

April 30, 2025

**VIA ELECTRONIC SUBMISSION**

**Commissioner Hester M. Peirce**

Chair, SEC Crypto Task Force  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: Law and Policy Considerations Relevant to Staking Services

Dear Commissioner Peirce and Members of the SEC Crypto Task Force:

The Crypto Council for Innovation’s Proof of Stake Alliance (“POSA”) and the undersigned organizations, which span the digital assets community and share the goal of encouraging the responsible global regulation of digital assets, respectfully submit this letter (this “**Letter**”) to the Crypto Task Force (the “**Task Force**”) of the U.S. Securities and Exchange Commission (the “**Commission**”). Specifically, we write in response to questions three and four of Commissioner Peirce’s *There Must Be Some Way Out of Here* statement, which request comment on whether the Commission should address the status of staking and liquid staking. We appreciate the Commission’s efforts to provide regulatory clarity for industries involved in activities related to digital assets and decentralized network infrastructure.

POSA, a project of the [Crypto Council for Innovation \(CCI\)](#), was founded in 2019 to advocate for forward-thinking public policy that fosters innovation in rapidly growing proof-of-stake (“**PoS**”) systems. Since its founding, POSA has consistently advocated for the staking industry and proof-of-stake ecosystems, bringing together industry leaders and legal experts to develop research and engage in collaborative advocacy, education, and thought leadership.

**I. EXECUTIVE SUMMARY**

Staking is a technical function necessary to secure PoS networks, validate transactions and add new blocks. Any participant on a network can perform this function, and in return, they are compensated in an amount determined by the underlying protocol in the form of tokens, often referred to as “**rewards**.” While staking is an essential good for PoS networks, certain barriers to participation exist, including—depending on the particular PoS network—the need for some technical knowledge to stake directly on a protocol, requirements for hardware running 24/7, minimum commitment amounts, and the loss of liquidity for the staked tokens. Staking Services, as defined in this Letter, solve for certain of these barriers to participation in staking on the network, thereby enhancing the security of the underlying protocol and allowing for more participants to share in the benefits of staking. **Part II** of this Letter provides context for staking and Staking Services, including a discussion of the policy considerations attendant to such

activities.

**Part III** of this Letter explains why the provision of staking and Staking Services do not constitute securities transactions under the federal securities laws. This analysis is consistent with the Division of Corporation Finance’s recent March 2025 Statement on Certain Proof-of-Work Mining Activities (the “**Mining Statement**”).<sup>1</sup> In the Mining Statement, the Commission clarified that participation in decentralized systems through mining on proof-of-work (“**PoW**”) systems generally does not give rise to a securities transaction, including when “engaging in an administrative or ministerial activity to secure the network, validate transactions and add new blocks, and receive Rewards.” The Mining Statement’s analysis applies equally to staking. As set out below, the actions performed by a staker—whether on their own or by using a Staking Service—amounts to “engaging in an administrative or ministerial activity to secure the network, validate transactions and add new blocks, and receive Rewards.” Stakers, like PoW miners, are compensated based on protocol-defined outcomes, not managerial actions or profit-sharing arrangements.

**Part IV** of this Letter explains why commercial transactions such as Staking Services do not require the securities laws to protect users of the services. In order to avoid any regulatory uncertainty concerning the applicability of the securities laws to staking and Staking Services, we respectfully request in Part IV that the Division of Corporation Finance consider issuing a statement identifying when such activities do not constitute the offer and sale of securities in their view. We offer certain risk-mitigation principles that should be considered that both protect users of Staking Services and reduce the likelihood that the securities laws could apply to such commercial transactions. Providing regulatory certainty in this context is key to allowing PoS networks to flourish with U.S. participants. The requested statement could also help address any regulatory concerns associated with exchange-traded products engaging in staking with assets held in trust.

## II. BACKGROUND ON STAKING AND STAKING SERVICES

### A. Staking Generally

**Overview.** Staking is an essential function on blockchain networks that rely on PoS consensus mechanisms. Base layer actors (on most protocols, but not all, called “validators”) perform a variety of technical functions relating to the consensus mechanism of the relevant network, including the creation of new blocks and validation of transactions. The integrity and ongoing viability of PoS networks depend on base layer actors performing these functions and therefore include economic incentives—in the form of additional tokens—designed to reward such actors for performing actions necessary to continuously secure and maintain the network. The proper alignment of base layer incentives is crucial to maintaining the network’s economic security.<sup>2</sup>

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<sup>1</sup> SECURITIES & EXCH. COMM’N, DIV. CORP. FIN., *Statement on Certain Proof-of-Work Mining Activities* (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025/>.

<sup>2</sup> See Florian Spychiger, *Incentive Systems in Blockchains (Philosophy Doctorate Dissertation)*, UNIV. ZÜRICH, BUS., ECON., & INFORMATICS (Oct. 2023), <https://www.zora.uzh.ch/id/eprint/253247/1/253247.pdf>; Rong Han, et al., *How Can Incentive Mechanisms and Blockchain Benefit with Each Other*, ACM COMPUTING SURVEYS 55(7) (Jun. 2022), [https://www.researchgate.net/publication/361014228\\_How\\_Can\\_Incentive\\_Mechanisms\\_and\\_Blockchain\\_Benefit\\_with\\_Each\\_O](https://www.researchgate.net/publication/361014228_How_Can_Incentive_Mechanisms_and_Blockchain_Benefit_with_Each_O)

Staking therefore involves base layer actors temporarily committing, or staking, their tokens to the network when participating in the PoS consensus mechanism and being rewarded with newly created tokens as consideration for the service. Staking rewards on a PoS network, whether received as a result of staking directly by running your own hardware and software or through a Staking Service, are best understood as rewards that are earned<sup>3</sup> for providing useful work to the network. The staking rewards are received in exchange for providing valuable technical services contributing to the PoS consensus mechanism and should not be viewed as passive investment gains, or a share of profits from the protocol.

The ability of base layer actors to propose and validate database transactions is typically proportional to the number of tokens they commit as collateral. In turn, the commitment of tokens aligns their incentives with the long-term security and reliability of the network. By design, base layer actors who stake tokens have a strong economic interest to act honestly and perform in the best interests of the network—their very ownership of the network’s tokens reflects their interest in the continued operation of the network. With respect to some PoS protocols, serious misbehavior can lead to financial penalties in the form of “slashing,” potentially resulting in a loss of a number of staked tokens in addition to minor penalties in case network-assigned duties are not performed correctly and timely.

In sum, staked digital assets serve as a tool to incentivize alignment of the system’s base layer actors and, therefore, as an indispensable source of protocol security, reliability, and integrity.<sup>4</sup>

**Policy Considerations.** The benefits of staking to a PoS network and its participants are clear: base layer actors are incentivized to contribute to the security of the network, minimize the risk of manipulative activity, ensure data integrity, and bolster community trust in the network.

Staking is not an investment activity; there is no risk of loss stemming from any financial activity. There is, however, a risk of loss if the staker acts outside the certain core rules of the protocol, which would result in slashing on some protocols and the potential loss of staked tokens. In practice, slashing rarely occurs.<sup>5</sup>

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[ther A Survey](#); Loïc Lesavre, et al., *Blockchain Networks: Token Design and Management Overview*, U.S. COMMERCE DEP’T: NAT. INST. STANDARDS & TECH., NISTIR 8301 (Feb. 2021), <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8301.pdf>; Long Chen, et al., *Ch. 1: A Brief Introduction to Blockchain Economics*, INFO. EFFICIENT DECISION MAKING, Ch. 1 (Dec. 2020), [https://www.worldscientific.com/doi/pdf/10.1142/9789811220470\\_0001?srsId=AfmBOorY\\_4DqP0jo0blSI1\\_nl1CtmXFnyHTz\\_KOz9Eo9dhNppW3otN2IE](https://www.worldscientific.com/doi/pdf/10.1142/9789811220470_0001?srsId=AfmBOorY_4DqP0jo0blSI1_nl1CtmXFnyHTz_KOz9Eo9dhNppW3otN2IE); Lane Rettig, *The Key Ingredients to a Better Blockchain, Part VII: Economics*, INFO. EFFICIENT DECISION MAKING ETHEREAN.ORG: BLOCKCHAIN: ECON. (Sep. 2, 2020), <https://www.ethereum.org/blockchain/economics/2020/09/02/key-ingredients-better-blockchain-part-vii-economics.html>.

<sup>3</sup> Depending on the network and the specific iteration of PoS consensus underlying that network, the ultimate source of rewards might vary. For example, staking rewards might be ultimately derived in part or in whole from fees paid by users when submitting database transactions to the network, or from tokens programmatically allocated or generated by the network protocol (i.e., through a genesis event) as a product, and incentivization, of staking itself. Regardless of the source, staking rewards are newly created property.

<sup>4</sup> See Nicolas Oderbolz, et al., *Towards an Optimal Staking Design: Balancing Security, User Growth, and Token Appreciation*, ARXIV (May 23, 2024), <https://arxiv.org/html/2405.14617v1>; Jessica Hart, *Policing Proof-of-Stake Networks: Regulatory Challenges Presented by Staking-as-a-Service Providers and the Need for a Tailored Regime*, ARXIV 23 COLUM. SCI. & TECH. L. REV. (Fall 2021), <https://journals.library.columbia.edu/index.php/stlr/article/download/9392/4801/21739>.

<sup>5</sup> A comprehensive industry analysis from 2023 found that only 0.04% of Ethereum Network validators had been subjected to slashing in the preceding 3 years, demonstrating that economic incentives related to staking effectively promote honest behavior among participants in PoS networks. See Brayden Lindrea, *Only 0.04% of Ethereum Validators Have Been Slashed Since 2020, Says Core Dev*, COINTELEGRAPH: NEWS (Feb. 23, 2023), <https://cointelegraph.com/news/only-0-04-of-ethereum-validators-have-been-slashed-since-2020-says-core-dev>. The current

## B. Forms of Staking and Staking Services

As described above, staking is a purely technical activity, which means any actor that wishes to stake must take on the responsibility of participating in this technical process. Users that hold a stakeable token (like ETH, SOL, or AVAX) and wish to participate in a Proof of Stake network (like Ethereum, Solana, or Avalanche) can choose to stake themselves by engaging in direct staking or by outsourcing the technological steps to a number of service providers.

Direct staking typically requires the technical proficiency to run a node independently. In order to engage in direct staking, a token holder must purchase and run hardware, run and maintain software, and ensure that keys are stored securely. Additionally, depending on the network, base layer actors will be subject to minimum commitment amounts for staking, waiting periods for staking and unstaking, and waiting periods for earning rewards.<sup>6</sup>

Fortunately, commercial services and technological solutions, such as delegated proof of stake and liquid staking, have emerged to address these potential barriers to participation. A key driver of network security is having a large number of participants who engage in staking. Staking Services of various forms began to emerge out of this need to foster more widespread adoption and facilitate secure network operations. These forms largely fall into one of any of the following three different buckets:<sup>7</sup> (1) Self-Custodial Staking-as-a-Service (StaaS) Systems, (2) Custodial StaaS and (3) Liquid Staking (each as described in detail below).

### 1. Self-Custodial Staking-as-a-Service (StaaS) Systems

**Overview.** A “StaaS System” consists of technical infrastructure necessary to help token holders contribute to staking by engaging directly with that system. StaaS Systems are typically either operated by a corporate entity that has developed the necessary technical infrastructure and on-boards clients or offered on a permissionless basis pursuant to protocols. The functionality of StaaS Systems varies depending on the interests and purposes of the underlying network. Depending on the underlying network and the relevant StaaS System, there may be different minimum token contributions, locked time periods, and other requirements imposed on users.

Token holders interact with Self-Custodial StaaS Systems from a digital wallet. The user retains ownership of the staked assets and receives rewards, less any fees due to the StaaS System that are withheld by the StaaS System pursuant to the relevant terms and conditions. The fees retained by the StaaS System, or any other Staking Service, are analogous to licensing fees

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slashing rate for proof-of-stake Ethereum is roughly 1.1 ETH, and all time cumulated slashing rates are estimated in the hundreds. See RATED NETWORK: DOCS: MISCELLANEOUS: SLASHINGS, <https://docs.rated.network/documentation/explorer/ethereum/miscellaneous/slashings> (last visited April 24, 2025). Additionally, many reputable custodial staking services providers, including Coinbase, have terms committing the provider to reimburse users (*i.e.*, their customers) for any slashing penalties incurred due to the mistakes of the provider or the third-party validators used by the provider. See Coinbase User Agreement, Appx. 4, § 3.3 (rev. Dec. 13, 2024), <https://www.coinbase.com/legal/user-agreement/united-states>; COINBASE: HELP CTR.: COINBASE EARN: SLASHING RISKS, <https://help.coinbase.com/en/coinbase/coinbase-staking/staking/staking-risks> (last visited Feb. 13, 2025).

<sup>6</sup> Each network has unique requirements for direct staking. For a description of the mechanics of staking on Ethereum, see Evan Thomas and Alison Mangiero, *Ethereum Staking Mechanics: A Step-by-Step Explanation* (Mar. 10, 2025), <https://cryptoforinnovation.org/ethereum-staking-mechanics-a-step-by-step-explanation/>.

<sup>7</sup> The policy considerations and analysis included in this Letter do not encompass any forms of staking services enabling liquid restaking. We will address those in a separate submission.

charged by software-as-a-service platforms, cloud storage, and cloud compute service providers to customers for using their technical infrastructure.

**Policy Considerations.** Self-Custodial StaaS Systems provide the same benefits as staking generally, but also provide opportunities to address some of the barriers to participation for staking. For example, StaaS systems have established infrastructure to comply with the technical steps required to stake on any relevant protocol, which relieves the staker from having to run hardware and software themselves. Further, each StaaS System may aggregate assets from multiple stakers, allowing them to meet minimum staking requirements set by the underlying protocol, and thereby encouraging greater participation in the consensus mechanism of the protocol.

Users of StaaS Systems must be confident in the technical infrastructure used to properly stake the tokens and often rely on security audits performed by third parties for a level of assurance. Additionally, users of StaaS Systems need clear disclosures for the applicable terms of the services being provided, which may include a fee schedule, obligations of the service provider, legal rights of the user, disclosures on slashing risk, to the extent applicable, and the limitations on any mechanisms used to mitigate such risk.

## 2. Custodial StaaS

**Overview.** “Custodial StaaS” refers to an arrangement that requires active administration by an intermediary (*i.e.*, to take custody of, aggregate, and stake user tokens; to allocate rewards; to manage unstaking and facilitate users’ access to their tokens when needed; etc.).

Intermediaries, including digital asset exchanges and custodial wallet service providers, have increasingly sought to offer various iterations of Custodial StaaS in response to growing user demand. Naturally, the activities involved in offering these kinds of staking solutions are in line with these intermediaries’ established role of providing for the custody and safekeeping of users’ tokens. In these arrangements, users usually deposit tokens with the intermediary, which aggregates them together with the tokens of other users (*i.e.*, using one or more digital wallets under the intermediary’s control) to then stake those tokens (as a validator or other base layer actor), or contribute them toward staking (via a StaaS System), *en masse*.

Users do not give up ownership of their digital assets in exchange for returns. Rather, intermediaries take custody of the digital assets on behalf of the users to stake the tokens through the intermediary’s technical infrastructure. Rewards generated by the protocol are received by the intermediary and then distributed to the user’s account, less any applicable fees due to the service provider.

**Policy Considerations.** Custodial StaaS has a number of benefits to both the users of the service and the PoS networks. From the perspective of the user of the service, Custodial StaaS allows users that feel comfortable trusting a third party to custody their tokens and administer the technical service of staking. It can allow holders of minimal staking balances to participate meaningfully in network security without having to deal with the underlying protocol-level rules surrounding minimum tokens. From the perspective of the protocol, Custodial StaaS helps to create and maintain economies of scale on blockchain networks while encouraging dispersed

ownership and assuring the security of the network. Custodial StaaS providers help lower barriers to entry, increasing the underlying network’s resilience and ensuring more sufficient decentralization.

Users of Custodial StaaS are exposed to risk of loss if the intermediary’s safeguarding measures are inadequate. Notably, there is no difference in this risk level for customers of the intermediary that already use the custodial services of the intermediary. Moreover, many digital asset exchanges and custodial wallet providers offering these services are licensed under state regulatory regimes for virtual currency business activity or banking activity in connection with providing custodial services for digital assets to customers. Additionally, users of Custodial StaaS should have clarity on the terms of the services being provided, including a clear fee schedule, obligations of the service provider, legal rights of the user, and disclosures on slashing risk and the limitations on any mechanisms used to mitigate such risk.

### 3. Liquid Staking

**Overview.** “**Liquid Staking**” involves users supplying digital assets to a protocol to allow them to be staked, and receiving “**Receipt Tokens**” representing the staked digital assets plus any pro-rata share of rewards earned from staking (over time). This enables users to retain exposure to and utilization of the underlying staked digital assets without being constrained by any native lock-up constraints imposed by the underlying PoS network or protocol. Receipt Tokens can come in different forms<sup>8</sup> but generally represent a user’s legal and beneficial interest in the staked tokens and any associated network rewards and can be redeemed or transferred, subject to protocol-specific conditions.

Liquid Staking is typically facilitated through two different models. Under a “**protocol model**,” a decentralized smart contract autonomously handles the staking of deposited tokens and the issuance and redemption of Receipt Tokens, without reliance on an intermediary. Under a “**provider model**,” a service provider—such as a custodial exchange—stakes user tokens to a liquid staking protocol, generates corresponding Receipt Tokens, and manages redemptions on request, typically pursuant to a service agreement.

Under either model, the relationship between the token holder and the protocol or provider reflects a functional bailment. The Receipt Tokens serve as digital title apparatuses, evidencing ownership in a manner analogous to warehouse receipts or other documents of title in traditional commerce. Like these kinds of devices, Receipt Tokens can be transferred or used to redeem the underlying asset while the staked tokens remain staked in the underlying PoS network or protocol until redemption.

**Policy Considerations.** The advantage to Liquid Staking is that it delivers all of the benefits associated with staking and other Staking Services, and provides the additional benefit of utility by providing the owner of the staked assets with Receipt Tokens liquidity of the staked tokens.

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<sup>8</sup> In practice, Receipt Tokens typically reflect rewards or losses through either one of two different mechanisms: (i) as ‘value-accruing’ Receipt Tokens, where the value represented by each token adjusts over time to account for network rewards or slashing penalties; or (ii) as ‘rebasing’ Receipt Tokens, where the user’s token amount (either directly or as represented via a share of overall Receipt Token supply) increases or decreases to reflect such changes. In either case, Receipt Tokens can typically be redeemed for the staked assets—subject to any applicable unbonding period of the underlying PoS network or protocol—or transferred to third parties.

This encourages more participation in staking by persons that would otherwise be discouraged by the lack of utility during the staking period.

Users of liquid staking are dependent upon the smart contracts or service providers to operate as advertised with respect to the ability to stake, receive Receipt Tokens and rewards, and unstake. Additionally, users of Liquid Staking should also be subject to similar disclosure considerations that users of other Staking Services are subject to, as discussed above.

### **III. LEGAL ANALYSIS: STAKING AND STAKING SERVICES GENERALLY DO NOT CONSTITUTE SECURITIES TRANSACTIONS**

We believe that neither staking nor the provision of Staking Services described herein constitute securities transactions under the federal securities laws.<sup>9</sup>

The threshold issue for whether the securities laws apply is whether a security is being offered and sold. Section 2(a)(1) of the Securities Act of 1933 defines “security” to include a number of financial instruments such as stocks, bonds, notes, and investment contracts. Of the instruments identified in the statute, investment contracts and notes provide the relevant frameworks for analyzing staking.<sup>10</sup>

#### **A. The ‘Investment Contract’ Test**

Investment contracts are defined by the U.S. Supreme Court’s holding in *S.E.C. v. W.J. Howey Co.*, which requires the following elements to be present: (1) a contract, transaction, or scheme, (2) whereby a person invests money, (3) in a common enterprise, (4) with a reasonable expectation of profits to be derived from the efforts of others.<sup>11</sup> Neither direct staking or staking through a Staking Service meets the investment of money or reasonable expectation of profits from the efforts of others elements of *Howey*.

##### **1. Investment of Money**

In order for there to be an investment of money, the purchaser must “g[i]ve up some tangible and definable consideration in return for an interest that ha[s] substantially the characteristics of a security.”<sup>12</sup> Here, stakers, in any capacity, do not relinquish ownership of their staked tokens and therefore do not give up tangible and definable consideration. Tokens may be unstaked at any time, subject to any protocol-mandated delays between the withdrawal request and the actual unstaking. Nor do stakers, in any capacity, receive an interest that substantially has the

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<sup>9</sup> Of course, staking services that differ from those outlined above, or that offer services that do not align with the POSA Industry Principles presented in Section IV may warrant additional scrutiny.

<sup>10</sup> To the extent the SEC Crypto Task Force is interested in analysis of staking and Staking Services under other instruments included in the definition of “security” under any of the federal securities laws, we would welcome the opportunity to provide such analysis. With respect to Liquid Staking, we refer the Task Force to the POSA Liquid Staking Paper for an analysis of why Liquid Staking does not constitute the offer and sale of notes or security-based swaps, in addition to investment contracts. See Proof of Stake Alliance, *U.S. Federal Securities and Commodity Law Analysis of Liquid Staking Receipt Tokens*, at 19 (Feb. 21, 2023), <https://static1.squarespace.com/static/62f147feb8108a08e666aea5/t/63f41766f6095b07bec7d1e8/1676941158721/.pdf>.

<sup>11</sup> 328 U.S. 293 (1946).

<sup>12</sup> See *Int’l Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979).

characteristics of a security. While Liquid Stakers receive receipt tokens, such tokens do not bear the indicia of a security, they merely evidence ownership of intangible commodities in a matter analogous to warehouse receipts.<sup>13</sup>

## 2. Reasonable Expectation of Profits from Efforts of Others

Courts generally require the activities of the issuer or promoter to be of a managerial or entrepreneurial character, and not merely ministerial or clerical in order for this element to be met.<sup>14</sup> Staking is a technical activity that secures a network, and is programmatically incentivized through the prospect of receiving rewards pursuant to the terms of the blockchain protocol. The only steps, therefore, that can be taken to generate rewards are technical in nature, not managerial or entrepreneurial.

Technical expertise of base layer actors with respect to staking, and service providers or smart contracts with respect to Staking Services, are not managerial efforts that are driving returns. Although participants in proof-of-stake networks receive staking rewards in the form of additional tokens, these are generated by either the network or its participants pursuant to the established rules of the protocol, not the technical service provider. The tokens are compensation for participation in securing the network with the staker's committed tokens. Additionally, validators and service providers do not typically outperform or underperform each other in the way that typical businesses with unique entrepreneurial plans would. The reward rate is determined by the underlying protocol and as such staking returns tend to be relatively even across service providers.

The Staff's *Howey* analysis of self (or direct) mining and mining pools in the Statement<sup>15</sup> is equally applicable to staking and Staking Services.

The Staff determined that self-mining does not meet the "efforts of others" *Howey* element because the miner's expectation to receive rewards are not derived from any third party's managerial or entrepreneurial efforts. Rather, "the expected financial incentive from the protocol is derived from the administrative or ministerial act of Protocol Mining performed by the miner." This same reasoning is applicable to staking. A staker—whether on their own or by using a Staking Service—that commits its own digital assets to secure the network and to enable the staker to earn rewards is engaging in an administrative or ministerial activity to secure the network, validate transactions, add new blocks, and receive staking rewards. Just as with mining, staking rewards are received in exchange for contributions provided to the network, rather than profits derived from the entrepreneurial or managerial efforts of others.

As previously highlighted, Self-Custodial StaaS Systems and Custodial Staking can include certain features designed to mitigate barriers to participation in staking at the protocol level, such as permitting holders of minimal amounts of tokens to stake when they otherwise would not be

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<sup>13</sup> See POSA Liquid Staking Paper, *supra* note 9.

<sup>14</sup> See, e.g., SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476, 482 (9th Cir. 1973) (stating that efforts of others must be "undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise").

<sup>15</sup> See *supra* note 1.

permitted to directly with the protocol or providing indemnification from slashing caused by a service provider's acts or omissions. These are administrative efforts by a third party to encourage wider participation in staking on the protocol and can hardly be said to be managerial or entrepreneurial efforts that drive any profits for the user of the Staking Service. Concluding otherwise would have the perverse result of discouraging Staking Services from offering such features, which would leave users of Staking Services worse off.

With respect to Liquid Staking, a person that receives a Receipt Token does not have a reasonable expectation of profit from the efforts of others. First, the Receipt Tokens function as digital title to staked assets and related rewards, not as instruments entitling holders to share in the earnings of a business enterprise or service provider. The rewards due to the holder are by virtue of their continued ownership of the staked assets, not efforts of a third party. Any profit derived from trading activities of the Receipt Token would be the result of the Receipt Token holder, not the issuer of the Receipt Token.

## **B. The 'Note' Test**

Section 2(a)(1) of the Securities Act also defines "security" to include "any note." In *Reves v. Ernst & Young*,<sup>16</sup> the Supreme Court explained that a note is presumed to be a security unless it falls into certain judicially-created categories of financial instruments that are not securities,<sup>17</sup> or if the note in question bears a "family resemblance" to notes in those categories based upon a four-part test. The Court's four-factor test requires examination of (1) the motivations that would prompt a reasonable seller and buyer to enter into the note (is the note sold for investment or commercial or consumer purposes), (2) the plan of distribution of the note to determine whether there is common trading for speculation or investment, (3) the reasonable expectations of the investing public, and (4) the existence of another regulatory scheme that significantly reduces the risk of the instrument and renders the application of the securities laws unnecessary. No one factor is dispositive. This test has typically been applied only in the context of issuance of a debt instrument, and staking does not involve any issuance of a debt instrument. However, if the test is applied, neither direct staking or staking through a Staking Service constitute a securities transaction under *Reves* assuming POSA's Industry Principles for Staking are followed.

### **1. Motivations of Seller and Buyer**

Using the labels "buyer" and "seller" in the context of direct staking or staking through a Staking Service is in many cases a mischaracterization of the nature of activities. Staking is generally a technical activity that secures a network and is programmatically incentivized through the prospect of receiving rewards pursuant to the terms of the blockchain protocol. Staking, either direct or through a Staking Service, is not investment activity between buyers and sellers so long as the POSA's Industry Principles for Staking are followed.

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<sup>16</sup> 494 U.S. 56 (1990).

<sup>17</sup> In *Reves*, the Court confirmed the following types of notes are not securities: "the note delivered in consumer financing, the note secured by a mortgage on a home, the short-term note secured by a lien on a small business or some of its assets, the note evidencing a 'character' loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note which simply formalizes an open-account debt incurred in the ordinary course of business (particularly if, as in the case of the customer of a broker, it is collateralized)." *Id.* at 65.

But to the extent a direct staker or user of Staking Services can be considered a “buyer” for purposes of the Reves analysis (and the protocol or a Staking Services provider a “seller”), the test is not met. Under Reves, if the seller’s purpose is to raise money for the general use of a business enterprise or to finance investments and the buyer is interested primarily in the profit, then the instrument is likely to be a security.<sup>18</sup> Conversely, if the note is to advance some commercial or consumer purpose, the note is less likely to be a security.<sup>19</sup> With respect to direct staking, blockchain protocols do not raise money with staked assets for business purposes; the staked assets are used programmatically to secure the network. With respect to Staking Services, the providers of such services similarly are not raising money to use in a business enterprise or finance investments; the staked assets of users are staked to the relevant protocol and rewards are received in exchange for the services provided to the protocol. As such, so long as POSA’s Industry Principles for Staking are followed, staking and Staking Services are best understood as commercial transactions that are entered into to secure blockchain protocols and to receive rewards, not as profits, but as consideration for providing staking services to the protocol.

## 2. Plan of Distribution of the Instrument

If the instrument is subject to “common trading for speculation or investment,” then it may be considered a security.<sup>20</sup> Direct staking, Self-Custodial StaaS, and Custodial StaaS arrangements are not represented by any instrument available for trading. While liquid staking provides users with Receipt Tokens that are available for trading, any speculative trading opportunities are generally minimized because Receipt Tokens are redeemable for the underlying asset.

## 3. Reasonable Expectations of the Investing Public

Courts consider whether notes are characterized as investment and whether there are any countervailing factors that would lead a reasonable person to question such a characterization. The evaluation of advertising and representations made by providers of Staking Services would be necessary for any specific analysis, but POSA’s Industry Principles for Staking limit the activities that could indicate the presence of a securities transaction. Marketing that is factual, accurate, and focuses on operational staking instead of the ability to earn enhanced rewards is commonplace in the industry and does not suggest that there is a reasonable expectation of profit by the public.

## 4. Risk-Reducing Features

The existence of insurance, collateral, or an alternative regulatory scheme suggest that a securities transaction is not present. Stakers do not give up ownership of their assets when direct staking or staking through a Staking Service. The staked assets, which may be withdrawn by their owner from either the protocol or a Staking Service, therefore serve as a form of collateral and reduce any risk in staking. Some Staking Services provide insurance, indemnification, or other coverage to protect users against slashing losses caused by the service provider’s acts or omissions, which provides another risk-reducing feature.

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<sup>18</sup> *Id.* at 66.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Staking and staking services are likely not securities under *Reves* because (1) the relevant parties to a staking transaction understand staking tends to be commercial in nature for the security of the network and the provision of rewards as consideration for such services; (2) staking transactions are generally not available for trading for speculation or investment; (3) a reasonable user of Staking Services would not expect the transaction to constitute an investment assuming the POSA's Industry Principles for Staking are followed; and (4) the continued ownership of staked assets by the user, and insurance or indemnification from slashing reduce the risk associated with these activities.<sup>21</sup>

#### IV. SCOPING STAKING AND STAKING SERVICES OUT OF FEDERAL SECURITIES LAWS

##### A. **Securities laws are not appropriate or necessary to protect stakers and users of Staking Services.**

Staking Services involve the provision of technical services to users that results in the receipt of staking rewards generated by the underlying protocol. Commercial transactions such as Staking Services do not need the securities laws to protect users of the services, and stretching the outer bounds of the securities laws to cover such services would be inappropriate.

The registration and disclosure mandates of the federal securities laws are fundamentally mismatched with the core functions of any Staking Service. For instance, registration under the Securities Act typically requires filing a Form S-1, which includes extensive disclosures like audited financial statements, management's discussion and analysis of financial condition and results of operations, and executive compensation and biographical information. Such information relating to the provider of Staking Services does not provide users of Staking Services with helpful information relevant to a decision of whether to use the Staking Service. As described throughout this Letter, users of Staking Services face risks that are largely technical in nature. Some of the information that is relevant to a user of Staking Services may include:

- **Disclosure of Applicable Risks and Terms.** These may include but are not limited to slashing risk, obligations of the service provider, and legal rights of the staker.
- **Technical Details.** Disclosure should be provided on how the protocols function so that users understand how the staking mechanics work.
- **Transparency of Fees.** A service provider should provide users with a clear fee schedule and other relevant terms and conditions that outline exactly how much of the user's rewards the staking provider receives as a service fee.
- **User Consent.** In the StaaS context, an intermediary should require that each user

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<sup>21</sup> Nevertheless, there may be cases in which providers of Staking Services, acting in violation of POSA's Industry Principles for Staking, offer services that may constitute securities transactions if, for instance, they advertise them as an investment opportunity, take control of investor funds and then exercise discretion in allocating them for the purpose of generating a return. It is therefore necessary to assess Staking Services carefully to determine whether the risks discussed in *Reves* that are intended to be mitigated by federal securities laws are present. It is our hope that POSA's Industry Principles for Staking offer a useful foundation for this analysis.

consents to either direct or liquid staking where applicable and should not stake a user's assets without such user's affirmative action or consent.

- **Unstaking and Withdrawal Details.** Disclosure should identify the process by which staked assets are unstaked and clarify any delay in receipt of the staked assets and final rewards, as applicable.
- **Smart Contract Code Audits.** Stakers should be provided with links to audit reports on the relevant code and details on any bug bounty program.

Ultimately, imposing the rigid regulatory framework of the securities laws on the providers or developers of Staking Services would place them in an untenable position, trying to work within a set of requirements meant to address information asymmetries in securities markets that do not exist within this context of providing a technical, commercial service.

## **B. Staff Guidance Would Bring Regulatory Certainty**

While we believe that staking and Staking Services do not constitute securities transactions, the industry would benefit from receiving guidance from the SEC on the issue.

We respectfully request that the Division of Corporation Finance consider issuing a statement identifying its views on when staking and Staking Services do not constitute securities transactions, consistent with recent statements on memecoins, PoW mining, and stablecoins.

POSA's Industry Principles for Staking<sup>22</sup> provide a helpful roadmap for providers or developers of Staking Services to avoid engaging in activities that could indicate the presence of a securities transaction. We would welcome the inclusion of the following principles in any staff statement in identifying the scope of activities that do not constitute a securities transaction:

- **Focus on Operational Staking Posture and Processes Instead of the Ability to Earn Enhanced Rewards** — Marketing should be factual. A service provider should not market a user's ability to earn "enhanced" rewards in excess of protocol rewards, or claim to have a competitive advantage outside what is earned natively from the protocol.
- **Use Accurate Terminology and Refrain from Investment Advice** — A service provider should not make any recommendations as to whether or not a market participant should purchase a particular digital asset. The service provider also should make no representations to market participants as to potential appreciation in the value of the staked digital asset. Service providers and/or those providing marketing materials on behalf of public protocols should avoid using words such as "interest" or "dividend," which may be confused for their financial meanings. POSA suggests the use of more accurate terminology such as "Block Reward" or "Staking Reward."
- **Focus on Providing Access to the Protocol & User Ownership of Staked Assets** — A

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<sup>22</sup> PROOF OF STAKE ALLIANCE, *POSA Staking Industry Principles* (Nov. 9, 2023), <https://static1.squarespace.com/static/62f147feb8108a08e666aea5/t/654cef598b8f5853acc57071/1699540825149/POSA+Staking+Industry+Principles.pdf>.

service provider should focus on its service of providing access to the protocol and highlight that the user is and remains the owner of the underlying staked asset (plus any staking rewards).

- **Do Not Manage or Control Liquidity for Users Without Transparency** — A technical service provider should not determine or manage the amount of a user’s staked assets to provide users with liquidity without disclosing the manner in which it is done. Each user should be able to determine the exact amount of their tokens that are staked.
- **Do Not Provide Guarantees on the Amount of Rewards Earned** — A service provider should not provide any guarantees or make any commitments to users as to the amount of staking rewards to be earned from a given protocol pursuant to the service relationship. The service provider should provide clarity surrounding the fees for their own technical services, but also make clear that the provider has no control over the overall staking reward rate for the applicable proof of stake protocol, as such rate is determined by the protocol itself. Service providers may note an estimated reward rate based on historical experience, but should make clear that rewards are determined by the protocol, which the service provider has no control over and may change over time for various reasons. The provider should also make clear that rewards are distributed in the native token of the protocol and that there can be no assurance of the value of that asset relative to any other crypto asset or fiat currency.
- **Engage in Ministerial or Clerical Efforts to Protect Users.** A service provider should be permitted to engage in ministerial or clerical efforts to protect users. For example, arranging for and publishing security audits of the source code of the protocol or obtaining insurance or other coverage to protect users against slashing losses are potential actions that should be considered ministerial.

SEC staff guidance along these lines would benefit providers and developers of Staking Services, users of Staking Services, and the digital asset ecosystem more broadly. Providers and developers of Staking Services would receive regulatory certainty that their activities do not constitute securities transactions, which would allow them to focus on technical solutions to securing blockchain protocols as opposed to hiring lawyers to assess regulatory risk of their activities. Users of Staking Services would receive the benefit of baseline disclosures and customer protections encouraged by the staff guidance. Finally, the digital asset ecosystem more broadly would benefit because regulatory clarity on how Staking Services can be provided in a securities law-compliant way could unlock opportunities for exchange-traded products (“ETPs”) to stake their assets in a responsible manner. The use of Staking Services with permissive unstaking or liquid staking features by ETP sponsors, for example, could aid sponsors to be able to both stake and fulfill redemption orders by authorized participants.

The issuance of guidance from the Division of Corporation Finance would help the U.S. keep pace with other jurisdictions and ensure U.S. competitiveness in digital asset markets. Domestically, some state securities regulators are pursuing enforcement actions relating to staking.<sup>23</sup> Guidance from the Commission can help send a clear signal that, at least at the federal

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<sup>23</sup> See NASAA Releases 2024 Enforcement Report (Oct. 20, 2024),

level, the U.S. is adopting common-sense regulations supportive of innovation and true to the limitations of the securities laws. Additionally, providing regulatory clarity to staking services proved to be a preliminary and important step in permitting ETPs to stake in Canada.<sup>24</sup> In addition, Hong Kong recently provided regulatory clarity for staking services within its jurisdiction.<sup>25</sup> Further, the U.K. recently determined that certain staking mechanisms, including custodial staking, do not amount to “collective investment schemes” under U.K. law.<sup>26</sup> Providing regulatory clarity on this issue will help establish U.S. leadership in common sense regulation of staking.

Finally, if the SEC issues a statement addressing its views on staking and Staking Services, we request that it avoid prescriptive guidance that would lock-in current market practices and discourage competition and experimentation with new technological solutions.

## V. CONCLUSION

We greatly appreciate the SEC Crypto Task Force’s engagement with the public on the issues relating to staking. If we can provide any further information or analysis to the Task Force in consideration of these issues, we stand ready to do so and welcome further dialogue. Thank you for consideration of this submission.

Respectfully,\*

CCI’s Proof of Stake Alliance

Crypto Council for Innovation

a16z crypto

Alluvial

Ava Labs, Inc.

Babylon Labs Ltd.

Blockchain Association

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<https://www.nasaa.org/73977/nasaa-releases-2024-enforcement-report/> (highlighting 144 investigations and enforcement actions involving staking across state securities regulators in 2023). See also Vince Quill, *Alabama Drops Staking Lawsuit Against Coinbase*, COINTELEGRAPH (Apr. 23, 2025) (noting that five of the ten US states that filed litigation against Coinbase in 2023 relating to staking have dismissed their lawsuits).

<sup>24</sup> Evan Thomas, *Regulation of Staking ETFs and Staking Services: Lessons from Canada*, Alluvial.Finance (Jan. 17, 2025), <https://alluvial.finance/staking-regulation-canada/>.

<sup>25</sup> See Hong Kong Securities and Futures Commission, *Circular on Staking Services Provided by Virtual Asset Trading Platforms* (Apr. 7, 2025), <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=25EC22>. The issuance of SEC guidance would help the U.S. keep pace with other jurisdictions and ensure U.S. competitiveness in digital asset markets.

<sup>26</sup> HM TREASURY, Order 2025 Under the Financial Services and Markets Act 2000, SI 2025/17 (Jan. 9, 2025), <https://statutoryinstruments.parliament.uk/instrument/5FulhQu6>. The U.K. is expected to seek public feedback on staking in Q2 2025 in furtherance of its efforts to develop a regulatory regime for crypto assets. See FCA CRYPTO ROADMAP, <https://www.fca.org.uk/publication/documents/crypto-roadmap.pdf>.

Blockdaemon

Consensys Software, Inc.

Decentralization Research Center

DeFi Education Fund

The Digital Chamber

Electric Capital Partners, LLC

Etherealize

Figment

Galaxy Digital

Jito Labs, Inc.

Kiln

Kraken

Lido Labs Foundation

Marinade Labs

Metalex

MoonPay

Near Foundation

Paradigm

Polychain Capital LP

Ribbit Capital

Solana Policy Institute

Twinstake

\*Supporters may have other points that they would make if making their own submissions.