slashing risks.

Additionally, they should also consider including systems to track protocol versus platform-generated returns in compliance, maintain audit trails for all customer transactions, and develop procedures for handling network forks, upgrades and slashing events.

U.S. Tax Considerations Regarding Staking

Because the statement is provided by the SEC staff, it does not address U.S. tax implications. Unfortunately, staking through a U.S. delegate remains subject to significant tax uncertainty, which market participants should bear in mind.

ETFs and Power to Vary

A crypto exchange-traded fund would fail to qualify as a grantor trust, and could instead be subject to U.S. corporate tax, if there were "a power under the trust agreement to vary the investment of the certificate holders," which the Internal Revenue Service has defined in Title 26 of the Code of Federal Regulations, Section 301.7701-4, as managerial power over

the trustee funds to take advantage of variations in the market.

Because validators earn execution-layer staking rewards by conducting real-time auctions for block space, staking by a crypto ETF might be viewed as an exercise of managerial power that violates the no-power-to-vary requirement, even if the SEC views validation as ministerial.

Deductibility of Staking Service Fees

Many retail staking services report staking yield to their customers net of fees. It is unclear whether deducting fees from staking yield is appropriate for tax purposes unless staking is a trade or business for U.S. tax purposes. Investment expenses, such as broker fees, typically are nondeductible to individuals.

Taxation of Consensus-Layer Rewards

The IRS' informal position is that all staking yield is taxable as ordinary income when a U.S. taxpayer has the ability to dispose of the staking rewards.

However, many U.S. taxpayers take the position that U.S. tax law does not authorize the IRS to tax the first owner of property — e.g., farmers when they harvest crops, miners when they extract ore, or validators when they are credited newly minted tokens for proposing or attesting to blocks. Those U.S. taxpayers pay tax on their execution layer rewards, but do not pay tax on their consensus layer rewards until they dispose of the newly minted tokens.

Income Tax on Foreigners

The IRS appears to believe that staking income is income from services performed for users of the relevant blockchain. The regular and continuous performance of services from within the U.S. generally is a U.S. trade or business.

Foreigners generally are subject to U.S. income tax, and are required to file U.S. tax returns, on income from a U.S. trade or business. Accordingly, foreigners risk being subject to U.S. income tax if they stake through a U.S. validator operator.

Withholding Tax on Foreigners

Foreigners generally are subject to 30% U.S. withholding tax on U.S.-source income that is not connected to a U.S. trade or business. Income from services is sourced by reference to where the services are performed.

Accordingly, even if staking is not a U.S. trade or business, foreigners risk being subject to withholding tax if they stake through a U.S. validator operator. If staking gives rise to U.S. withholding tax, U.S. validator operators could be liable for failing to withhold on rewards paid.

Unrelated Business Taxable Income for Tax-Exempt Entities

U.S. retirement accounts and other tax-exempt entities are subject to U.S. tax on income from businesses unrelated to their tax-exempt purpose. Accordingly, if — as the IRS appears to believe — staking is a service, tax-exempt entities risk recognizing unrelated business taxable income from staking directly or through a delegate.

Conclusion

The staff has concluded that core, protocol-level staking of network native tokens — whether performed directly, through delegated validators or via custodial pass-through programs — in many cases does not involve an offer or sale of securities. Applying the Howey test, the staff reasoned that staking rewards are coded into the network and flow programmatically, rather than from anyone's entrepreneurial efforts; validators and custodians provide only ministerial infrastructure services; and token holders retain ownership of staked tokens and bear network-level risks.

SEC Commissioner Hester M. Peirce applauded the clarification, stressing that it removes a regulatory cloud that had chilled U.S. participation in proof-of-stake consensus and aligns staking with the staff's earlier view that proof-of-work mining is likewise outside the securities regime.[7]

However, it is important to bear in mind that the statement constitutes only staff guidance, not binding law or even an official SEC statement, meaning future interpretations or SEC actions could modify this position. In addition, Carolyn A. Crenshaw, the current sole Democrat SEC commissioner, published a dissent, warning that the staff guidance may not survive judicial scrutiny and could foster regulatory whiplash if future commissions change course.

For crypto developers, validators and custodial platforms willing to keep staking strictly limited to protocol-driven rewards — with no fixed yields, profit-sharing rights, discretionary reinvestment or derivative liquid-staking tokens — the staff guidance offers a workable compliance blueprint.

Yet departure from the relatively narrow fact pattern provided by the staff, or any resurgence of investor-reliance factors, could revive securities law risk. Staking service providers should therefore be prepared to recalibrate if the SEC's balance between network functionality and investor protection shifts again.

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[1] <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>.

[2] SEC Press Release, Kraken to Discontinue Unregistered Offer and Sale of Crypto Asset Staking-As-A-Service Program and Pay \$30 Million to Settle SEC Charges (Feb. 9, 2023), at <https://www.sec.gov/news/press-release/2023-25>.

[3] SEC v. Coinbase Global, Inc., No. 23 Civ. 04738 (S.D.N.Y. filed June 6, 2023).

[4] SEC v. Binance Holdings Ltd., No. 23 Civ. 1599 (D.D.C. filed June 5, 2023).

[5] SEC v. Consensus Software Inc., No. 24 Civ. 04578 (E.D.N.Y. filed June 28, 2024).

[6] L. Cohen, G. Strong and S. Chen, Restaking and the evolution of blockchain security, Global Legal Insights: Blockchain & Cryptocurrency Laws and Regulations 2025 (Oct. 25, 2024), at <https://www.globallegalinsights.com/practice-areas/blockchain-cryptocurrency-laws-and-regulations/restaking-and-the-evolution-of-blockchain-security/>.

[7] <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-protocol-staking-052925>.