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Shielding Staking from UK Funds Regulation: The First Crypto Law of 2025

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In a previous alert, we identified that the definition of a collective investment scheme (CIS) could capture on-chain staking, and that the UK government, acting through the HM Treasury (HMT), was looking to clarify the regulatory treatment of staking in the UK.

Well, the HMT finally acted. On 9 January 2025, it published the Staking Order, which provides that, effective 31 January 2025, arrangements for “qualifying crypto-asset staking” (QCS) do not amount to a CIS. While the Staking Order may not represent the final word on the regulation of staking services in the UK, it is useful in making it clear that certain staking arrangements will be captured by the complex CIS regime, a regime designed primarily to capture the management of investment funds. This is a positive development for the UK’s crypto industry.

The Issue

The UK Financial Services and Markets Act (FSMA) defines a CIS broadly to include any arrangement governing the management of property (of any description) that enables participants in the arrangement to receive profits or income arising from the acquisition, holding, management, or disposal of the property. Anyone who operates a CIS in the UK must be authorised by the Financial Conduct Authority (FCA). Further, a CIS may be promoted only to investment professionals, sophisticated investors, and similar individuals. The CIS regime has been a central pillar of UK funds regulation since the late 1980s. Until the issuance of the Staking Order, there was some uncertainty as to whether staking would fall within the CIS-related prohibitions. This had a negative impact on the UK’s crypto industry.

The Fix

Noting the breadth of the CIS definition, the HMT made the FSMA (CIS) Order in 2001. This excludes various arrangements, including those that govern companies and insurance contracts, from the CIS definition. The Staking Order adds arrangements for QCS from a CIS (Staking Exclusion) to the list of exclusions in the CIS Order.

“Blockchain Validation”

For a staking service to fall within the Staking Exclusion, the service provider will, therefore, have to perform that staking service for the purpose of blockchain validation. Specifically, the Staking Order defines QCS as: “the use of a qualifying crypto-asset (QCA) in blockchain validation.”

It defines “blockchain validation” as: “ *the validation of transactions on a blockchain or a network that uses distributed ledger technology or other similar technology.*”

Finally, the Staking Order defines a QCA by reference to the FSMA Financial Promotion Order 2001 (FPO) discussed in a previous alert. In essence, this is any crypto-asset such as bitcoin and Ethereum that is fungible and transferable but excludes regulated investments, such as security tokens and derivatives; electronic money and fiat or digitally issued fiat currency; and certain types of limited use tokens.

Guidance on the Staking Exclusion

The explanatory memorandum published with the Staking Order provides useful guidance on the application of the Staking Exclusion.

As an example, the HMT identifies the common practice of a business undertaking staking on behalf of a group of customers for whom the firm has “pooled” crypto-assets in order to meet the crypto-asset’s minimum staking requirements. The HMT notes that, frequently, the business will delegate the actual operation of the validator node to a specialist third party. The HMT points out that these services have a number of characteristics that are similar to those of a CIS and that the HMT’s view is that it “would be undesirable” for these arrangements to be treated as a CIS. For the HMT, this “would represent a significant hindrance to the effective operation of blockchains and staking arrangements” in the UK.

Completely Outside Regulation?

The Staking Order addresses an issue that curtailed staking activities in the UK. Given this order, there is greater clarity as to the legality of staking, and we expect staking to increase. However, those providing staking services may still need to analyse whether any component of those services would amount to the purchase or sale of QCAs or other controlled activities, which would bring them within the financial promotion regime, noted in a recent alert. It has yet to be seen how staking products more generally will be treated under the new UK crypto-asset regulatory regime which the UK Government confirmed in a speech, Keynote address at the Tokenisation Summit: UK government approach to tokenisation and regulation - GOV.UK, is due to be finalised, through amendments to the existing financial services regulations, in 2026. Based on the “Future financial services regulatory regime for cryptoassets”, discussed in a previous alert, the new regulations will likely include specific ownership and disclosure rules on staking. The hope, if not the expectation, is that any rules formulated will be proportionate to the risk for the users of staking services. will not impose unnecessary burdens on providers, and will permit staking to grow the UK. The Staking Order is a positive step in this direction.

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