United States Senate
WASHINGTON, DC 20510

February 20, 2025

Hon. Mark T. Uyeda and Hon. Hester Peirce
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Protocol Staking in Exchange Traded Products

Dear Commissioners,

We write to urge the Securities and Exchange Commission (SEC) to clarify the position of the agency in preventing digital asset exchange traded product (ETP) issuers from including protocol staking in their S-1 filings.

The current lack of availability of protocol staking for these issuers significantly impacts the investment potential of digital asset ETPs in the U.S. and challenges the competitive positioning of U.S. asset managers in the global market. ETPs in Canada and Europe do not prohibit protocol staking. The United Kingdom[1] has recently permitted the launch of digital asset ETPs, and both the Conservative and Labour Governments of that country have energetically supported the adoption of a comprehensive regulatory framework for digital assets that includes staking.[2]

In 2024, the SEC approved the registrations of multiple ETPs—however, staking was removed from these ETPs' S-1 filings due to regulatory pressure from the SEC. While only Congress can create a comprehensive regulatory framework for digital assets, greater clarity around the decision to prevent staking products in the recent S-1 approvals would help facilitate understanding of the SEC's current regulatory stance, as well as highlight areas where legislation could be needed.

In proof-of-stake networks, digital assets are staked by participants in order to validate transactions on the underlying distributed ledger. Staking also provides the possibility for increased returns for investors; when staked assets contribute to validations (when chosen at random by the network), they can generate rewards in the form of additional tokens. By not permitting certain digital asset ETP issuers to include protocol staking in their S-1 filings, the SEC is undermining the consensus mechanisms underpinning certain digital assets, weakening the resilience and integrity of the data stored on certain distributed ledgers. Further, the SEC's position skews market activity by preventing investors in American digital asset ETPs from accessing a fundamental feature of the digital asset markets they are investing in. Further adoption of protocol staking increases network resiliency as well.

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[1] Steve Johnson, *First UK Crypto ETPs to Launch on May 24*, Financial Times, May 22, 2024, https://www.ft.com/content/76e9ecf3-4429-42c5-a945-43ab92abfda4.

[2] *See, e.g.*, Ellen Milligan and Emily Nicholle, *UK to Spell Out Crypto Plans as Startups Eye U.S. Trump Benefits*, Bloomberg, November 14, 2024, https://www.bloomberg.com/news/articles/2024-11-14/uk-to-spell-out-crypto-plans-as-startups-eye-us-trump-benefits; United Kingdom Treasury, *UK Sets Out Plans to Regulate Crypto and Protect Consumers*, February 1, 2023, https://www.gov.uk/government/news/uk-sets-out-plans-to-regulate-crypto-and-protect-consumers.

We encourage the SEC to consider the potential benefit to investors from allowing protocol staking in certain digital asset ETPs. We also encourage the SEC to consider any potential risks from protocol staking and to engage with filers to ensure they are properly disclosed to investors, including assessing any potential concentration risks stemming from staking that could undermine the decentralization of certain digital assets,[3] as well as the risk of staked digital assets being "slashed."[4]

To further understand the SEC's reasoning and intentions regarding this instruction, we request responses to the following questions:

1. What specific analysis or rationale did the SEC use to restrict inclusion of protocol staking from certain S-1 filings with respect to digital asset ETPs?
2. What risks has the SEC identified with respect to protocol staking?
3. If the SEC believes that staking may create an investment contract, why not allow it within the context of an instrument that is a security?

We believe that clarifying these points would benefit American investors as well as software and protocol developers.

Please respond no later than April 1, 2025. We appreciate your attention to this request.

Sincerely,

Cynthia M. Lummis

Senator Cynthia M. Lummis

Kirsten Gillibrand

Senator Kirsten Gillibrand

Steve Daines

Senator Steve Daines

Ron Wyden

Senator Ron Wyden

Thom Tillis

Senator Thom Tillis

Bill Hagerty

Senator Bill Hagerty

Bernie Moreno

Senator Bernie Moreno

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[3] For example, if a few ETPs were to become very large, then concerns could exist about the outcome of votes based on percentage of stake being determined by a select few financial institutions.

[4] "Slashing" is a deterrent to keep validators from engaging in dishonest behavior such as proposing and attesting to two different blocks in the same slot. If a validator engages in dishonest or malicious behavior it will be "slashed," resulting in loss of staked assets. This plays a critical role in maintaining the security and integrity of certain distributed ledger networks. *See* Slashing, *Coinmarketcap*, https://coinmarketcap.com/academy/glossary/slashing, last visited Jan. 13, 2025.