Dechert LLP

# SEC Staff Issues Statement on Proof-of-Work Crypto Mining Activities

MARCH 25, 2025

## Key Takeaways

- The Staff of the SEC's Division of Corporation Finance issued a statement clarifying that mining crypto assets on proof-of-work networks does not involve the offer and sale of securities and does not require registration with the SEC.
- The Statement applies only to crypto assets intrinsically linked to the functioning of public, permissionless networks and used for participating in consensus mechanisms or maintaining network security.
- The Statement's clarification covers both solo mining and mining pools, emphasizing that these activities do not meet the "investment contract" criteria under the *Howey* test, as miners' profits in both these cases are not derived from the efforts of others.
- The Statement does not address staking or proof-of-stake networks, which have been the subject of SEC scrutiny, particularly around delegated staking practices.

On Friday, March 21, 2025, the staff of the Securities and Exchange Commission's Division of Corporation Finance (the "Staff") issued a statement clarifying the application of the federal securities laws to the mining of crypto assets on proof-of-work ("PW") networks.[1] The Statement solely addresses the mining of crypto assets ("Covered Crypto Assets") that are:

1. "intrinsically linked to the programmatic functioning of a public, permissionless network"; and
2. used to, and/or earned for:

    - participating in such network's consensus mechanism; or
    - maintaining the technological operation and security of such network.

The Statement clarifies that the mining of Covered Crypto Assets on PW networks ("Protocol Mining") does not involve the offer and sale of securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. Participants in Protocol Mining accordingly do not need to register transactions with the SEC or qualify for any exemptions from registration.

### Understanding Protocol Mining and PW Networks

Blockchain networks typically use cryptography and economic mechanisms to verify transactions in crypto assets without traditional financial intermediaries. The operation of each network is governed by a software protocol that programmatically enforces network rules and rewards. A key component of this protocol is the "consensus mechanism," which allows a distributed network of unrelated computers (nodes) to agree on network data, including transaction records.

PW is a consensus mechanism used to validate transactions by rewarding participants, known as "miners," who use computers to solve complex mathematical puzzles. The first miner to solve a puzzle validates a batch of transactions and proposes new blocks to the network. In return, miners earn "rewards" in the form of newly created Covered Crypto Assets. This process secures the network by requiring miners to spend significant computational resources, making it difficult to alter transactions or engage in fraudulent activities. Public, permissionless networks allow anyone to participate in the network's operation, including the validation of new transactions to the network in accordance with the network's consensus mechanism. The Bitcoin blockchain is a prominent example of a public permissionless PW network.

Solo miners on networks can also join "mining pools," where they can combine their computational resources to increase their chances of successfully validating transactions and mining new blocks. Pool operators typically coordinate the miners' resources, maintain hardware and software and ensure security. Rewards are distributed among pool members based on their contribution, with the pool operator taking a fee for its services.

## The Staff's Statement

In the Statement, the Staff clarifies that Protocol Mining activities on public blockchains do not involve the offer and sale of securities. Accordingly, participants in these activities do not need to register mining transactions with the SEC or fall within an exemption from registration.

The Staff`s view applies to only the following types of Protocol Mining activities:

- *Self (or Solo) Mining*: Miners use their own computational resources to mine Covered Crypto Assets.
- *Mining Pools*: Miners combine resources to increase their chances of mining new blocks, with rewards distributed proportionally. Such rewards are distributed either directly or through a pool operator.

The Statement notes that Covered Crypto Assets do not fall within any of the financial instruments listed in the definition of "security" under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. Accordingly, the Staff applies the "investment contract" test in *SEC v. W.J. Howey Co.*[2] to determine whether transactions involving Covered Crypto Assets in the context of Protocol Mining are securities. The *Howey* test states that an "investment contract," and therefore a security, exists where there is an investment of money in a common enterprise with a reasonable expectation of profits derived from the entrepreneurial or managerial efforts of others.[3] Federal courts have clarified that the "efforts of others" requirement is met when "the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise."[4]

The Statement concludes that solo miners' activities do not involve a reasonable expectation of profits derived from the efforts of others. Instead, each miner uses its own computational resources to secure the network and earn rewards issued by the network`s software protocol. According to the Staff, the miner is merely engaging in an administrative or ministerial activity to secure the network, validate transactions and add new blocks and receive mining rewards. The mining rewards are therefore payments for services provided to the network, not profits derived from the efforts of others.

Although a mining pool could be considered a common enterprise, the staff similarly reasons that the pool does not involve a reasonable expectation of profits derived from the efforts of others. When miners participate in a mining pool, they combine their computational resources with others to increase their chances of successfully mining new blocks. The Statement notes that by contributing their

computational resources to the pool, miners engage in administrative or ministerial activities to secure the network, validate transactions, and earn rewards. The key point in this analysis is that the pool operator`s role is primarily administrative, and any benefits provided by the pool operator are not sufficient to meet *Howey*'s "efforts of others" requirement of the *Howey* test. Miners rely on their own computational contributions, not on the pool operator's efforts, to earn rewards.

## Conclusion: What's at Stake?

The Staff's Statement on Protocol Mining is the second statement in rapid succession regarding the non-security status of certain transactions in crypto assets. It follows the Staff's earlier statement regarding meme coins (which we discuss in an earlier Newsflash).[5] Crypto industry participants will undoubtedly welcome the Statement's clarification regarding Protocol Mining but will also note that it says nothing about staking or "proof-of-stake" networks, which are distinct from PW networks.[6]

The SEC has previously entered into settlement orders against entities offering "delegated staking," in which participants on a proof-of-stake network delegate their crypto assets to an entity that aggregates and stakes the pooled assets on their behalf, and then returns staking rewards in an agreed proportion to the delegators.[7] In delegated staking, unlike in a mining pool, the delegators undertake no further computational efforts beyond delegating their assets to the staker. While the SEC has withdrawn from litigation against some delegated stakers, it has not thus far publicly revisited its position on delegated staking.[8] Industry participants will be looking to see if the SEC reaches a different outcome on delegated staking.

The Statement will also be closely studied by the sponsors of, and authorized participants in, various ether-based exchanged traded products ("ETPs") in the United States. None of these ETPs currently undertake staking, although some have sought approval from the SEC to stake the ether they hold. Ether ETP sponsors may read the Statement's observations about solo validation activities with interest and consider the implications for their vehicles.

Since the formation of its new Crypto Task Force, the SEC and SEC Staff have been active in seeking comments on various crypto-related activities and providing guidance to the industry, including seven statements[9, 10] since the Task Force was first formed. More statements and clarifications are likely to follow.

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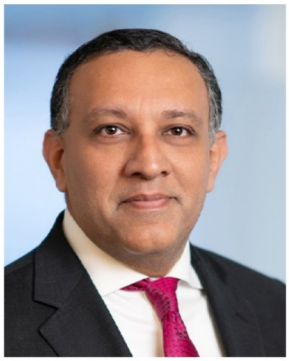
## Footnotes

1. *Statement on Certain Proof-of-Work Mining Activities*, SEC Division of Corporate Finance, (Mar. 20, 2025) (the "Statement").
2. 328 U.S. 293 (1946).
3. *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975).
4. *See, e.g., SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973).
5. *Staff Statement on Meme Coins*, SEC Division of Corporate Finance, (Feb. 27, 2025); *see SEC's Division of Corporation Finance Clarifies Stance on Meme Coins*.
6. "Staking" concerns the "proof of stake" validation protocols that certain blockchains utilize, as distinct from PW validation. To become a validator and obtain such rewards, holders of crypto assets must first "stake"—or commit—crypto assets. Validators are selected based on the size of their stake, among other factors, creating an incentive to stake, or commit, greater quantities of crypto assets.

The protocols incentivize validators to add legitimate transactions to the blockchain because validators are rewarded if they do and could be penalized if they do not, including by having the staked crypto assets "slashed" (or destroyed).

7. *See*, for example, the complaint in *SEC v. Payward Ventures Inc.*, (N.D. Cal, Feb. 9, 2023).
8. *See, e.g.*, *A win for fairness: Agreement to dismiss the SEC's lawsuit against Kraken* (Mar. 3, 2025).
9. *See*, *Speeches and Statements*, SEC.
10. *See, e.g.*, *U.S. Crypto Regulation: Key Developments in Trump's First Week*, (Jan. 30, 2025); *SEC Crypto Task Force Announces Priorities, Invites Engagement*, (Feb. 6, 2025); and *SEC's Division of Corporation Finance Clarifies Stance on Meme Coins*, (Mar. 6, 2025).

## Key Contacts

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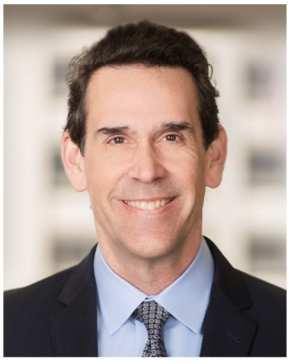


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