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Blockchain Bites: SEC cooks up clarity on crypto staking, It's morning at the SEC for defi innovation, and Crypto ATMs under fire as AUSTRAC brings the heat

Steven Pettigrove, Luke Higgins, Luke Misthos and Emma Assaf of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

SEC cooks up clarity on crypto staking

On May 29, 2025, the SEC issued a staff statement titled "Certain Protocol Staking Activities" (the "Staff Statement") giving an opinion that routine, protocol-level staking of native tokens on public proof-of-stake blockchain networks, as well as some other staking, would not be considered the offer or sale of securities subject to registration and oversight by the SEC. The same day a second staff statement was published, noting that the provision of security for a loan does not always amount to a "Security" as defined in US law.

This follows on from the SEC investigating and declining to prosecute the movement of Ethereum to a proof-of-stake network in 2024. The second of the staff statements says:

> *Proof-of-stake network protocols are designed to encourage users to voluntarily coordinate and cooperate to secure the network. But uncertainty about regulatory views on staking discouraged Americans from doing so for fear of violating the securities laws. This artificially constrained participation in network consensus and undermined the decentralization, censorship resistance, and credible neutrality of proof-of-stake blockchains.*

The recipe for clarity

The Staff Statements tread a careful line, making clear that individuals can stake without fear of prosecution by the SEC, and that certain kinds of staking products would not be considered to be securities under US law, including:

- self-custodial staking with third parties;
- operating a node to earn staking rewards;
- managing nodes for others where the nodes offer staking rewards;
- custodial operations, where a business holds another party's crypto for the sole purpose of staking that crypto and sending the rewards back to the owner, with the business only selecting which node to stake the assets to.

In addition, "Ancillary Services" are said to be outside the realm of what the SEC considers to be a security, such ancillary services include where slashing occurs to staked crypto, the early 'unbonding' of staked crypto (where crypto must be staked for a minimum period of time for certain rewards), delivery of rewards earlier than the protocol provides them (so long as not exceeding the total rewards provided by the protocol) and the aggregation of crypto with several other persons where individually they didn't have enough crypto to stake to obtain node rewards, but together they can achieve that number. The Staff Statements makes clear all of these ancillary services can be provided at once.

What's the critical ingredient?

The critical point of difference the Staff Statements find is that where a staking provider is *making decisions or exercising discretion* about how to stake a customers assets, then the current SEC will consider that amounting to a regulated product, but absent that discretion, the current SEC does not consider the staking products require their oversight.

This gives common-sense and clear guidance to staking businesses, which had uncertainty over their business models, despite staking being useful to secure proof of stake blockchain security. It has been welcomed by many in the crypto industry as being well-considered and clear. The inclusion of aggregation and early payments of rewards is somewhat surprising, as this goes beyond merely passing through rewards.

A burnt dissent

In the spirit of open dissent, Commissioner Crenshaw said in her response that the Staff Statement is inconsistent with current law, going on to say:

Today's staff's statement, the most recent in a series of Howey interpretations declaring that particular crypto products or services are not securities, is premised on the idea that protocol staking is an "administrative or ministerial activity" devoid of entrepreneurial effort. From there, staff concludes that third-party services that stake on behalf of customers are likewise not engaged in entrepreneurial efforts, and so not offering investment contracts under Howey. But investment contracts have been found to exist in a variety of circumstances where a promoter takes an established product or technology— which itself may not be a security or involve entrepreneurial effort— and "buil[ds] an enterprise on top of it."

Commissioner Crenshaw also criticised the current SEC's crypto roundtables, saying that the current SEC leadership had not "initiate[d] rulemaking or take other formal regulatory action", without mentioning this same criticism was made of the prior SEC leadership. Commissioner Crenshaw's dissent implies the court's have found staking to be a security under US law, which needs to be unpacked. She refers to:

- An SEC prosecution of Kraken, which settled the case without admission.
- An interlocutory decision against Binance which was seeking to dismiss the SEC's case. There the Court found that there was a *plausible argument* the SEC could bring at final hearing on this point (this has not reached final hearing).
- An interlocutory decision against Coinbase in the same manner, where the SEC was found to have reasonably pleaded the matter.

International flavours of staking

In the *Block Earner* Federal Court decision at first instance in Australia (which is not binding in the US but reached a final hearing), a product called "Access" which gave customers access to DeFi staking via aggregation of their crypto with other customers was found by the Federal Court to be outside securities laws, and after an appeal to the Full Federal Court the other staking product offered by the Defendant was similarly found not to be within securities laws. That Full Federal Court decision is presently under appeal to the Australian High Court. Notwithstanding these decisions, ASIC has indicated in proposed updates to Information Sheet 225 that it considers at least some intermediated staking services to involve a financial service.

Earlier this year, the UK Treasury declared that 'eligible staking was not a 'collective investment scheme' – the UK equivalent of a product which would be registered and supervised in the US. That decision was similarly well received by the crypto industry and was made by a statutory instrument, giving it more weight than a regulatory body's statement.

How does this change the menu?

While the clarity from the SEC is welcomed, the strong dissent highlights sharply the philosophical divide between those who believe existing securities laws apply to crypto, and if it cannot fit those laws, it must change to meet them, ignoring that those changes would remove the very features of crypto which make it so innovative and that decentralisation does not fit well (or in many cases at all) with existing laws. Legislation, as has been progressing in the UK and announced for Australia, as well as bills being advanced in the US Congress, will be the only way to give the industry assurance that activities will be treated consistently even when the current leadership of a regulator changes. Well considered rule-making and clear guidance with fit-for-purpose laws balancing innovation and protecting consumers by using the very features of crypto which make it unique are still critical to the long term success of the industry.

By Michael Bacina with Steven Pettigrove

It's morning at the SEC for defi innovation

The new Chair of the US Securities and Exchange Commission (SEC) has given one of the new administration's most promising statements on crypto policy to date, putting a firm end to the era of regulation-by-enforcement which has plagued the US (and other countries) and making clear it is now to be replaced with rule-making to support innovation.

In his remarks, the Chair embraced DeFi as consistent with American values:

The American values of economic liberty, private property rights, and innovation are in the DNA of the DeFi, or Decentralized Finance, movement.

He also encouraged a pro-innovation approach that accommodates peer to peer technologies:

> *I do not believe that we should allow century-old regulatory frameworks to stifle innovation with technologies that could upend and most importantly improve and advance our current, traditional intermediated model. We should not automatically fear the future.*

And that:

> *Most current securities rules and regulations are premised upon the regulation of issuers and intermediaries. The drafters of these rules and regulations likely did not contemplate that self-executing software code might displace such issuers and intermediaries.*

Chair Atkins also acknowledged a clear distinction between software development activity and intermediated financial services:

> *Engineers should not be subject to the federal securities laws solely for publishing this type of software code.*

Chair Aktins has asked SEC staff to explore how further guidance or rulemaking may be helpful to enable people to transact with DeFi in compliance with existing law and he specifically highlighted the benefits of eliminating cost, increasing capital efficiency and enabling new kinds of financial products with greater liquidity.

> *While the Commission and its staff work to propose fit-for-purpose rules of the road for on-chain financial markets, I have directed the staff to consider a conditional exemptive relief framework or "innovation exemption" that would expeditiously allow registrants and non-registrants to bring on-chain products and services to market.*

The SEC's proactive approach by way of rulemaking and guidance stands in sharp contrast to many jurisdictions which have discussed introducing friction to tackle scams, and where the regulatory perimeter is being 'tested' by regulators at great cost which might be better put to use funding fit for purpose regulation and rules. It is also a sharp departure from the SEC under Chair Gensler, as one leading US attorney put it:

> *The SEC [was] simply seeking to ban DeFi protocols in America*

With a markets infrastructure bill before Congress and stablecoin legislation likely to pass, together with tax amendments expected shortly the US is rapidly moving to embrace crypto and blockchain technology in a way that other countries will be watching closely, as the size of the US market can dictate standards in financial services and products like few others can.

By Michael Bacina with Steven Pettigrove

Crypto ATMs under fire as AUSTRAC brings the heat

AUSTRAC, Australia's anti-money laundering and counter-terrorism financing regulator and financial intelligence unit, has refused to renew the registration of a crypto ATM operator and imposed strict conditions on others after uncovering "disturbing trends" in scam and fraud-related activity.

The number of crypto ATMs in Australia has surged from just 23 in 2019 to over 1,800 in 2024. With nearly 150,000 transactions processed annually, moving an estimated $275 million, AUSTRAC considers this channel a significant risk for money laundering and scam activity.

Following months of investigation by AUSTRAC's Cryptocurrency Taskforce, the agency found that crypto ATMs are being exploited to target vulnerable users. Australians aged 60 to 70 emerged as the most frequent users. Data from nine major crypto ATM providers revealed that users over 50 accounted for nearly 72% of all transaction value, with 60 to 70 year-olds alone representing 29%. The Australian Federal Police also reported on 3 June 2025 that from January 2024 to January 2025, the Australian Cyber Security Centre received 150 reports of scams involving crypto ATMs with an estimated loss of approximately AU$3,000,000.

In response, AUSTRAC has introduced a set of mandatory safeguards for crypto ATM operators:

1. $5,000 limit on all cash deposits and withdrawals per transaction;
2. mandatory scam warnings displayed before transactions;
3. enhanced customer due diligence obligations; and
4. stronger transaction monitoring and reporting requirements.

These measures appear to have been imposed by way of conditions on the registration of crypto ATM operators under AUSTRAC's powers in Section 76G of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**AML/CTF Act**).

In a media release, AUSTRAC CEO Brendan Thomas has said that bad actors are to blame for the action taken by AUSTRAC.

> *The conditions are designed to help protect individuals from scams by deterring criminals from directing them to a crypto ATM, as well as to protect businesses from criminal exploitation,*
>
> *This action draws a clear line in the sand and serves as a warning to other digital currency exchange providers that aren't meeting their responsibilities under the AML/CTF Act.*

While the $5,000 cash limits only relate to crypto ATM providers, AUSTRAC expects digital currency exchange providers to consider imposing similar limits if they accept cash for crypto transactions.

The Chair of the Digital Economy Council of Australia, Paul Derham pushed back on suggestions that crypto ATMS are inherently problematic, noting that some users have resorted to ATMs following tighter restrictions on electronic payments to cryptocurrency exchanges among banks.

AUSTRAC is following in the footsteps of the UK's Financial Conduct Authority which had cracked down on the sector recently touting its success driving crypto ATMs out of the country. However, crypto ATMs are also in wide usage in a number other countries.

While crypto ATMs themselves are not inherently problematic, this nuance appears to be have been lost in the headlines. AUSTRAC's targeted action against crypto ATMs is signal of increased scrutiny of the sector generally following on the footsteps of its recent "use or lose it" campaign against DCEs. AUSTRAC has also been involved in a number of recent criminal enforcement actions involving cryptocurrency. In that context, and given the introduction of the enhanced VASP regime scheduled for 2026, DCEs should adopt a proactive approach in reviewing their AML/CTF risk assessments and commencing preparations for the new regime.

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