

Vital Briefing

SEC crypto interpretation: protocol mining and protocol staking

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The Commission issued its crypto interpretation in March 2026, thus putting a more formal stamp on what for the past year was merely a growing collection of non-binding guidance on a variety of crypto topics. Much of the informal guidance remains, although some topics previously addressed have been subsumed into the crypto interpretation. This Vital Briefing, the second in a three-part series, takes a closer look at the Commission's [crypto interpretation](#) regarding protocol mining and protocol staking, the foundational activities that power all blockchains through individual and collective action to "mine" new blocks, obtain rewards, and validate transactions.

I. Introduction

The two main methods for discovering new digital commodities, what the Commission calls protocol mining and protocol staking, have in common the activity of "mining" new digital commodities, validating transactions, creating new blocks, and potentially earning rewards for contributing computing power to accomplish all of these goals. Protocol mining is also known as proof of work or PoW mining because it involves solving

complex cryptographic puzzles. Because of the large amounts of electricity used to run large-scale mining farms, PoW has come under scrutiny by environmentalists. As a result, the alternative known as proof of stake or PoS, was developed to at least partially reduce energy use in the mining process. The Commission's crypto interpretation treated PoW and PoS separately.

The discussion below covers multiple staking methods. However, for the practice of protocol staking, the provision of ancillary services by third party providers, and the practice of issuing staking receipt tokens, there are numerous activities on which the Commission's crypto interpretation did not opine, including:

- When a custodian or liquid staking provider (LSP) selects whether, when, or how much of a depositor's digital commodities to stake;
- When a custodian or LSP guarantees or sets the reward amount owed to depositors; and
- When, in the context of staking receipt tokens, LSPs may offer opportunities for the generation of additional returns.

In these instances, the Commission said merely that the activity was "outside the scope of [the] release."¹

II. Protocol mining

Protocol mining is the activity of providing computing resources for the purpose of "mining" digital commodities by solving complex cryptographic problems that aid the validation and addition of new blocks to a blockchain in a network predicated on proof of work (PoW). This consensus mechanism or mode of verifying transactions can result in miners receiving rewards. The Commission's crypto interpretation noted that the digital commodities that may be mined in a PoW network are not enumerated "securities" under federal securities laws, so the *Howey* standard applies to the analysis of whether these activities involve "securities."

According to the Commission's crypto interpretation, self/solo mining and mining via a mining pool are essentially the same administrative or ministerial activity, which is done to secure a PoW network, validate transactions, add new blocks, and receive rewards.

1 Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13728 nn. 123-127, and 13729 n. 131 (Mar. 23, 2026).

Protocol mining

Activity	Securities?	Reasoning
Self/solo mining Miners mine digital commodities using their own computational resources (miners may work alone or together).	No.	- No reasonable expectation of profits from the essential managerial efforts of others. - Adding computational power is an administrative or ministerial activity (i.e., secure network, validate transactions, add blocks, and receive rewards). - Rewards are payments for services to network, not profits.
Mining pools Miners combine their computational resources to increase the odds of validating transactions and, thus, mining new blocks on a PoW network (rewards may be received directly from the network or indirectly via a pool operator).	No.	- No reasonable expectation of profits from the essential managerial efforts of others. - Any profit expectations would <i>not</i> arise from third party actors (e.g., pool operators), whose activities are likewise administrative or ministerial.

Source: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13723-13725 (Mar. 23, 2026).

Even when a third-party pool operator becomes involved, that person's activities also are administrative or ministerial in nature, despite the fact that the pool operator's activities may benefit a group of miners. "[A]ny such efforts are not sufficient to constitute essential managerial efforts because miners are expecting the computational resources that they provide in conjunction with other members to the mining pool to earn profits," said the Commission. The interpretation added that miners do not join mining pools to passively earn profits.

III. Protocol staking in general

The Commission's crypto interpretation categorically states that several modes of engaging in the practice of staking digital commodities do not fall within the ambit of the federal securities laws. Most of the covered staking methods can be engaged in for a

variety of reasons, including convenience and the maintenance of liquidity.

But these modes of engaging in protocol staking are just the tip of the iceberg. The Commission's crypto interpretation goes on to examine the legal status of staking receipt tokens and related ancillary services.

Protocol staking, the Commission explained, also can implicate additional services that are ancillary in nature. These services require separate analysis under the federal securities laws.

Ancillary services mentioned in the SEC's crypto interpretation would be considered administrative or ministerial in nature and would not involve essential managerial efforts. As a result, service providers who offer one or more such services would not be engaged in providing essential managerial efforts.

IV. Protocol staking: staking receipt tokens

The Commission's crypto interpretation applies to three scenarios involving staking receipt tokens: (1) a staking receipt token issued for a non-security crypto asset that is not subject to an investment contract; (2) a staking receipt token issued for a digital security or a non-security crypto asset that is subject to an investment contract; and (3) a staking receipt token issued for a non-security crypto asset that is not subject to an investment contract where the staking receipt token itself might be offered or sold subject to an investment contract.

The definition of "security" under the federal securities laws includes a "receipt for" a "security." According to the Commission's crypto interpretation, "[a] Staking Receipt Token is a receipt, which is an instrument

Protocol staking

	Self/solo staking	Self-custody staking directly with third-party	Custodial arrangement	Liquid staking
Activity	Individual stakes crypto but retains ownership of crypto and related private keys.	Individual stakes crypto with third-party but retains ownership of crypto and private keys while splitting rewards with third-party.	Crypto staked with third-party who has custody of the crypto while the owner retains ownership of the crypto. Third-party selects node and stakes crypto subject to limits on use of crypto. Owner and third-party agree to split rewards.	Third-party takes deposit of crypto it will stake and provides owner with staking receipt token, which provides owner with liquidity and right to redeem (including right to rewards) subject to unbonding period.
Offer/sale of security?	N	N	N	N
Rationale	No reasonable expectation of profits to be derived from the essential managerial efforts of others. Rewards paid to node operator are in exchange for the services to network, not profits derived from the essential managerial efforts of others.	Owner has no expectation of profit derived from the essential managerial efforts of others. Node operator's service to Owner is administrative or ministerial, not essential managerial efforts. Conclusion applies regardless of whether node operator stakes its own crypto or has grant of validation rights from owner.	Akin to self-custody staking directly with third-party (owner grant of validation rights to third party) but with additional custodial grant from owner to third party regarding deposited digital commodities. Taking custody/selection of node operator are administrative or ministerial acts. Third party makes no decision about whether, when, how much to stake, acts as agent, and charges a fee.	Akin to custodial arrangement.

Source: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13725-13728 (Mar. 23, 2026).

certifying that a stated amount of a digital commodity has been deposited with the Liquid Staking Provider issuing the receipt, because it evidences the holder's ownership of the deposited digital commodity."²

The key distinction, then, is: (1) whether the staking receipt token is a receipt for a non-security crypto asset that is not subject to an investment contract; or (2) whether it is a receipt for a digital security or non-security

crypto asset that is subject to an investment contract. The first scenario does not result in a security, but the second scenario does result in a security for both types of assets, the digital security and the non-security crypto asset.

The treatise Securities Regulation, authored by Louis Loss (late), Joel Seligman, and former SEC Commissioner Troy Paredes (the treatise is a Wolters Kluwer Incorporated

publication), attempted to explain the scope of the term "receipt for" a "security" and aspects of the Commission's crypto interpretation, albeit without citation to the treatise, appear to follow much of the treatise's explanation. According to Loss, Seligman, and Paredes:

"Conversely, not all instruments that are in form receipts for securities are themselves securities. Congress

2 Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13729 (Mar. 23, 2026).

Protocol staking—ancillary services		
Who is a service provider?	• Third-party node operators • Validators • Custodians • Delegates • Nominators • Liquid staking providers	
What services are allowed?	Slashing coverage	Reimbursement or indemnification of staking customer for slashing-related losses.
	Early unbonding	The return of digital commodities to an owner before the unbonding period ends (SEC said the service is convenience to owners/depositors).
	Alternate rewards	Payment of rewards on a different schedule than fixed by the PoS network’s software protocol, but not if fixed, guaranteed, or more than allowed by the protocol (SEC said the service is convenience to owners/depositors).
	Aggregation	Owners/depositors aggregate digital commodities to meet PoS network staking minimums (SEC treats service as part of validation and, thus, merely administrative or ministerial in nature).
Who receives those services?	• Owners of digital commodities • Depositors of digital commodities	
What limits apply to the interpretation?	Footnote 127 of the Interpretation explained that any services not mentioned in the Interpretation would be outside the scope of the Interpretation.	
Source: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13728 (Mar. 23, 2026).		

could not have intended to require registration when the issuer of the receipt acts in a purely ministerial capacity and has only the obligations of an ordinary bailee. For example, a bank or trust company, retained to act as depositary by a corporation or a committee of security holders, may issue receipts as part of the mechanics of a voluntary reorganization, the receipts merely evidencing the depositors’ right either to receive certain new securities or to have their

old securities returned depending on specified contingencies (such as the number of securities deposited by a given date). The new securities called for by the plan will be registered (unless an exemption is available), but the receipts themselves are hardly securities. In other words, receipt for a security is more or less ejusdem generis with certificate of deposit, and is essentially another statutory handle to cover instruments that are certificates of deposit in substance

without being so termed. In close cases, this may draw a fine line. But the touchstone should always be substance rather than form — whether it operates to include or to exclude.”³

The Commission’s crypto interpretation noted via footnote that the term “certificate of deposit for a security,” would generally be understood to mean an instrument used by protective committees during corporate reorganizations.⁴

3 Securities Regulation - Loss, Seligman and Paredes at 3.A.1.i.

4 Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13729 at n. 129 (Mar. 23, 2026).

Staking receipt tokens

Is there a staking receipt token?	Is there a receipt for an asset?	What kind of asset is the receipt for?	Is the asset subject to an investment contract?	Interpretation	Commission analysis
Y	Y	Non-security crypto asset	N	(1) The transaction does not involve the offer or sale of a security. (2) No need to register transaction or assert a registration exemption.	(1) Not within enumerated definition of “security” (lacks economic characteristics of a security). (2) Staking receipt token itself does not generate rewards; rewards arise from underlying PoS activities, which do not involve a securities transaction. (3) Staking receipt tokens are not derivative financial instruments. ⁵
Y	Y	Digital security Non-security crypto asset	N/A Y	(1) Transaction involves the offer or sale of a security. (2) Register the transaction or assert a registration exemption.	
Y	Y	Non-security crypto asset	N	Question: Is a staking receipt token itself, under these facts, potentially offered and sold subject to an investment contract? Answer: No. Note: The interpretation noted that the scenario in which an LSP provides the means for the holder of a staking receipt token to earn additional returns is beyond the scope of the interpretation. ⁶	(1) Value of the staking receipt token derived from deposited digital commodity, not essential managerial efforts of the LSP or another third party who generates, issues, and redeems the staking receipt token. (2) rewards arise from underlying PoS activities, which do not involve a securities transaction.

Source: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13728-13729 (Mar. 23, 2026).

5 The Commission’s interpretation posits that staking receipt tokens are not derivative financial instruments as defined by Securities Act Section 2(a)(1) and Exchange Act Section 3(a)(10), both of which specifically mention puts, calls, straddles, options, privileges on any security, and security-based swaps. The Commission stated that, in its view, this is true because staking receipt tokens lack a premium, do not have optionality, and do not transfer risk between parties. See, Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13728-13729 and n. 128 (Mar. 23, 2026).

6 Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release No. 33-11412 (Mar. 17, 2026), 91 F.R. 13714, 13729 at n. 131 (Mar. 23, 2026).

V. Looking ahead

The categorical nature of the Commission's interpretation is perhaps best on display regarding protocol mining and staking activities. Here, the Commission attempted to distinguish participants who engage in more securities-like activities from those who provide administrative or ministerial services. Specifically, the Commission attempted to separate out those who provide ancillary services, including

third-party node operators, validators, custodians, delegates, nominators, and LSPs.

But whether any of these participants fall within the ambit of the federal securities laws is a key question, which the Commission tried to answer for some participants, but which the Commission left open for others, either because their activities depend on close factual analysis or because the Commission decided that

certain services fall outside the scope of the interpretation. As a result, many blockchain industry participants must still engage in intensive, individualistic analyses of whether their activities may invite application of the federal securities laws.

In the concluding Part III of this series, the spotlight will turn to the Commission's interpretation regarding wrapping and airdrops.