



US SEC Opens Proceedings on VanEck Bitcoin and Ethereum Trusts Proposal to Permit In-Kind Creations and Redemptions

On 2 June 2025, the United States Securities and Exchange Commission (**US SEC**) published an **Order instituting proceedings** to determine whether to approve or disapprove a proposed rule change submitted by Cboe BZX Exchange, Inc. The proposal seeks to amend the listing terms of the VanEck Bitcoin Trust and the VanEck Ethereum Trust to allow in-kind creations and redemptions under BZX Rule 14.11(e)(4), which governs commodity-based trust shares.

The proposed rule change was filed by the exchange on 19 February 2025 under Section 19(b)(1) of the United States **Securities Exchange Act of 1934** and United States SEC **Rule 19b-4**. It was published in the Federal Register on 5 March 2025. The US SEC initially extended the decision timeline to 3 June 2025, and has now opened formal proceedings under Section 19(b)(2)(B) of the same Act to allow for further analysis.

According to the proposal, the exchange intends to amend the operational mechanics of the VanEck Bitcoin Trust and VanEck Ethereum Trust to allow market participants to create and redeem shares in-kind, meaning with bitcoin or ether rather than cash. All other representations approved by the US SEC when these trusts were originally listed would remain unchanged and continue to serve as ongoing listing conditions.

The US SEC clarified that instituting proceedings does not indicate any conclusion on the merits of the proposal. The review is being initiated to determine whether the proposed rule change is consistent with Section 6(b)(5) of the United States **Securities Exchange Act of 1934**. This provision requires that exchange rules be designed to prevent fraudulent and manipulative practices, ensure fair trading, support the mechanism of a free and open market, and protect investors and the public interest.

The US SEC also invites public comments on whether the proposed rule change complies with applicable law and regulations. Submissions may be made electronically or by post and must reference file number SR-CboeBZX-2025-031 till 21 days after published in the Federal Register. Rebuttal comments may also be submitted till 35 days after published in the Federal Register. The US SEC will review all relevant materials before issuing its final determination.

(Source: <https://www.sec.gov/files/rules/sro/cboebzx/2025/34-103164.pdf>)

US SEC Initiates Proceedings on WisdomTree Bitcoin Fund Proposal to Permit In-Kind Creations and Redemptions

On 2 June 2025, the United States Securities and Exchange Commission (**US SEC**) published an [Order instituting proceedings](#) to determine whether to approve or disapprove a proposed rule change filed by Cboe BZX Exchange, Inc. The proposed rule change seeks to amend the terms governing the listing and trading of the WisdomTree Bitcoin Fund under BZX Rule 14.11(e)(4), to allow the fund to conduct in-kind creations and redemptions of bitcoin.

The proposed rule change was originally submitted by Cboe BZX Exchange, Inc. on 20 February 2025, pursuant to Section 19(b)(1) of the United States [Securities Exchange Act of 1934](#) and United States SEC [Rule 19b-4](#). The US SEC published the proposal for public comment in the Federal Register on 5 March 2025. On 14 April 2025, the US SEC extended the deadline to decide on the proposal until 3 June 2025. As of 02 June 2025, the US SEC on 2 June 2025, instituted proceedings under Section 19(b)(2)(B) of the United States [Securities Exchange Act of 1934](#) to allow further analysis of the legal and policy considerations raised by the amendment.

The proposal specifically requests a change in the creation and redemption mechanics of the WisdomTree Bitcoin Fund to permit in-kind transactions involving bitcoin, instead of relying solely on cash-based settlements. According to the exchange, all other conditions and representations that governed the US SEC's prior approval of the WisdomTree Bitcoin Fund on 10 January 2024 will remain unchanged and continue to apply as ongoing listing requirements.

Instituting proceedings does not indicate any conclusion on the merits of the proposal by US SEC. The purpose of the proceedings is to evaluate whether the proposed rule change is consistent with Section 6(b)(5) of the United States [Securities Exchange Act of 1934](#). This section requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to a free and open market, and protect investors and the public interest.

Interested persons are invited to submit written comments on the proposed rule change, including views, data, and arguments addressing whether it is consistent with Section 6(b)(5) or any other provision of the United States [Securities Exchange Act of 1934](#). Rebuttal comments may also be submitted in accordance with the timeframes to be published in the Federal Register. The US SEC has not scheduled an oral presentation of views but will consider requests for one under United States [Rule 19b-4](#).

All submissions/comments should refer to file number SR-CboeBZX-2025-033 and may be submitted via the official US SEC website or by email or post. The order remains open to public participation and further comment until the designated period of 21 days is reached.

(Source: <https://www.sec.gov/files/rules/sro/cboebzx/2025/34-103165.pdf>)

US SEC Appoints Natalia Díez Riggín as Senior Advisor and Director of Legislative and Intergovernmental Affairs

On 2 June 2025, the United States Securities and Exchange Commission (**US SEC**) appointed Natalia Díez Riggín as the Senior Advisor and Director of its Office of Legislative and Intergovernmental Affairs. Ms. Riggín had been serving as Acting Director since January 2025 and will now permanently lead the US SEC's outreach and liaison efforts with Congress, federal departments, and state governments.

Ms. Riggín brings legislative experience, having most recently served as a senior professional staff member on the U.S. Senate Committee on Banking, Housing, and Urban Affairs for Chairman Tim Scott of South Carolina. She has also held positions as deputy legislative director for U.S. Senator John Kennedy of Louisiana and staff director for the Senate Banking Committee's Economic Policy Subcommittee. Earlier roles included serving as policy aide to U.S. Senators Mike Enzi of Wyoming and Mark Kirk of Illinois. A graduate of the University of Illinois Chicago, Ms. Riggín holds a Bachelor of Arts degree in political science and history.

US SEC Chairman Paul S. Atkins welcomed Ms. Riggín and stated, *"I'm pleased that Natalia will continue to lead this important office and serve as our primary liaison to Congress and other federal agencies as well as state governments. She has been serving the Commission effectively since January and her experience will help guide the Commission as we return to our core mission that Congress set for us."*

(Source: <https://www.sec.gov/newsroom/press-releases/2025-81-natalia-diez-riggin-named-senior-advisor-director-legislative-intergovernmental-affairs>)

US SEC Commissioner Crenshaw Highlights Regulatory Inconsistency in Crypto Asset Classification Amid ETF Registrations

On 31 May 2025, United States Securities and Exchange Commission (**US SEC**) Commissioner Caroline A. Crenshaw issued a powerful dissent titled *"Muddying the Waters: More Confusion on Crypto Asset Security Status,"* sharply criticising what she described as deepening inconsistencies in how the US SEC classifies crypto assets, especially in the wake of recently approved exchange-traded funds (**ETFs**) tied to Ethereum (**ETH**) and Solana (**SOL**). The Commissioner expressed concern that regulatory clarity is being sacrificed in favour of expediency, warning that current actions may "thwart any meaningful attempt to apply a coherent regime to crypto assets."

Over the past few months, the US SEC's Division of Corporation Finance has released multiple staff statements—each pronouncing that different categories of crypto assets, including meme coins, proof-of-work tokens, and stablecoins, are not securities. Yet on 30 May 2025, two new ETFs i.e. Rex-Osprey ETH + Staking ETF and Rex-Osprey SOL + Staking ETF, were allowed to become effective under **Form N-1A** filings, indicating their classification as investment companies dealing primarily in securities. This apparent contradiction was further exacerbated by unresolved staff comments on the funds' registration, disclosed in a correspondence posted on the US SEC's EDGAR system.

Commissioner Crenshaw also pointed to the lack of internal procedural rigour, citing that the Division of Investment Management's serious concerns about the ETFs' compliance and investor disclosures were not addressed before the funds were made effective. She warned that "it is to the detriment of market participants and investors when the staff's review is not met with good faith engagement and comments are not fully resolved prior to effectiveness."

Crenshaw invoked several prior US SEC documents, including the **Statement on Meme Coins** dated 27 February 2025, **Statement on Proof of Work Mining** dated 20 March 2025, and **Statement on Stablecoins** dated 4 April 2025, all of which claim certain crypto assets are not securities. She contrasted these positions with the registration of ETFs investing in ETH and SOL as if they were securities—emphasising that this is not merely a matter of differing statutes, but a violation of foundational legal coherence. She asserted, *"These assets cannot be both securities and not securities at the exact same time."*

In closing, she concluded that rather than moving towards regulatory clarity, the US SEC is adrift in *"increasingly muddy waters of our own making."* Crenshaw's statement is the reflection of growing intra-agency friction within the US SEC and the urgent need for consistent, principled interpretation of US federal securities laws in the evolving crypto economy.

(Source: <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-crypto-asset-security-status-053125>)

US SEC Commissioner Hester M. Peirce Releases Statement Titled "Providing Security is not a 'Security'" in Support of US SEC Division of Corporation Finance's Statement on Certain Protocol Staking Activities

On 29 May 2025, Commissioner Hester M. Peirce of the United States Securities and Exchange Commission (**US SEC**) issued a public statement titled *"Providing Security is not a 'Security'"* in support of the earlier statement released by the US SEC Division of Corporation Finance titled *"Statement on Certain Protocol Staking Activities"* regarding the application of US federal securities laws to protocol staking. Commissioner Peirce welcomed the US SEC Division of Corporation Finance's clarification that staking certain crypto assets on proof-of-stake (**PoS**) or delegated PoS networks, whether by individuals or through non-custodial or custodial third-party providers, does not constitute a securities transaction when conducted within the factual framework outlined in the staff statement.

Commissioner Peirce stated that prior regulatory uncertainty had discouraged American participation in staking, which in turn affected the decentralisation and operational integrity of PoS blockchain networks. She expressed that the Division's guidance restores needed clarity and enables broader participation in network security without the fear of breaching securities laws.

She highlighted that the US SEC Division of Corporation Finance's statement covers activities such as solo staking, non-custodial third-party staking, and custodial staking services. The guidance also confirms that certain support features, such as slashing coverage, early unbonding, reward scheduling, and asset aggregation, do not, in themselves, turn staking into a securities offering. These services, the statement affirms, are technical or administrative in nature and do not alter the legal character of the staking activity.

Commissioner Peirce connected the US SEC Division of Corporation Finance's staking guidance statement to its earlier March 2025 [statement on proof-of-work mining](#), which similarly concluded that participating in blockchain consensus mechanisms, when limited to protocol execution, does not constitute a securities transaction. She noted that the US SEC Crypto Task Force is expected to continue examining the legal character of other network-based activities and encouraged stakeholders to submit questions and feedback to the Division.

Commissioner Peirce concluded with thanking Cicely LaMothe, Acting Director of the US SEC Division of Corporation Finance, and her team for producing the guidance.

(Source: <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-protocol-staking-052925>)

US CFTC Commissioner Kristin Johnson's Remarks on "Exploring AI Risks and Opportunities Across the Digital and Cyber Landscape" Signals Compliance Shift in Financial Markets with GenAI, Agentic AI and Cyber Risk Management in Financial Markets

On 29 May 2025, the United States Commodity Futures Trading Commission (**US CFTC**) Commissioner Kristin Johnson delivered keynote remarks at the Federal Reserve Bank of Dallas Symposium on *"Exploring AI Risks and Opportunities Across the Digital and Cyber Landscape."* Commissioner Johnson outlined the US CFTC's evolving supervisory priorities regarding the rise of generative AI (**GenAI**) and agentic AI, placing particular emphasis on the dual nature of AI as both a regulatory opportunity and systemic risk. The address offered detailed insight into how the US CFTC interprets AI's growing footprint in financial supervision, cybersecurity resilience, third-party risk governance, and operational compliance—signalling a proactive but cautious regulatory direction.

The US CFTC has made clear that AI is no longer speculative, it is operational. Commissioner Johnson categorised AI development into three strategic epochs: traditional machine learning, GenAI, and now agentic AI. While recognising the automation potential in compliance and market monitoring, she also signalled the agency's preference for use-case-specific assessments. Importantly, the US CFTC is not proposing blanket regulation but a tiered and dynamic supervisory lens, guided by whether the application serves compliance objectives or exposes market integrity to automation risk. Regulated entities should prepare for the US CFTC's differentiated oversight based on the type of AI model deployed and its functional integration into regulatory or trading operations. This implies readiness to provide AI governance documentation, model explainability, and error escalation protocols in case of autonomy failures.

GenAI's Regulatory Promise Is Overshadowed by its Weakness in High-Stakes, Data-Driven Environments

The US CFTC acknowledges the value of GenAI in simplifying compliance operations, particularly in regulatory reporting, policy review, and customer interaction frameworks. However, Commissioner Johnson directly identified hallucinations, model opacity, and non-deterministic outputs as structural flaws for regulatory dependence. She cited real-world failures of GenAI models under dynamic environmental conditions, such as rerouting traffic in changing cityscapes, drawing a parallel to financial compliance under evolving regulations. Compliance teams should note that the US CFTC is unlikely to view GenAI outputs as reliable without robust guardrails. Institutions using GenAI for AML/KYC, stress testing, or disclosures should employ independent validation layers, deterministic safeguards, and audit trails for all outputs.

Agentic AI Is a Compliance Force Multiplier, But Only When Architected for Oversight

Unlike GenAI, agentic AI can act independently, adapt to data, and execute tasks without prompts making it a potent tool for fraud prevention, continuous monitoring, and autonomous transaction flagging. Commissioner Johnson spotlighted agentic AI's ability to enhance real-time credit scoring, automate regulatory filings, and improve compliance interaction with customers. She welcomed these capabilities but underscored the non-negotiable need for input integrity and governance transparency. Financial firms must classify agentic AI implementations as "regulated systems" under internal compliance architectures. Risk and compliance functions should document: (a) model training data provenance, (b) override protocols, (c) error learning loops, and (d) AI output supervision parameters in line with US CFTC's expectation of proactive governance.

US CFTC Flags the Autonomy-Risk Feedback Loop: Poor Inputs Will Poison AI Outputs at Scale

Commissioner Johnson warned that agentic AI, if trained on corrupted or biased data, can perpetuate false assumptions across autonomous actions. In the absence of "humans-in-the-loop," these models can enter self-reinforcing feedback loops of faulty compliance or trading actions. Additionally, vulnerabilities such as data leakages, privacy breaches, model inference attacks, and hallucination propagation present amplified systemic threats. The US CFTC is likely to evaluate AI systems through the lens of operational resilience and model integrity. Firms should adopt layered governance covering input validation, periodic adversarial testing, model risk management, and kill-switch design for AI agents in mission-critical functions.

AI-Powered Cyber Threats are Rising: US CFTC Signals Supervisory Convergence with SupTech Adoption

Commissioner Johnson detailed how AI is now central to both cybersecurity threats and their mitigation. She cited rising AI-enhanced attacks such as deepfake-based fraud, synthetic identity generation, and phishing malware. At the same time, the US CFTC views AI as a foundational element in SupTech architecture, capable of detecting fraud patterns, real-time market manipulation, and system anomalies. Regulated firms should prepare for dual obligations: (i) integrating AI into their cybersecurity frameworks, and (ii) documenting how they defend against adversarial AI exploitation. US CFTC is likely to favour institutions that demonstrate "AI-aware cyber hygiene," combining threat detection with pre-emptive architecture.

SupTech Is No Longer Optional: US CFTC May Soon Mandate Supervisory Technology Readiness

The US CFTC has positioned itself as both a user and regulator of AI. Johnson noted that 59% of global supervisory authorities now use SupTech tools. The implication is clear: the US CFTC is aligning itself with a global supervisory transformation, likely to expand expectations around regulated firms' internal RegTech capabilities. Firms should align internal compliance transformation efforts with the US CFTC's SupTech trajectory—by investing in data lakes, automated reporting pipelines, fraud detection AI, and RegTech integration for document review and transaction monitoring. Capability disclosures may soon become routine.

Third-Party Risk Management Becomes Structural: US CFTC Proposes Embedded TPRM for DCOs

Commissioner Johnson announced MRAC's recommendation to enhance Rule 39.18 with formal Third-Party Risk Management (**TPRM**) requirements. This would compel Derivatives Clearing Organizations (**DCOs**) to implement TPRM programmes with full lifecycle oversight such as onboarding, performance monitoring, and exit strategies. The goal is to regulate not only the systems within firms, but also the AI ecosystems surrounding them. Expect regulatory expansion of TPRM across swap dealers, FCMs, and critical infrastructure providers. Compliance officers should pre-emptively map their third-party AI service dependencies like cloud providers, LLM vendors, APIs, and introduce risk-weighted controls, SLA-based accountability, and contingency planning aligned with proposed US CFTC frameworks.

Commissioner Johnson's remarks shed lights on the US CFTC's forward-leaning yet prudential posture toward AI. The Commission is neither resistant to innovation nor blind to its risks. Instead, it is building a supervisory framework that aligns AI usage with financial stability, fairness, and technological accountability. Markets, in her words, must be "fit-for-purpose," a mandate that applies equally to infrastructure, innovation, and investor protection. Regulated firms should treat this speech as regulatory signalling: AI is now a formal vector of compliance scrutiny. Governance documentation, SupTech integration, adversarial risk testing, and agentic AI lifecycle policies should be embedded into firmwide controls. The US CFTC is laying the foundation for AI-inclusive financial supervision, and it will reward foresight, but penalise negligence.

(Source: <https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson19>)

US SEC Division of Corporation Finance Clarifies Regulatory Status of Crypto Protocol Staking Under US Federal Securities Laws

On 29 May 2025, the Division of Corporation Finance of the United States Securities and Exchange Commission (**US SEC**) issued an interpretive statement titled "*Statement on Certain Protocol Staking Activities*." This statement provides the US SEC Division of Corporation Finance's views on whether specific staking arrangements on public, permissionless networks that use proof-of-stake (**PoS**) consensus mechanisms involve the offer or sale of securities under the United States Securities Act of 1933 and the United States **Securities Exchange Act of 1934**. The analysis applies the legal test established in *SEC v. W.J. Howey Co.* (1946) to self-staking, third-party delegated staking, and custodial staking models involving crypto assets that are integral to the operation of PoS networks—referred to as "Covered Crypto Assets." The US SEC Division of Corporation Finance concluded that when staking activities are merely administrative or ministerial and do not depend on the entrepreneurial or managerial efforts of others, such activities do not fall within the statutory definition of a security. Although the statement does not carry the binding force of law, it provides compliance clarity for entities engaged in staking-related services. Crypto Staking service providers, validators, and custodial platforms must structure their services in a manner that avoids discretionary control or revenue guarantees and clearly distinguishes staking activities from investment contracts.

Definitions

Cryptoasset:

For the purposes of this statement, a *crypto asset* is defined as a digital asset generated, issued, and/or transferred using blockchain or similar distributed ledger technology. This includes "tokens," "coins," "digital assets," and "virtual currencies," and depends upon cryptographic protocols for security and functionality.

Network:

A *network* refers to a crypto network, a decentralised digital infrastructure based on blockchain or distributed ledger technology where transactions and data are recorded immutably.

Covered Crypto Asset:

A *Covered Crypto Asset* is a crypto asset that is intrinsically linked to the operation of a PoS network and used in the execution, validation, or maintenance of its consensus mechanism. These assets do not have standalone economic rights such as yields, profit claims, or entitlements to business income.

Protocol Staking:

Protocol Staking refers to the process whereby participants stake Covered Crypto Assets on a PoS network to validate transactions, update the blockchain, and secure the network, thereby earning protocol-defined rewards. It includes activities by solo stakers, delegates, and custodial agents.

Service Providers:

Service Providers in this context include third-party entities engaged in staking-related functions such as Node Operators, Validators, Custodians, Delegates, and Nominators, either directly or via ancillary services like slashing coverage or reward scheduling.

Ancillary Services:

Ancillary Services are add-on administrative or logistical services that support protocol staking but do not constitute managerial or entrepreneurial efforts under securities law analysis. These may include slashing indemnity, early unbonding, alternative reward distribution, and stake aggregation.

Compliance Perspective:

Crypto entities must ensure these terms are reflected precisely in their internal documentation, consumer interfaces, and risk statements. Misclassification or imprecise communication may attract regulatory scrutiny under the "economic reality" test even if the activity appears compliant.

Protocol Staking and Consensus Structure

The US SEC Division of Corporation Finance explains that PoS networks rely on a cryptographically enforced consensus mechanism that rewards Validators for confirming network transactions. To qualify as a Validator, a Node Operator must “stake” Covered Crypto Assets through the network’s software protocol. The staked assets are locked via smart contracts, and in return, Validators earn newly minted tokens and transaction fees. Crypto entities must ensure that staking rewards are protocol-driven and non-guaranteed. Any deviation, such as fixed return schemes or discretionary pooling, may recharacterise the activity as a security offering.

Self (or Solo) Staking is Ministerial, Not an Investment Contract

According to the US SEC Division of Corporation Finance, when a Node Operator stakes its own Covered Crypto Assets and validates transactions directly, the activity does not satisfy the “efforts of others” prong of the *Howey* test. The Node Operator’s reward is tied to its own technical participation and not to the success of any entrepreneurial venture led by a third party. Crypto entities facilitating solo staking should document and disclose that the staker retains full custody, makes independent operational decisions, and earns protocol-level rewards. Platform features must not introduce passive earning elements or third-party performance dependencies.

Delegated Self-Custodial Staking Remains Outside Securities Scope

In models where asset owners delegate validation rights to a Node Operator while retaining control over their assets and private keys, the US SEC Division of Corporation Finance maintains that rewards are not the result of others’ managerial efforts. The Node Operator merely performs automated or mechanical tasks without discretion over asset management or reward structuring. Crypto firms supporting delegated staking must ensure the validator operates purely as an agent, not as a manager or reward guarantor. Any terms suggesting strategic decision-making, yield generation, or portfolio optimisation would likely trigger securities analysis.

Custodial Staking is Permissible if the Custodian Acts as an Agent

Where staking is facilitated by a Custodian holding crypto assets on behalf of customers, the US SEC Division of Corporation Finance distinguishes such arrangements from investment contracts, provided that the Custodian exercises no discretion over whether or when to stake, and assets are never lent, pledged, or reused. The customer retains beneficial ownership, and the Custodian’s role remains purely administrative. Crypto Custodians should operate under clear non-discretionary frameworks, supported by user agreements affirming customer ownership and limiting the Custodian’s role to protocol execution. Use of pooled assets or discretionary delegation may alter the regulatory character of the staking service.

Ancillary Services Do Not Constitute Entrepreneurial Effort

The US SEC Division of Corporation Finance further clarifies that services such as slashing indemnity, early unbonding, or reward forwarding are logistical conveniences that do not rise to the level of entrepreneurial or managerial efforts. Their availability does not alter the staking relationship into one of investment dependency. Crypto platforms offering ancillary services should avoid combining them with speculative incentives or bundling them into products marketed as yield instruments. Transparency and service segregation will be key to maintaining compliance integrity.

Economic Reality and the Howey Analysis Anchor the Regulatory Position

The US SEC Division of Corporation Finance reiterates that the *Howey* test remains the guiding standard for determining whether staking arrangements amount to securities. Central to the analysis is whether there exists a common enterprise and a reasonable expectation of profits derived from others’ significant managerial efforts. Ministerial acts, regardless of their necessity or frequency, do not satisfy this requirement. Crypto businesses should also conduct *Howey* analyses on a per-activity basis, documenting the absence of speculative structures, central managerial functions, or investor-like expectations. Internal legal reviews should accompany any new staking service launch.

Jurisdictional Scope and Legal Limitations

The US SEC Division of Corporation Finance emphasises that its views are non-binding and contingent upon the specific facts presented. Variations in practice, such as offering fixed returns, liquid restaking, or discretionary asset pooling, could lead to a different regulatory conclusion. The statement also excludes analysis of “liquid

staking” and “restaking” models, which may involve distinct legal risks. Crypto entities should not treat this statement as a blanket exemption. Novel staking variations or composite DeFi protocols must undergo separate legal evaluation to avoid assuming regulatory safety where ambiguity remains.

The US SEC’s Division of Corporation Finance has offered a practical interpretation of Crypto staking arrangements, based not on nomenclature but on the functional and economic substance of the activity. The regulatory theme is that crypto staking may be compliant when it resembles a decentralised network utility function and not an investment scheme. However, the guidance also leaves the door open for enforcement where staking models exhibit profit dependency, passive participation, or custodial misuse. Crypto platforms, validators, and custodial agents, when operating within the strict technical parameters of PoS protocol design, staking may be legally permissible. But deviation into speculative architecture, third-party discretion, or opaque reward systems could convert an otherwise exempt activity into a regulated securities transaction. Legal, compliance, and product teams must work collaboratively to embed these principles across smart contracts, disclosures, and operational protocols.

(Source: <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>)

US SEC Commissioner Caroline A. Crenshaw’s Dissenting Statement on Protocol Staking Challenges Division-Level Exemptions: A Legal Reality Check for Crypto Entities

On 29 May 2025, Commissioner Caroline A. Crenshaw of the United States Securities and Exchange Commission (**US SEC**) issued a dissenting statement titled *“Stake it Till You Make It?”* criticising the contemporaneous statement issued by the US SEC Division of Corporation Finance titled *“Statement on Certain Protocol Staking Activities”* stating that certain protocol staking arrangements fall outside the scope of US federal securities laws. Crenshaw rebukes this staff position as legally flawed, inconsistent with *SEC v. W.J. Howey Co.* jurisprudence, and out of step with recent federal court decisions that upheld staking-as-a-service models as investment contracts. There is continuing legal uncertainty surrounding crypto staking models and Commissioner Caroline A. Crenshaw has called for substantive rulemaking over informal carve-outs. Crypto entities must treat this dissent as a judicially reinforced counterweight to staff guidance statement provided earlier. Business models that involve third-party infrastructure, pooled validation, or profit enhancement mechanisms require a full *Howey* analysis and should not be deemed exempt based on the US SEC Division’s statement.

Commissioner Crenshaw asserts that while the US SEC Division of Corporation Finance’s statement may reflect industry preference, it directly contradicts settled securities law. She points to multiple court rulings, including *SEC v. Binance* and *SEC v. Coinbase*, that validated the Commission’s enforcement theory on staking as an investment contract under *Howey*. She also references the quiet dismissal of these cases, warning that the court decisions themselves remain legally operative. US SEC Commissioner Crenshaw’s dissent reinforces that staking models may still fall within the securities definition even if an enforcement action is dropped. Dismissals for strategic or resource reasons do not invalidate legal reasoning upheld by courts. Crypto platforms offering staking services should initiate or update an internal legal opinion or ISO-compliant risk classification framework that integrates case law precedent and clearly delineates between passive returns and protocol-based participation.

The dissent refutes the US SEC Division of Corporation Finance’s assumption that protocol staking involves no entrepreneurial activity. Crenshaw argues that when entities build technical infrastructure, pool assets, and offer enhanced liquidity or loss protection, they are not merely executing protocol functions, they are creating managed investment schemes. She analogises this to the *Gary Plastic* case, where the packaging of traditional financial products into revenue-enhancing programs created investment contracts. *‘The use of automation, user-friendly interfaces, and scalable validator pools does not shield a service from Howey scrutiny if these enhancements drive profit expectancy through third-party efforts.’* Crypto Entities operating validator infrastructure or offering staking-as-a-service should develop an internal control system compliant with ISO 37301 (Compliance Management Systems) and ISO 27036-4 (IT governance in cloud trust relationships) to document their role boundaries and mitigate misclassification risks.

Crenshaw challenges the US SEC Division of Corporation Finance’s portrayal of features like pooling, slashing coverage, and early unbonding as “ancillary.” She argues that these are precisely the kinds of risk and liquidity enhancements that courts have considered entrepreneurial efforts under *Howey*. She warns that mislabeling such services could lull users into false assumptions of protection. Convenience features that materially change

reward delivery, user risk, or asset access may legally recharacterise staking as a managed financial product. Function, not framing, governs classification. Crypto businesses should maintain an ISO 31000-aligned enterprise risk register that documents how each staking service component interacts with securities law risk categories (e.g., profit inducement, investor expectation, control transfer).

Commissioner Crenshaw expresses concern that the Division's vague exclusions—such as the undefined limits of staking discretion, create ambiguity for operators. Questions remain unanswered: Does re-staking of rewards trigger investment contract analysis? How are infrastructure-led staking strategies treated? Ambiguity in regulatory interpretation increases risk. When functions like automatic reward reinvestment or delegation-based validator selection occur, they must be documented, disclosed, and legally tested. Staking platforms should initiate a risk impact assessment under ISO/IEC 27005 that addresses all discretionary and automated functions in staking workflows. Compliance reviews should accompany product iterations.

Crenshaw criticises the US SEC Division of Corporation Finance's use of terms like "custodian" and "ownership" in staking contexts, arguing these terms carry false regulatory connotations. In securities markets, custodians are subject to statutory controls that do not exist for staking services. Use of this language, she argues, invites users to assume protections that are not legally guaranteed. Misuse of regulated terminology such as "custody," "ownership," or "safekeeping" can mislead users and potentially trigger consumer protection violations. Language must match legal architecture. Crypto firms should audit all customer-facing documents using ISO 22458 (Consumer Vulnerability) standards and issue a lexicon of approved terms that reflect the true legal status of staking and custody.

The dissent further notes that many staking platforms use user agreements to imply security or segregation of assets during staking. However, these assurances often lack legal force in bankruptcy or fraud situations. Without regulatory protection, the disposition of customer assets remains uncertain. Reliance on private contractual language is not equivalent to legal protection. Asset segregation, recovery rights, and insolvency outcomes must be grounded in law, not suggested in disclaimers. Platforms should conduct a contract audit under ISO/IEC 27001 Annex A.18.1.4 (Privacy and Data Protection Agreements) to ensure all language related to asset handling, loss indemnity, and insolvency aligns with enforceable law and bankruptcy jurisprudence.

Commissioner Crenshaw closes by warning that informal statements from the US SEC Division of Corporation Finance do not provide market certainty or investor protection. Instead, they obscure legal risks, potentially create false security among participants, and fail the public mission of the US SEC. She calls for formal rulemaking, clear enforcement guidance, and an accurate portrayal of how staking programs function in reality. Informal guidance is not a replacement for regulation. Until the US SEC adopts formal rules on staking, firms must navigate a fractured legal terrain with both internal prudence and external legal defensibility. Entities engaged in any form of staking should adopt an enterprise-wide staking compliance framework anchored in ISO 37301, with continuous legal monitoring of judicial trends and US SEC-level actions. Internal audit functions should routinely test whether staking operations, communications, and risk disclosures remain compliant with both staff guidance and judicial precedent.

(Source: <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-protocol-staking-052925>)

US SEC Extends Decision on Grayscale Avalanche Trust ETF Listing Under Nasdaq Rule 5711(d); Final Action Now Expected by 15 July 2025

On 28 May 2025, the United States Securities and Exchange Commission (**US SEC**) published **Notice of Designation of a Longer Period** for US SEC Action on a Proposed Rule Change to List and Trade Shares of Grayscale Avalanche Trust (**AVAX**) under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) and thereby announced an extension of its deadline of 15 July 2025 to decide on a proposed rule change submitted by The Nasdaq Stock Market LLC. The rule change seeks approval to list and trade shares of the Grayscale Avalanche Trust (**AVAX**) under Nasdaq Rule 5711(d), a provision governing the listing of commodity-based trust shares. The US SEC has designated 15 July 2025 as the new date by which it must either approve, disapprove, or initiate proceedings to disapprove the proposal.

The Grayscale Avalanche Trust (**AVAX**) is a commodity-based trust intended to offer investors regulated exposure to Avalanche (**AVAX**), a Layer 1 proof-of-stake digital asset. While the US SEC's release does not describe the trust in operational detail, its categorisation under Nasdaq Rule 5711(d) indicates it would function similarly to other single-asset crypto trusts previously filed by Grayscale, such as those for Bitcoin or Ethereum.

The proposed rule change was filed by Nasdaq on 27 March 2025 under Section 19(b)(1) of the United States **Securities Exchange Act of 1934** and US SEC **Rule 19b-4**. It was published for public comment in the Federal Register on 16 February 2025. Under Section 19(b)(2) of the same Act, the US SEC had a 45-day statutory window, originally set to expire on 31 May 2025. The extension, announced in US SEC Release No. 34-103141, provides additional time to assess the proposed listing and the related market structure issues.

Timeline of Developments

On 16 February 2025, the proposed rule change was published for comment in the *Federal Register* (Release No. 102812, 90 FR 16022).

On 27 March 2025, Nasdaq Stock Market LLC filed the proposed rule change with the US SEC (SR-NASDAQ-2025-030). On 31 May 2025, Initial 45-day period from publication was set to expire.

On 28 May 2025, the US SEC extended the period for taking action to 15 July 2025 (**Release No. 34-103141**).

On 15 July 2025, US SEC can either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

The US SEC's procedural extension does not imply a position on the substance of the application. Instead, it reflects the need for more time to evaluate the proposed rule change and the regulatory questions it presents. The extension allows for further consideration of any issues raised by commenters or identified by the US SEC during its ongoing review.

The proposed rule change continues to be evaluated within the framework of the United States **Securities Exchange Act of 1934**, specifically under Section 19(b)(2), which authorises the US SEC to extend the review period where appropriate. United States **Rule 19b-4** governs the submission and review of such changes. Nasdaq Rule 5711(d), under which the AVAX Trust would be listed, is the applicable rule for commodity-based trust shares and has previously supported digital asset-based products.

All information about the filing, including comments and updates, is available on the official US SEC website under file number SR-NASDAQ-2025-030. The final decision on whether the Grayscale Avalanche Trust (**AVAX**) will be approved for listing is now expected by 15 July 2025.

(Source: <https://www.sec.gov/files/rules/sro/nasdaq/2025/34-103141.pdf>)

ASIC Initiates Australian Federal Court Proceedings Against Blockchain Global Former Director for Alleged Directors' Duties Breaches Linked to ACX Exchange Collapse

On 28 May 2025, the Australian Securities and Investments Commission (**ASIC**) commenced **civil penalty proceedings** in the Australian Federal Court against Mr. Liang (Allan) Guo, a former director of Blockchain Global Ltd (now in liquidation), alleging multiple breaches of his statutory directors' duties under the Australian **Corporations Act 2001**. The allegations arise from Mr. Guo's involvement in the operation and eventual collapse of the ACX Exchange, a cryptocurrency platform run by Blockchain Global, which ceased functioning around December 2019 when customers were unable to withdraw funds or cryptocurrencies from their accounts.

According to ASIC, Mr. Guo is alleged to have failed to meet fundamental obligations as a director, including mishandling customer assets, making misleading statements about fund management, and not maintaining adequate corporate records. These failures, ASIC claims, contributed to substantial financial losses for retail users of the exchange. As per the liquidators' report, Blockchain Global owes over AUD 20 million in unsecured creditor claims from former ACX Exchange customers.

The ACX Exchange was operational from mid-2016 until its collapse in December 2019, allowing users to buy, sell, and hold cryptocurrencies. Liquidators were appointed on 11 February 2022. A subsequent report filed with ASIC on 01 November 2023 identified potential breaches of the Australian Corporations Act by multiple former officeholders, including Mr. Guo. The report estimated total liabilities of AUD 58.6 million as of 2 October 2023, with approximately AUD 22.75 million attributable to claims by former exchange users. ASIC commenced its formal investigation in January 2024.

Mr. Guo departed Australia on 23 September 2024, immediately following the expiration of **travel restraint orders** issued earlier that year (reference: **24-030MR**), and has not returned to date.

(Source: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-087mr-asic-sues-blockchain-global-former-director-for-multiple-directors-duties-breaches/>)

ASIC Seeks Clarification from Australian High Court on Crypto Products in Block Earner Case

On 21 May 2025, the Australian Securities and Investments Commission (**ASIC**) **announced** it is seeking special leave from the High Court of Australia, the apex court, to appeal a ruling by the Australian Full Federal Court in the ongoing regulatory dispute with Web3 Ventures Pty Ltd, trading as Block Earner. The appeal seeks judicial clarity on the interpretation of the term “financial product” under Australian law, particularly in relation to crypto-to-asset products offering fixed-yield returns.

The contested product, Block Earner’s “Earner” product, allowed customers to earn a fixed yield by lending specified crypto-assets. The Australian Full Federal Court had ruled that the Earner product did not constitute a financial product under the Australian **Corporations Act 2001**, a finding that ASIC seeks to contests. ASIC contends that the definition of financial product was deliberately drafted to be broad and technology-neutral, and thus should encompass emerging crypto-asset-based interest products. The ASIC states that clarification from the Australian High Court is required in the public interest, given its implications for the regulation of all financial products, not limited to the crypto sector.

On 9 February 2024, the Australian Federal Court initially found that Block Earner had engaged in unlicensed financial services conduct between March and November 2022 by offering its Earner product. However, the Australian Federal Court dismissed ASIC’s claims regarding another offering, the “Access” product, finding it was not a financial product. On 4 June 2024, Block Earner was relieved from any penalty liability for the Earner product, prompting ASIC’s appeal on 18 June 2024. Block Earner cross-appealed on 9 July 2024, challenging the court’s earlier conclusion that it needed a financial services licence.

The Full Federal Court heard both the appeal and cross-appeal on 6 March 2025 and ultimately ruled in favour of Block Earner on 22 April 2025, overturning the previous decision and dismissing ASIC’s appeal. ASIC is now taking the matter to the Australian High Court, with a hearing date yet to be fixed.

(Source: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-082mr-asic-seeks-leave-from-high-court-to-appeal-block-earner-decision/>)

This newsletter is for information purposes only

This newsletter and the information contained herein is not intended to be a source of advice or credit analysis with respect to the material presented, and the information and/or documents contained in this newsletter do not constitute investment advice.

Cryptocurrency markets are highly volatile and speculative in nature. The value of cryptocurrencies can fluctuate greatly within a short period of time. Investing in cryptocurrencies carries significant risks of loss. You should only invest what you are prepared to lose.

The content on this newsletter is for informational purposes only. You should not construe any such information or other material as legal, tax, investment, financial, or other advice. Nothing contained on our newsletter constitutes a solicitation, recommendation, endorsement, or offer to buy or sell any cryptocurrencies, securities, or other financial instruments.

We do not guarantee or warrant the accuracy, completeness, or usefulness of any information on this site. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to this newsletter, or by anyone who may be informed of any of its contents.

Your use of this newsletter and your reliance on any information on the site is solely at your own risk. Under no circumstances shall we have any liability to you for any loss or damage of any kind incurred as a result of the use of the newsletter or reliance on any information provided on the newsletter. Your use of the newsletter and your reliance on any information on the site is governed by this disclaimer and our terms of use.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

**CHARLTONS
QUANTUM**



Hong Kong Office

Dominion Centre 12th Floor
43-59 Queen's Road East
Hong Kong

enquiries@charltonslaw.com
www.charltonsquantom.com
www.charltonslaw.com
Tel: + (852) 2905 7888
Fax: + (852) 2854 9596