

News **Regulation**

SEC Offers ‘Narrow’ Clarity on Crypto Staking

May 30, 2025 By  **Michael A. Mora**

What You Need to Know

- SEC staff says certain protocol staking does not implicate federal securities laws.
- Coinbase’s chief legal officer immediately slammed the states still blocking staking services.
- Some lawyers argued that SEC guidance, without rulemaking, only deepens market legal ambiguity.



U.S. Securities and Exchange Commission building. Photo: Diego M. Radzinski/ALM

The U.S. Securities and Exchange Commission's Division of Corporation Finance clarified its view on Thursday evening that certain proof-of-stake blockchain protocol "staking" activities are not securities transactions within the scope of federal securities laws.

And the announcement drew commentary from leaders in the digital asset space on Friday, including Paul Grewal, the chief legal officer at Coinbase. Grewal said that the guidance should send a message to states that sent cease-and-desist orders targeting and preventing the crypto exchange from staking new assets for users.

"We now have confirmation from SEC Corp Fin of what we've all long known is true: staking as a service isn't a security. You know it, I know it, the SEC knows it ... the five holdout states know it too. It's time they move on," Grewal said on social media, referring to the states of California, New Jersey, Maryland, Washington, and Wisconsin.



Paul Grewal of Coinbase

Arlo Devlin-Brown, partner at [Covington & Burling](#) and ex-chief of the public corruption unit for the U.S. Attorney's Office for the Southern District of New York, said the statement offers market participants clear guidance as to the SEC's view that staking assets to secure a blockchain's protocol does not itself implicate the securities laws.

"This removes a cloud that has been hanging over protocol staking activities and may encourage broader participation in this process," Devlin-Brown said, but the litigator advised caution on the "fairly narrow" statements. "Market participants would be wise to keep within the four corners of the SEC's guidance and not test the outer limits."

'Not Binding on the Agency'

Protocol staking is locking up cryptocurrency tokens in a blockchain protocol to earn rewards. And in a statement on the staff's views, Commissioner Hester M. Peirce wrote that proof-of-stake network protocols are designed to encourage users to voluntarily coordinate and cooperate to secure the network.

However, Peirce highlighted that regulatory uncertainty surrounding staking prevents investment due to fears of violating securities laws, undermining the decentralization, censorship resistance and credible neutrality of proof-of-stake blockchains. Additionally, he noted, the pairing of certain ancillary services with custodial or noncustodial staking services does not constitute a securities offering by providing staking services.

"These ancillary services include the provision of slashing coverage, allowing crypto assets to be returned to a staker prior to the end of the protocol's 'unbonding' period, delivering earned rewards based on an alternative rewards payment schedule and in alternative amounts, and aggregating stakers' crypto assets together for purposes of satisfying a network's minimum staking requirements," Peirce advised.

Still, the staff wrote that its statement "has no legal force or effect." And [King & Spalding's](#) Daniel Kahan observed that activities like liquid staking, third-party pooling and yield farming "remain in a regulatory gray area."

"Those areas will continue to require careful, fact-specific analysis to determine whether they implicate the federal securities laws," said Kahan, a partner at the Am Law 100 firm's corporate finance and investment practice.

Peirce's and the staff's views contrasted with those of Commissioner Caroline Crenshaw, who warned their analysis reflects what "some wish the law to be, but it does not square with the court decisions on staking" and the longstanding *Howey* precedent—the test that determines whether a contract qualifies as an investment contract—on which they are based.

For instance, courts in recent SEC enforcement actions ruled that staking services were properly alleged to be investment contracts because they involved entrepreneurial efforts. And through those efforts, the services enhanced profit potential beyond what customers could earn from staking on their own.

"Rather than initiate rule-making or take other formal regulatory action, the Commission and the [Crypto] Task Force have instead rolled out a flurry of staff statements, enforcement action dismissals and roundtables," she said. "Rather than promote clarity, this approach continues to sow uncertainty around what the law is and what parts of it the Commission is willing to enforce, which is bad for investors and the markets."



Helen Gugel of Ropes & Gray

Helen Gugel, a New York partner in Ropes & Gray's litigation and enforcement practice, said the SEC's statement is particularly welcoming to the extent that it removes a potential barrier to agency approval of pending applications to add staking to exchange-traded funds, but agreed with Crenshaw that a clear regulatory framework is overdue.

"The SEC's statement does not remove the need for rule-making or legislative action to bring certainty to the industry," Gugel added, "especially as the statement itself is not binding on the agency and includes caveats that suggest some staking services may still be seen as securities."

Andrew W. Balthazor, a Miami-based co-leader of Holland & Knight's crypto asset dispute team, said that the practical effect of the statement is to provide comfort for entities currently offering staking services, as it assures them that the

SEC will not bring enforcement actions against them.

"If a business entity has declined to participate in the staking market to date, this statement is not going to give them a lot of confidence to jump into offering it now," Balthazor said. "Even if they decide to offer staking services, they might have to do a state-by-state evaluation because some states are still going to consider certain types of staking services as securities transactions and bring enforcement actions."

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