

Collective investment schemes and staking

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Some crypto business models resemble collective investment schemes. A provider that pools the crypto-assets of several clients and invests them according to a strategy may be operating a fund. Staking services, in which a provider locks clients' tokens in the consensus mechanism of a proof-of-stake network and distributes the rewards, raise similar questions. The provider must ensure that the clients' tokens remain attributable to them and that the service does not amount to the management of a pooled investment. FINMA addressed staking in guidance published in December 2023, stating that crypto-assets held in custody for staking can be treated as custody assets and segregated in bankruptcy, provided that certain conditions are met. The custodian must have the power of disposal over the assets at all times, and the client must have expressly consented to staking. The risks of the network's penalties for misconduct, known as slashing, must be addressed.¹ The guidance allowed Swiss banks and securities firms to offer staking to their clients within the regulated framework. Several crypto banks and the larger banks with crypto offerings have introduced such services.

1 Notes

1. FINMA, Guidance 08/2023 "Staking", 20 December 2023, finma.ch: staked crypto-assets can qualify as custody assets under Art. 16 no. 1bis BankG and Art. 242a SchKG if they remain available to the client at all times, if the client has given a specific instruction on the type and quantity of assets to be staked, if they can be unambiguously attributed to the client, if the client is informed of all risks (including slashing and lock-up periods) and if the institution takes suitable measures against slashing; FINMA notes that no case law yet exists on the point. ↔

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Online version: helveticaregister.com/zug-collective-investment-schemes-and-staking