

# IRS Guidance Allows Exchange-Traded Products to Stake Digital Assets

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In Revenue Procedure 2025-31 (Rev Proc), released November 10, 2025, the Internal Revenue Service (IRS) announced a safe harbor (Safe Harbor) that, if satisfied, would permit exchange-traded products (ETPs) to stake their digital assets without threatening their tax status as investment trusts and grantor trusts for U.S. federal income tax purposes, opening the door for ETPs to share staking rewards with their investors. The Rev Proc also provides a nine-month period (beginning on November 10, 2025) during which an existing ETP may amend its trust agreement to authorize staking, provided the Safe Harbor is satisfied.

In general, there has been concern that permitting a trust to engage in staking could be treated as a power to vary the investment of the trust's interest holders, risking their tax status under the Internal Revenue Code (Code) and applicable Treasury regulations discussed below. This is why, historically, such trusts and their sponsors have generally been reluctant to stake trust assets. The inability of such trusts to use their digital assets in staking and receive staking rewards has been a limitation, potentially affecting the value of interests in such trusts.

The Rev Proc, while confirming the IRS view that staking rewards are taxable, represents a significant change by permitting ETPs holding proof-of-stake digital assets to deliver yield to their investors, which likely will spur growth in this product segment.

## Why does this matter?

ETPs generally are organized as fixed investment trusts for U.S. federal income tax purposes. Beneficial interests in these trusts are divided into units. A fixed investment trust is an arrangement classified as a trust under Treasury Regulation section 301.7701-4(c). The IRS treats these trusts as grantor trusts under Section 671 of the Code, and the owners of the beneficial interests (units) in the trusts as the grantors. This tax treatment is beneficial because, for U.S. federal income tax purposes, each unit holder is treated as owning an undivided interest in the assets held by the trust and as directly realizing its pro rata share of the trust's income, gains, losses and deductions.

Critical to an ETP qualifying as a trust is that the trustee or sponsor may not possess the power under the trust agreement to "vary the investment" of the trust's unit holders. This limitation means that the trustee cannot take advantage of market variations to enhance the returns on investments of the unit holders. Permitting the trustee of an ETP to stake digital assets has been viewed as potentially giving the trustee such a disqualifying power, which is one significant reason ETPs have avoided staking their digital assets.

Staking refers to using a digital asset (or permitting the digital asset to be used), directly or indirectly, through an agent or otherwise, in the digital asset's proof-of-stake validation protocol, which is how transactions on the relevant blockchain are validated. Some prominent examples of digital assets utilizing a proof-of-stake validation protocol are Ethereum, XRP, and Solana. Bitcoin, the digital asset with by far the largest market capitalization, uses a proof-of-work protocol which takes it outside the Safe Harbor. In exchange for staking, the owner of the digital asset receives consideration, including, but not limited to, staking rewards paid in fiat currency or paid in kind in additional, newly created digital assets. The inability of ETPs to use their digital assets in staking and receive staking rewards has potentially negatively affected the value of interests in such trusts.

## Parameters of the Safe Harbor

ETPs satisfying all 14 criteria of the Safe Harbor will be permitted to stake their digital assets and receive staking rewards without losing their status as an investment trust under Treasury Regulation section 301.7701-4(c) or as a grantor trust under Section 671 of the Code. The Safe Harbor requires, among other things, that:

- An ETP's interests are traded on a national securities exchange, and its activities comply with the regulations and rules of both the SEC and the rules of the exchange on which it trades;
- The ETP owns only cash and single type of digital asset that uses a proof-of-stake consensus mechanism to validate transactions (again, Bitcoin is not included in this);
- A custodian, acting on behalf of the ETP, holds the ETP's digital assets at digital asset addresses controlled by the custodian, and the ETP retains tax ownership of the digital assets at all times, including while they are staked;
- The ETP's trust agreement prohibits the trust from seeking to take advantage of variations in the market to improve the investments of its interest holders (including variations based on the value of the digital assets or the amount of staking rewards); in other words, no discretionary trading of digital assets is permitted;
- The ETP (i) directs the staking of its digital assets through one or more custodians who facilitate the staking of the digital assets with one or more third-party staking providers who regularly provide such services, (ii) such services are provided on an arm's length basis, and (iii) the trust and its sponsor are unrelated to the staking provider;
- The ETP, its sponsor, and the digital asset custodian have no legal right or arrangement to participate in or direct or control the activities of the staking provider in any way, and do not do so, except to direct the staking and un-staking of the trust's digital assets;
- All of the digital assets of the ETP must be made available to the staking provider to be staked at all times, except where needed to comply with liquidity reserve requirements of the exchange on which the interests in the trust trade, or in certain short-term temporary situations (e.g., the sale of digital assets to pay trust expenses, or digital assets obtained through a contingent liquidity arrangement);
- The ETP's digital assets are indemnified from "slashing" due to the activities of staking providers (slashing refers to the forfeiture of some staked digital assets where the validator fails to act in accordance with a blockchain network's consensus mechanism). Since staking indemnities often do not cover the entire value of the loss, this requirement may be difficult to satisfy; and
- The only new assets the ETP can receive from staking its digital assets are additional units, in the same form, of the single type of digital asset held by the trust, and the ETP must distribute the staking rewards or cash from the sale of such rewards (net of trust expenses in each case) to its interest holders no less frequently than quarterly; this requirement effectively prohibits compounding staking, where staking rewards are automatically or manually reinvested into the original staked amount. It could also lead to liquidity issues for the unit holders as they might not be able to liquidate or withdraw these rewards to meet the related tax requirements. IRS guidance still treats staking rewards as taxable.

## Timing

The Safe Harbor applies to all tax years ending on or after November 10, 2025. Trusts that were formed prior to the issuance of the Rev Proc may make an amendment to their trust agreements at any time during the nine-month period starting on November 10, 2025, to authorize staking without jeopardizing their status as an investment trust under Treasury Regulation section 301.7701-4(c) or as a grantor trust under Section 671 of the Code, as long as the Safe Harbor requirements of the Rev Proc are met.

<sup>1</sup>. The Rev Proc makes explicit reference to SEC guidance on crypto ETPs, citing, among other documents, SEC Division of Corporation Finance, Statement on Certain Protocol Staking Activities (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities052925>; SEC Release No. 34-103571, 90 FR 36248 (Aug. 1, 2025) (permitting in-kind creations and redemptions for crypto ETPs); SEC Release No. 34-103995, 90 FR 45414 (Sept. 22, 2025) (approving rule changes proposed by three national securities exchanges to adopt generic listing standards for ETPs that hold commodities, including certain digital assets).

## Implications of the Rev Proc

The Rev Proc, together with the SEC guidance outlined in the Rev Proc, represents a significant change by permitting ETPs holding proof-of-stake digital assets to deliver yield to their investors, which likely will spur growth in this product segment. The Rev Proc's explicit reference to SEC guidance evidences a unique alignment between the IRS and the SEC, which in our view can be traced to the approach toward digital asset regulation articulated in the report of the President's Digital Asset Working Group.

While confirming the IRS's view that all staking rewards are treated as taxable income, the Rev Proc leaves many related tax questions unanswered. Specifically, the Rev Proc states that no inference may be drawn as to (i) the effect of a trust falling outside of the Safe Harbor's requirements, (ii) whether income attributable to staking constitutes "effectively connected income" for non-U.S. investors and is therefore subject to withholding, (iii) whether income attributable to staking constitutes "unrelated business taxable income" for individual retirement accounts and other tax-exempt entities, or (iv) the tax treatment of other digital asset transactions, such as forks and airdrops.

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