

SEC: CERTAIN “PROTOCOL STAKING ACTIVITIES” ARE NOT SECURITIES TRANSACTIONS

By Alexander C. Drylewski, Stuart D. Levi and Shaud G. Tavakoli

Alexander Drylewski and Stuart Levi are partners, and Shaud Tavakoli is a counsel, in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP.

Contact: alexander.drylewski@skadden.com or stuart.levi@skadden.com or shaud.tavakoli@skadden.com.

On May 29, 2025, the Securities and Exchange

Commission's ("SEC") Division of Corporation Finance issued a statement¹ providing that certain cryptoasset staking activities in connection with proof-of-stake ("PoS") networks do not create investment contracts that would require registration under the federal securities laws.

Although this guidance is non-binding and fact-dependent, it is a welcome development for platforms, staking service providers and crypto holders. It validates the long-held view among crypto advocates that staking is an essential mechanism to ensure the safe and reliable operation of a blockchain rather than an investment activity. It also marks the latest in a trend of reversals by the commission. The agency previously brought a number of enforcement actions alleging that custodial staking services were investment contracts subject to the SEC's regulatory purview.

Protocol Staking and Ancillary Services Defined

"Protocol Staking" is the process by which cryptoasset holders participate in the consensus mechanism of PoS networks by committing, or "staking," their assets to validate transactions and secure the network. In a typical PoS network, one must stake a defined amount of a digital asset to become a "node operator," and is not permitted to remove that stake for a period of time defined by the network (known as the "unbinding" period). The PoS system then randomly selects a node operator to serve as the validator to validate a set of transactions.

When staked, the cryptoasset itself cannot be transferred but the ownership of the asset does not change. Node operators earn rewards when selected as a validator, and can lose their stake (have it "slashed") if they act contrary to the network's rules or threaten its security. These rewards incen-

tivize participants to use their cryptoassets to secure and maintain the network. The more cryptoassets in a PoS network that are staked, the safer the network becomes. In most cases, the node operators comprise staking "pools" (*i.e.*, a large number of cryptoasset holders who have pooled their assets together).

There are three forms of Protocol Staking addressed in the statement:

Self (or solo) staking, through which the owner of the cryptoassets maintains ownership and control of the cryptoasset at all times.

Self-custodial staking, through which the cryptoasset owners participate in the PoS network validation process using self-custodial staking directly with a third party—*i.e.*, granting validation rights to a third-party node operator. The cryptoasset owner and third party split the rewards for self-custodial staking. This definition addresses the "pool" concept noted above.

"Custodial" staking, through which the cryptoasset owner grants custody of the asset to a custodian that in turn facilitates staking on behalf of the owner in exchange for a portion of the rewards. The cryptoasset owner is intended to retain ownership of the asset during custodial staking. The custodian does not use the deposited asset for leverage, trading, speculation or discretionary activities.

Importantly, the SEC statement also discusses various "Ancillary Services" to cryptoasset owners in connection with Protocol Staking. These include:

- Slashing coverage, where a service provider reimburses or indemnifies a staking customer against losses resulting from slashing.

- Early unbonding, where a service provider allows cryptoassets to be returned to an owner prior to the protocol’s unbonding period.
- Alternate rewards payment schedules and amounts offered by a service provider that differ from the protocol’s set schedule.
- Aggregation of cryptoassets to permit owners to aggregate their assets with those of other users to meet staking minimums (*e.g.*, into staking pools).

The SEC statement refers to Protocol Staking and related Ancillary Services as “Protocol Staking Activities.”

Protocol Staking Activities Are Not Covered by the Securities Laws

The SEC statement clarifies that Protocol Staking Activities are not among the specifically enumerated “securities” under the securities laws, including “investment contracts” under the rubric of the *Howey* test.

To qualify as an investment contract, a transaction must involve (i) an investment of money (ii) in a common enterprise (iii) with a reasonable expectation of profits (iv) derived from the entrepreneurial or managerial efforts of others.

Per the SEC statement, Protocol Staking Activities do not meet the “efforts of others” prong of *Howey*.

The SEC statement concludes that activities attendant to Protocol Staking—whether self-staking, delegating to a third party or using a custodian—are administrative or ministerial rather than entrepreneurial or managerial efforts. That is because rewards earned are a result of the partici-

part’s own actions in securing the network, not from the managerial efforts of a third party. For self (or solo) staking, rewards are payments to the cryptoasset holder in exchange for the services the node operator provides to the network. The same is true for self-custodial staking: Any rewards are derived solely from the participant’s role in maintaining the network rather than the success of the PoS network or a third party. So, too, for custodial arrangements: Although a custodian may take custody of the cryptoassets and, in some cases, may select a node operator, that does not satisfy the “efforts of others” requirement because those activities are administrative or ministerial in nature and do not involve managerial or entrepreneurial efforts.

Moreover, even where third parties are involved in connection with Ancillary Services, their roles are limited to administrative functions, such as facilitating staking or distributing rewards. The involvement of these third parties therefore does not rise to the level of managerial or entrepreneurial activity required under the “efforts of others” prong of *Howey*.

Key Points

The SEC statement provides clarity that common forms of staking do not, standing alone, constitute securities offerings. This is a meaningful step in the direction of providing concrete guidance regarding fundamental activities in the crypto space.

Perhaps the most noteworthy aspect of the statement is the commission’s view that Ancillary Services are not subject to securities regulation. Although the statement does not expressly demarcate the distinction between administrative versus managerial and entrepreneurial functions, it clarifies that various functions by service providers are

not sufficiently managerial or entrepreneurial to satisfy *Howey*. For example, the SEC states that slashing coverage is “similar to that offered by service providers in many types of traditional commercial transactions.” Early unbonding “merely shortens the protocol’s effective unbonding period as a convenience to the [cryptoasset] owner by reducing the burden of the unbonding period.” Likewise, alternate reward payment schedules and amounts are nothing more than an “optional convenience” afforded “in connection with the administration of rewards allocation and delivery.” And aggregation services are merely “part of the validation process, which itself is administrative or ministerial in nature.” These conclusions may be extrapolated to other, similar services.

On the other hand, the SEC statement is narrowly framed and fact-dependent. It addresses only prescribed Protocol Staking Activities and not all variations of staking, including “liquid staking” (*i.e.*, staking through a software solution that permits the cryptoasset owner to obtain another digital token to retain liquidity) and “restaking” (*i.e.*, using the same cryptoasset for staking on multiple networks).

The SEC’s guidance is also not binding. It does not foreclose contrary SEC guidance or enforcement activity. Nor was the statement unanimous. The sole remaining Democratic-appointed commissioner, Caroline Crenshaw, issued a dissent asserting that the SEC’s guidance conflicts with and “does not erase” court decisions in now-dismissed enforcement actions. According to Commissioner Crenshaw, the courts in those actions “ruled that staking services were properly alleged to be investment contracts because, as alleged, they involved entrepreneurial efforts.” Commissioner Crenshaw also asserts that the SEC’s guidance

“cannot readily be mapped onto real-world services.”

For now, however, the statement provides important regulatory clarity for participants in PoS networks and related service providers.

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ENDNOTES:

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