



# everstake

## BY ELECTRONIC SUBMISSION

April 8, 2025

Commissioner Hester M. Peirce  
Chair of the SEC Crypto Task Force  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-0213

Re: Crypto Task Force Meeting

Dear Commissioner Peirce and Crypto Task Force Members:

We appreciate the opportunity to engage with the Crypto Task Force of the Securities and Exchange Commission (the “**Commission**”). Everstake is a provider of what has come to be known as non-custodial “staking as a service,” but could more properly be called “validation as a service.” Holders of digital assets who wish to participate in a blockchain’s “proof-of-stake” and validation process, but do not wish to run the validator software on their own, can turn to Everstake or similar providers to run this software on their behalf without having to give up control of their digital assets.

Commissioner Peirce’s statement titled “There Must Be Some Way Out of Here” (released on February 21, 2025) (the “**Statement**”) posed a series of thoughtful questions regarding existing statutes and rules that may present challenges to firms seeking to innovate with digital assets and blockchain technology. Among these was a specific question regarding third-party service providers involved in staking. This letter offers a high-level overview in response to this question from the perspective of Everstake and is designed to form the basis for further conversation. It outlines the technical, legal, and economic features of staking and non-custodial staking services, explains why staking and non-custodial staking services meet the criteria of an investment contract under the Howey Test, and respectfully requests clear guidance affirming that staking and appropriately structured non-custodial staking services do not constitute securities offerings.

Recently, the Commission withdrew enforcement actions against Kraken (Payward Ventures, Inc. and Payward Trading Ltd.), Coinbase (Coinbase, Inc. and Coinbase Global, Inc.), and Consensus Software Inc. These actions had alleged, in part, that the staking services provided by these parties constituted the offer and sale of securities (the “**Withdrawn Enforcement Actions**”). We applaud the Commission’s proactive decision to dismiss the Withdrawn Enforcement Actions. We believe the arguments are clear and readily apparent: the provision of non-custodial and custodial staking services does not constitute the offer or sale of securities under existing law.

While we welcomed the dismissal of the Withdrawn Enforcement Actions, we believe that such dismissals alone fall short of providing the necessary regulatory clarity. Without an explicit statement, uncertainty remains as to the Commission’s position on the legal framework governing non-custodial staking services. A confirmatory statement from the Commission would offer much-needed clarity as to the application of federal securities laws in this context and would enable continued innovation without the chilling effect of unclear or inconsistent enforcement. Our submission today concludes with suggested criteria for the Commission to consider as guidance to adopt to delineate when a non-custodial staking service is not a securities offering.

If additional analysis or a discussion would be helpful to the Crypto Task Force’s mission in making rapid progress to alleviate the legal imprecision and commercial impracticality of the current digital asset regulatory environment, we would welcome the opportunity to either provide additional material for your consideration or schedule a meeting.

***(3) Certain crypto assets are used in a variety of functions inherent to the operation of a blockchain network, such as mining or staking as part of a consensus mechanism or securing the network, validating transactions or other related activities on the network, and paying transaction or other fees on the network. These technology functions may be conducted directly or indirectly, such as through third-party service providers. What types of technology functions are inherent to the operation of a blockchain network? Should the Commission address the status of technology functions under the federal securities laws and, if so, what issues should be addressed?***

### ***Background on Staking Mechanisms***

#### ***The Transition from Proof-of-Work to Proof-of-Stake***

In blockchain networks, consensus mechanisms determine how transactions are validated and how the network remains secure. Traditionally, many blockchains used proof-of-work, in which participants (miners) contribute computational power to validate transactions and are rewarded for doing so. However, this model is energy-intensive and increasingly outdated.

Proof-of-stake is an upgraded consensus mechanism that is more energy-efficient and environmentally sustainable. Rather than contributing computational power, participants in proof-of-stake networks contribute voting power — by “staking” their tokens — to help secure the network and validate transactions.

Importantly, in proof-of-stake, participants are not “investing” in a third-party enterprise; instead, they are contributing to the operational security and governance of decentralized network operations.

Blockchains require participation from stakers to remain decentralized and secure. Without participation, bad actors could take control of a network without expending significant resources. To encourage participation, proof-of-stake networks often include built-in protocol rewards.

These are typically distributed algorithmically — meaning the blockchain software itself distributes rewards based on pre-set rules, without any discretionary action by the validator for most blockchains.

These staking rewards are not guaranteed returns or profits from a business — they are better understood as governance incentives, similar to how volunteers in a distributed system might be offered tokens for performing needed services.

### *What is Staking?*

“Staking” is a process where tokens are committed or “locked” to support the operations and governance of a decentralized blockchain network. Blockchain networks use various methods to ensure that new blocks of data are properly validated before they are added to the chain.

The core idea: those who have a stake in the network (i.e., token holders) are given a role in maintaining its integrity. In exchange for their contribution, network participants may receive protocol-defined rewards, akin to earning a fee for helping to run the system. These are not profits from a business, but rather incentives from a decentralized protocol for performing a service. Staking occurs when a holder of digital assets commits or locks up a certain amount of tokens (the native token of a blockchain such as ETH for Ethereum or SOL for Solana) to support what is known as a “validator” (a node that participates in consensus). Validators, in turn, support the blockchain network’s operations of validating transactions and securing the blockchain. A token holder can either operate a validator itself or “delegate” its tokens, typically through a validator smart contract or through the native protocol delegation mechanism, which restricts the transfer of the delegated tokens until the holder determines to un-delegate the stake.

This system relies on validators running validator software to confirm transactions and add new blocks to a blockchain. In proof-of-stake blockchain protocols, validators are selected according to consensus rules—typically with reference to the amount of assets staked with them—to propose new blocks. These proposed blocks are then attested to by other validators, and upon reaching a quorum determined by the protocol, are finalized and added to the blockchain ledger. This process is critical to network security and consensus without the need for centralized intermediaries. The core idea behind staking is that in order to participate in validating transactions, a validator must have some vested interest in the network to validate transactions, which is achieved by the staking process.

Properly operated proof-of-stake consensus mechanisms are essential to ensuring the integrity and security of blockchain. In such systems, validators play a critical role by proposing and validating new blocks. If a validator engages in unintentional or negligent behavior—such as extended downtime, failing to sign blocks or consistently poor performance—the offending validator may be penalized through a process known as “slashing”, which reduces the amount of all staked tokens on the node. If a validator engages in intentional or malicious behavior—such as double-signing (signing two conflicting blocks), surround voting or equivocation (signing messages that contradict each other), or submitting intentionally false or manipulated data—the consequences can be more severe. The validator may incur a significant slashing penalty and

may also be “jailed,” meaning they are suspended from participating in block production and earning rewards. To be reactivated once jailed, the validator typically must take specific corrective actions. In the most serious cases, a validator may be permanently removed from the network. The potential for slashing penalties, jailing and permanent removal create strong incentives for validators to avoid engaging negligent, intentionally harmful or malicious behavior.

Stakers themselves, even if they do not run their own validator software, also play a critical role in network security. Staking serves as a deterrent to large-scale attacks, as an attacker would need to acquire and then commit and risk through staking a significant amount of digital assets in order to attempt to manipulate the network.

Blockchain networks reward stakers who contribute to network security by automatically distributing reward tokens when a new block is validated. These rewards are known as staking rewards.

Validators can select transactions to add to a block from a pool of pending transactions, and use available software and relays to prioritize those transactions offering higher-than-minimum native token fees. A validator that seeks to maximize these additional native token payments is referred to as working to achieve “maximum extractable value” or “MEV.”

### *What is Non-Custodial Staking?*

Many holders of digital assets rely on non-custodial staking services—often referred to as “delegated” staking services—to facilitate their ability to stake. These staking services, such as those provided by Everstake, offer essential technological infrastructure and play a role comparable to that of cloud computing services in traditional financial systems. While most networks permit anyone to participate in proof-of-stake consensus mechanisms (subject to protocol-specific limitations), operating a validator node independently requires significant technical knowledge, hardware, a consistent internet connection and ongoing system maintenance and upgrades when a protocol changes.

With non-custodial staking, token holders maintain full control of their assets at all times. They do not deposit or transfer ownership of tokens to a third party. Instead, they use network-level delegation mechanisms to assign only the voting power (or validation rights) of their tokens to a validator — someone who runs specialized software to help keep the network operational. The title, technical control and all economic rights remain with the token holder. This is fundamentally different from many custodial models, where a staking provider takes possession of users’ tokens, pools them together, and performs actions on their behalf. Delegation is akin to proxy voting — the token holder keeps ownership but allows someone else to exercise limited governance rights. Validators are paid for providing infrastructure services, not for managing or investing other people’s assets.

Running a validator effectively involves actively managing both the software and hardware components, ensuring uptime, and responding promptly to network demands. If a validator is offline when selected to propose a block, it forfeits the opportunity to receive rewards. Worse, mismanagement of a validator can result in slashing penalties. Due to these ministerial requirements, many users choose to delegate their stake to professional non-custodial staking service providers, which allow them to participate in supporting network security and receive rewards without the burdens of maintaining their own infrastructure.

Staking services generally fall into two categories: custodial and non-custodial. In custodial staking, users relinquish control of their private keys and must interact through the staking provider to access or manage their digital assets. In contrast, non-custodial staking allows users to retain full control of their private keys, enabling them to stake and unstake their digital assets directly--without requiring the intervention of a custodian.<sup>1</sup>

Non-custodial staking offers users significant advantages over custodial alternatives, particularly in terms of control, security, and alignment with the decentralized ethos of blockchain technology.

- **Users Retain Full Control of Assets**

In non-custodial staking, users retain full control of their private keys, and thus maintain direct ownership of their digital assets at all times. This significantly reduces the risk of loss due to platform mismanagement, hacking, or insolvency—real and documented risks that have materialized in several high-profile failures of custodial platforms.

Moreover, non-custodial staking aligns with the core decentralized ethos of blockchain technology, which is fundamental to many users. By removing unnecessary intermediaries, non-custodial staking preserves user autonomy, enhances efficiency and upholds the original vision of decentralized, user-controlled networks.

- **Reduced Counterparty Risk**

By removing the need to trust a third party with custody of their tokens, non-custodial staking eliminates the counterparty risk inherent in custodial services. In custodial arrangements, users must rely on the integrity, security practices, and financial solvency of the service provider. If that provider is compromised—whether through hacking, fraud, technical failure, or regulatory enforcement—users may lose access to their assets or suffer financial loss.

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<sup>1</sup> Some staking services issue a liquid staking token to users, which functions as a digital receipt representing their stake position. These tokens can often be traded or used in other decentralized (DeFi) applications, adding flexibility to the staking process. However, Everstake does not provide users with a liquid staking token. We also wish to reference and express our support for the March 25, 2025 submission by Lido Labs Foundation, which provides a thoughtful and well-reasoned analysis explaining why a liquid staking token does not constitute a security, even when considered independent of the underlying staked digital asset.

In contrast, non-custodial staking does not involve a centralized entity taking control of or pooling user funds. Each user maintains possession of their private keys and control of their assets. This structure dramatically reduces the attack surface, as there is no central repository of assets for hackers or malicious actors to target. Furthermore, the systemic risk is lowered, since non-custodial systems avoid the creation of large, centralized honeypots whose failure could cascade across the ecosystem.

- **Permissionless Unstaking**

Unlike custodial staking, where users must request access to their assets and rely on the custodian to process withdrawals, non-custodial staking empowers users with direct control over their funds. Users participating in non-custodial staking can unstake and reclaim their assets at any time, subject only to the standard unbonding or lock-up periods defined by the underlying blockchain protocol. No approval or intervention from the staking service provider is required, allowing for a seamless and self-directed experience.

- **Transparency and Protocol-Level Rewards**

In non-custodial staking, rewards are earned directly through the blockchain protocol, in a transparent, deterministic manner. Users interact with the network itself, and no intermediary controls or modifies how rewards are distributed. There are no derivative tokens, off-chain IOUs, or proprietary reward structures—just straightforward participation and protocol-based incentives. This clarity helps users track performance, verify earnings, and avoid hidden fees or manipulation.

- **Minimally Intermediated Participation**

Non-custodial staking services provide technical infrastructure, such as validator nodes, to facilitate user participation—but they do not pool, repackage, or take custody of user funds. Each user’s stake remains individually controlled and traceable on-chain. As a result, users are direct participants in the network’s consensus mechanism, actively contributing to network security and earning protocol-based rewards.

- **Low-Risk Regulatory Profile**

Because non-custodial staking services do not involve the transfer of assets, the pooling of user funds, or the issuance of reward-bearing financial instruments, we respectfully submit that these services represent the clearest and most straightforward category of staking arrangements to classify as *not* constituting investment contracts under the test set forth in *SEC v. W.J. Howey Co.*<sup>2</sup> (the “**Howey Test**”) or any other applicable securities framework.

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<sup>2</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

In a non-custodial model, users retain full control over their digital assets and interact directly with blockchain protocols. There is no reliance on the managerial or entrepreneurial efforts of a third party to derive profits, no centralized enterprise conducting investment activity, and no issuance of a separate financial instrument.

Accordingly, non-custodial staking arrangements are fundamentally distinct from models that involve significant intermediation, custodial risk, or the packaging of financial returns, and should not be regulated as securities under federal law.

We discuss below the application of the Howey Test to non-custodial staking services in more detail. We respectfully urge the Commission to recognize this important distinction and to issue guidance confirming that an appropriately structured non-custodial staking service does not constitute a securities offering.

***Everstake urges the Commission to issue guidance that providers of non-custodial staking services should not be viewed as offering securities, but rather as providing a technical and ministerial service to users.***

In the context of digital assets and related services, the Commission has placed heavy reliance on the test set forth in the Howey Test, which determines whether an asset or arrangement constitutes an “investment contract,” one of the enumerated types of instruments included in the definition of “security” in the Securities Act of 1933.<sup>3</sup> The Howey Test states that an investment contract involves (i) an investment of money, (ii) in a common enterprise, (iii) in which the investor is led to expect profits, (iv) derived from the entrepreneurial or managerial efforts of one or more third parties.

Non-custodial staking services such as Everstake’s do not meet the criteria for an investment contract under the Howey Test. The customers of such services do not relinquish property in a manner that creates a risk of loss. Non-custodial staking services constitute the provision of a technology service, rather than “the essential managerial or entrepreneurial efforts” necessary for a finding of an investment contract. And the customer’s reasonable expectation of profit arises not from the technology services of the staking service provider, but from the relevant blockchain protocol itself, and its emissions of tokens and facilitation of native token fees.

### Investment of Money

Customers of non-custodial staking services are not making an “investment of money” in any offering by the staking service provider. This is because they do not transfer ownership of their assets to the provider, nor do they provide any consideration to the provider in exchange for an expected return. Instead, customers retain full title to, control over, and ownership of their

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<sup>3</sup> 15 U.S. Code § 77b(a)(1).

property throughout the staking process, and pay a fee to the staking services provider for the technical service of operating the validator.

Everstake, like other non-custodial service providers, explicitly affirms this in its terms of use: customers remain the legal owners of their digital assets at all times. In the case of most network protocols, the customer's staked digital assets do not ever leave the customer's wallet, further underscoring the absence of a custodial relationship between the customer and the service provider.

In the case of ETH staking, although the staking process involves the delegation of ETH into a smart contract, this does not alter the non-custodial nature of the service. For Everstake and other similar non-custodial providers, the ETH is deposited into an Ethereum-native smart contract that is decentralized, transparent, and self-executing. These smart contracts are designed to allow users to withdraw their ETH and rewards at any time, without requiring any intervention or approval from the staking provider. Even in the unlikely event that Everstake were to cease operations, customers would retain the ability to access and withdraw their ETH autonomously via the Ethereum network.

The critical point is this: in no case does the staking provider obtain custody or control over customers' assets. The provider does not hold private keys to users' assets, nor does it have the power to unilaterally move or restrict customer funds. The smart contract is executed, governed by, and operates under pre-defined rules enforced by the Ethereum blockchain, ensuring the user's control over their assets and eliminating custodial risk.

In sum, any risk faced by customers is entirely unrelated to the Everstake enterprise: Everstake's solvency has no impact on the results achieved by its customers. As such, the "risk of loss" described in *Gary Plastic* is not present.<sup>4</sup>

It is true that holders and stakers of digital assets are subject to some risk of loss, but that risk arises exclusively from properties inherent to the relevant blockchain network itself rather than the non-custodial staking service provider. These risks include price fluctuations of the relevant digital asset and restrictions on transferring tokens while they are staked and during an unbonding period thereafter. While there is a potential for loss due to "slashing," using a service provider such as Everstake actually mitigates this risk, as Everstake's technical expertise helps ensure the reliability and uptime of its validators. This is, in fact, the fundamental purpose of utilizing a validator service: to reduce the risk of loss arising from participation in the consensus mechanism through expert management and increased network stability.

### In a Common Enterprise

To satisfy the common enterprise prong of the *Howey Test*, courts in different federal circuits have required that there be either "horizontal commonality" or "vertical commonality." Horizontal commonality exists where there is a "pooling of assets" that is normally combined

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<sup>4</sup> *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230, 239 (2d Cir. 1985)

with a “pro-rata distribution of profits” such that each investor’s fortunes are tied to those of the other investors.<sup>5</sup> Vertical commonality may be shown by demonstrating that “the fortunes of the investors are linked with those of the promoters.”<sup>6</sup>

### *Horizontal Commonality*

Horizontal commonality is not present in the case of non-custodial staking services such as those provided by Everstake. In order for horizontal commonality to exist, customers’ assets must be “pooled” in a way that ties their fortunes to one another, typically through an entitlement to profits or exposure to the losses of the enterprise. However, in the context of non-custodial staking services, most providers including Everstake do not engage in any such pooling of customer assets.

Instead, customers retain control over their own assets, which are individually staked into the network rather than aggregated in a shared pool. While the fortunes of individual stakers may be indirectly affected by broader market dynamics—such as the price of the digital asset, the network’s emissions rate, and fees paid by other users—this does not create a pooling of assets where each customer’s financial outcomes are tied to those of others within the staking service.

Moreover, users do not receive greater rewards for using non-custodial staking providers like Everstake than they would if they staked independently. In fact, the rewards a customer receives are reduced due to the fees paid to the service provider for providing its service. The staking provider charges a fee for its role in managing the staking process and ensuring network uptime, which means the rewards are proportionally lower than if customers staked directly on the network.

Any potential horizontal commonality, therefore, is not linked to a shared pool of rewards or profits among Everstake’s customers but is tied to the broader digital asset network itself, where the price fluctuations of the asset and the overall network conditions impact all stakers, irrespective of their choice of staking service.

### *Vertical Commonality*

Vertical commonality is similarly absent in the non-custodial staking context. For vertical commonality to exist, the fortunes of the investor must be tied to those of the promoter. However, in this case, a customer’s fortunes are tied not to the staking provider itself, but to the value of the digital asset they are staking and the rewards distributed to all stakers on the network.

As mentioned above, Everstake’s insolvency or cessation of operations would not affect the customers’ ability to withdraw their staked assets (and thereby avoid a loss). Conversely, the

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<sup>5</sup> *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2d Cir. 1994).

<sup>6</sup> *S.E.C. v. R.G. Reynolds Enterprises, Inc.*, 952 F.2d 1125, 1130 (9th Cir. 1991) (internal quotation marks omitted).

profitability of Everstake has no effect on its customers in that they have no residual claim on such earnings nor ownership interest in Everstake’s business which could appreciate in value. While Everstake’s fees increase when its customers’ revenues increase, to the extent there is any connection between the fortunes of the customers and Everstake, it is that of “an ordinary buyer, having advanced the purchase price” to an “ordinary seller.”<sup>7</sup>

### *Commonality Conclusion*

In conclusion, neither horizontal nor vertical commonality is present in the non-custodial staking service context. The structure of non-custodial staking services, like those provided by Everstake, preserves the autonomy of the customer and ensures that customers’ fortunes are not interdependent in the way required by the Howey Test. Thus, staking services do not meet the common enterprise prong of the Howey Test, as they do not pool assets or create a direct link between the fortunes of customers and the promoter’s success.

### With an Expectation of Profit

The Supreme Court has interpreted “profit” in the context of the Howey Test to mean either expected participation in an enterprise’s earnings resulting from the use of the investors’ funds, as in the case of the payment of interest or dividends, or from capital appreciation from the development of the initial investment, as in the case of increases in value of the investor’s ownership stake in the enterprise.<sup>8</sup>

In short, in order to satisfy the Howey Test, the profits must derive from a “share in the enterprise”<sup>9</sup> rather than as a result of an increase in price of a commodity the enterprise sells or value derived from a service it provides. For example, where a customer pays a company to custody gold bars on its behalf, the gold bars do not represent a “share in the enterprise” of the gold mining company, and profit derived from the customer’s sale of the gold bars at the prevailing market price will fall outside the ambit of the federal securities laws.<sup>10</sup>

Here, Everstake customers do not obtain any ownership stake in the Everstake enterprise. As discussed, they have no entitlement to its profits or exposure to its losses. Such customers expect to receive network rewards and fees from the relevant blockchain network, as facilitated by Everstake’s provision of validator services, but these should be viewed not as profits of an enterprise but as fees for the provision of services vital to network security. Customers may expect to profit from market forces which could cause the value of these rewards and fees to appreciate after they receive them—however, this expectation of profits does not trigger the third prong of the Howey Test. These rewards and fees are distributed by the relevant blockchain network and their value is determined by external market forces and the broader marketplace, such as the price fluctuations of the network token.

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<sup>7</sup> *SEC v. Belmont Reid & Co.*, 794 F.2d 1388, 1391 (9th Cir. 1986).

<sup>8</sup> *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975).

<sup>9</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

<sup>10</sup> *SEC v. Belmont Reid & Co.*, 794 F.2d 1388, 1391 (9th Cir. 1986).

## In Reliance on the Managerial Efforts of Others

As originally articulated by the Supreme Court, the Howey Test requires a reasonable expectation of profits derived “solely” from the efforts of others. However, subsequent case law has adjusted this requirement to focus on a more nuanced standard, wherein profits must be expected “primarily” from the efforts of others, rather than solely.

The Commission observed in the 2019 “Framework for “Investment Contract” Analysis of Digital Assets” (the “**Framework**”)<sup>11</sup> that price appreciation resulting solely from external market forces impacting the supply and demand for an underlying asset generally will not suffice for an asset or related service to be considered a security.<sup>12</sup> This principle is encapsulated in the Ninth Circuit’s decision in *SEC v. Belmont Reid & Co.*, which held that an investment of money with an expectation of profits in partial reliance on the promoter’s “managerial skill” could be outweighed by the investor’s “primary purpose” of profiting from external market forces.<sup>13</sup> In the case of non-custodial staking services, while customers rely in part on the sturdiness of the providers’ software infrastructure and the technical skill of their team, their investment returns are driven by the emission schedule of the relevant blockchain network and the market price of the relevant digital asset.

The provision of validation software by a non-custodial service provider is best characterized as ministerial in nature rather than managerial. While Everstake attracts customers by offering a user-friendly interface and by providing a reliable service designed to optimize fees and rewards through the expertise of its team, this does not render the customer’s expectation of profits dependent on Everstake’s managerial efforts. Instead, Everstake’s service acts as a facilitator that enables users to more efficiently earn rewards through the underlying protocol, rather than through any active management, discretion or decision-making by Everstake itself. The success of the customer’s venture is determined by the functionality of the blockchain protocol, network conditions, and the market forces which affect the price of the staked asset and accrued rewards. The efforts or discretion of the management of the Everstake enterprise is not at issue here—only its ability to deliver a well-functioning technology product.

Even though Everstake and other non-custodial staking providers use MEV software to optimize the native token fees received by customers, the role of the service provider is akin to that of a tool or intermediary that enhances the customer’s experience without itself generating the profit. This is analogous to a company using customer targeting software to increase sales revenue—while the software may increase revenue to the customer as compared to engaging in the activity on their own, the profits come from the sales activity of the customer, not from the software provider itself.

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<sup>11</sup> SEC, *Framework For “Investment Contract” Analysis Of Digital Assets* (2019), <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.

<sup>12</sup> *Id.*

<sup>13</sup> *SEC v. Belmont Reid & Co.*, 794 F.2d 1388, 1391 (9th Cir. 1986).

Case law has established that depending in part on the differentiated services<sup>14</sup> or the expertise of a third party do not render those efforts the “undeniably significant”<sup>15</sup> ones which satisfy the third prong of the Howey Test. For example, in *Noa v. Key Futures*,<sup>16</sup> purchasers of silver bars were offered free storage of the bars by the promoter for up to a year. The court held that no investment contract was formed because the success of the venture depended primarily not on the storage capabilities of the promoter, but on fluctuations of the silver market. (“There is a national market for silver which is not dependent upon Key Futures.”)<sup>17</sup> The court emphasized that the profits of the purchasers depended on the timing of their decision to sell the silver bars at the prevailing market price, which they could do so at any time, even during such period while under storage by the promoter.

Similarly, customers of non-custodial staking service providers can unstake at any time to sell the underlying asset. While Everstake provides ministerial efforts by carrying out the staking services it is contracted to provide, it has no role in the crucial decision of the sale of the asset at an optimal fluctuation in price, which decision ultimately results in profits or losses. As the court in *Belmont Reid & Company* held, characterizing the provision of services which facilitates a customer’s access to a valuable asset as sufficient to trigger the “efforts of others” prong of Howey would result in bringing “any sale-of-goods contract” under the ambit of the federal securities laws.<sup>18</sup>

Thus, Everstake’s customers are not primarily dependent on the managerial efforts of Everstake in the same way that investors are primarily dependent on the managerial efforts of promoters in traditional investment contracts. The customer's success is driven by the performance of the blockchain and the market conditions, not the efforts of Everstake’s management.

### ***Suggested Guidance***

The Commission's Statement on Certain Proof-of-Work Mining Activities dated March 22, 2025 clarified that proof-of-work mining does not involve the offer and sale of securities. We believe this Statement provides a compelling precedent for issuing similar guidance on non-custodial staking. In its proof-of-work assessment, the Commission concluded that miners contributing computational resources to validate transactions and secure the network are not engaging in securities transactions, as their rewards are derived from their own efforts rather than the managerial efforts of others.

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<sup>14</sup> *Noa v. Key Futures*, 638 F.2d 77 (9th Cir. 1980).

<sup>15</sup> *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973).

<sup>16</sup> *Noa v. Key Futures*, 638 F.2d 77 (9th Cir. 1980).

<sup>17</sup> *Noa v. Key Futures*, 638 F.2d 77 (9th Cir. 1980).

<sup>18</sup> *SEC v. Belmont Reid & Co.*, 794 F.2d 1388, 1391 (9th Cir. 1986).

### *Staking Generally*

Applying this rationale to staking generally, participants who operate validators themselves retain full control over their assets and do not rely on the managerial efforts of others for profits. Instead, they contribute to network security and consensus, receiving rewards directly from the protocol based on their participation. This structure mirrors PoW mining, where rewards are earned through individual contributions to network operations. Given these parallels, it would be consistent and beneficial for the Commission to issue a statement affirming that staking, and the receipt of network rewards in connection with such staking, does not constitute a securities transaction. Such guidance would provide much-needed regulatory clarity, encouraging innovation and participation in proof-of stake networks while ensuring compliance with existing securities laws.

### *Non-Custodial Staking Service Guidance*

In addition, in a non-custodial model, users retain control over their digital assets and interact directly with blockchain protocols. There is no reliance on the managerial or entrepreneurial efforts of a third party to derive profits, no centralized enterprise conducting investment activity, and no issuance of a separate financial instrument. Instead, these services act solely as facilitators, enabling users to earn rewards through the underlying blockchain network, without transferring ownership or subjecting assets to custodial risk.

While we believe the arguments presented are clear and well-supported, we respectfully urge the Commission to provide formal guidance regarding the application of federal securities laws to non-custodial staking services. The Howey Test has been applied broadly to digital assets in recent years, and as the market continues to evolve, there remains uncertainty about the classification of non-custodial services within the current regulatory framework despite the dismissal of the Withdrawn Enforcement Actions.

Given that the vast majority of staking is not done by individuals directly but through third party service providers like Everstake, we respectfully request that the Commission confirm that the provision of non-custodial staking services does not constitute the offer or sale of securities, provided the following criteria are met:

- The staking provider's offering is limited to the provision of technology services, which may include bespoke software designed to maximize network rewards and fees, but does not involve the management of customer funds.
- The staking provider does not take title to the customer's digital assets.
- The customer retains the right to unstake their digital assets at any time, without intervention or approval from the staking provider.
- The staking provider merely transmits rewards and fees generated by the relevant blockchain, without providing returns based on its own assets.

We believe that formal confirmation from the Commission regarding the regulatory status of staking and non-custodial staking services, when structured in accordance with the above criteria, will provide much-needed legal clarity and stability. This guidance will support ongoing innovation while ensuring the continued protection of consumers within a well-regulated framework. Importantly, such clarity will not only foster responsible growth in the digital asset ecosystem, but will also enhance confidence among traditional financial institutions evaluating opportunities in blockchain technology—ultimately contributing to greater market stability and long-term economic growth across both emerging and established sectors.

In addition, while we respectfully submit that non-custodial staking services represent the clearest and most straightforward category of staking arrangements that may be classified as not constituting investment contracts under the Howey Test, and encourage the Commission to provide speedy confirmation of that position, we also believe that it is important to extend this inquiry and guidance to other categories of staking services. Specifically, services such as liquid staking and custodial staking should also be reviewed by the Commission, and clear guidance should be provided as to the specific criteria under which the provision of those services would not be viewed as investment transactions under federal securities laws.

We deeply appreciate the opportunity to address the Commission on this important matter, and we are happy to provide any further context or clarification should the Commission require additional information.

Sincerely,



Margaret Rosenfeld

Chief Legal Officer

Everstake, Inc.