



May 15, 2026

VIA E-MAIL

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Affairs
U.S. Department of Treasury
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Mr. Kevin Salinger
Deputy Assistant Secretary for Tax Policy
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Re: Sourcing, Character & Withholding with respect to Digital Asset Transactions

Ms. Burch and Mr. Salinger:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to expand the comments provided in our August 20, 2025, letter² (the “August 2025 Letter,” attached) regarding brokers’ information reporting and withholding responsibilities with respect to the staking of digital assets, such as ether held by an ether exchange traded product (“ETP”). Since the submission of that letter, SIFMA members have seen an increase in the volume of activity related to such ETPs and the staking of digital assets more broadly, highlighting the need for guidance.

¹SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² [Withholding With Respect to Digital Asset Transactions - SIFMA](#) (August 20, 2025).

I. Background with Respect to Staking Rewards

“Proof of stake” is the mechanism by which transactions on the Ethereum blockchain (and certain other blockchains) are validated. Those who wish to validate transactions on such a blockchain are required to “lock up” their tokens and, upon validating a transaction, are typically compensated with newly created tokens that the staker is permitted to “mint” by writing additional blocks to the blockchain. In addition, it is possible to earn a return indirectly by providing stake-able tokens to others (e.g., centralized exchanges) who in turn stake the tokens and share the rewards. “Liquid staking” tokens, which represent the right to tokens that have been staked (and therefore locked up) as well as their rewards, also are available for trading. And, as described below, ETPs have begun to stake, resulting in staking income to their investors.

A. IRS Guidance on Staking Rewards

In Rev. Rul. 2023-14, the Internal Revenue Service (“IRS”) determined that a cash-method taxpayer is required to include the fair market value of staking rewards in gross income in the taxable year when that taxpayer gains dominion and control over them, regardless of whether the taxpayer stakes directly or through a centralized exchange.

B. Developments Since Revenue Ruling 2023-14

After publication of Rev. Rul. 2023-14, several investment fund sponsors created ETPs classified as grantor trusts that hold different types of digital assets which are recorded on a blockchain and can be staked. These ETPs trade much like stocks and most brokers and custodians permit customers to hold units of them in their accounts. Brokers apply the information reporting rules for widely held fixed investment trusts (“WHFITs”) to digital asset ETPs organized as grantor trusts.

The ETPs initially did not stake their digital assets out of concern that doing so would endanger their status as investment trusts under Treas. Reg. § 301.7701-4(c). After receiving requests for guidance, the IRS published Rev. Proc. 2025-31, which provides a safe harbor that allows grantor trusts that hold proof-of-stake digital assets (“staking ETPs”) to stake those assets and maintain their tax status as investment trusts.³ Many staking ETPs have started to stake their holdings in reliance on Rev. Proc. 2025-31.

For tax purposes, the holders of units in a staking ETP are grantors of a grantor trust and are treated as receiving the staking rewards when the trust receives them. Moreover, Rev. Proc.

³ See Rev. Proc. 2025-31 §3.04.

2025-31 requires staking ETPs to distribute staking rewards to investors at least quarterly in cash or kind. Accordingly, under current IRS guidance, it would appear that unitholders have taxable income when the ETP earns staking rewards, and that income should be treated as paid to the investors no later than when it is distributed, and possibly as early as the moment the staking ETP obtains dominion and control over the rewards.⁴

SIFMA members often rely on the tax analyses included in issuers' filings with the Securities and Exchange Commission, but staking ETPs have taken divergent views, at various levels of confidence, in those filings with respect to whether staking rewards earned by a U.S.-registered staking ETP should be subject to U.S. withholding when paid to a non-U.S. investor. For example, one prospectus opines that rewards should not be treated as U.S. source fixed or determinable annual or periodical income ("FDAP") and thus should not be subject to 30% withholding.⁵ Another prospectus states that it is unclear whether the FDAP income received from the staking rewards would constitute U.S. or foreign source income, and therefore non-U.S. investors should expect 30% withholding.⁶ Given the divergent views of the ETPs, and the fact that staking rewards are already being earned by ETPs, SIFMA members are in dire need of clarity through Treasury guidance on this issue as soon as possible. We are aware that legislative proposals relating to the tax treatment of digital assets may ultimately address this issue, however given the uncertainty around timing and enactment, we would appreciate guidance in the interim.

In addition, as other regulators have updated their positions regarding the ability of traditional financial institutions to provide services in connection with digital assets, many of our members either currently hold digital assets in custody or are considering doing so in the future. The payment of staking rewards through custody accounts is sure to follow. Finally, the absence of guidance by Treasury is limiting the industry's ability to innovate its product offerings in the digital asset space and expand product offerings for its non-U.S. customers.

II. Request for Moratorium on Withholding Pending Guidance

Until the Treasury and the IRS provide greater clarity on the tax treatment of staking rewards, we strongly urge Treasury and the IRS to issue a moratorium on any withholding requirements related to staking rewards until definitive guidance is issued addressing the source, character and timing of that income. If withholding is ultimately required, there should be an adequate

⁴ We hope the IRS and Treasury do not lose sight of the fact these timing issues are also relevant to backup withholding under section 3406. Any timing rule under chapters 3 and 4 should be consistent with corresponding rules for backup withholding.

⁵ See [iShares® Staked Ethereum Trust ETF Prospectus](#), pg. 143 (Mar. 11, 2026).

⁶ [Grayscale Ethereum Trust ETF Prospectus](#), pg. 49 (July 22, 2024).

transition period to allow payors and brokers time to implement the new rules. Consistent with the approach taken for other novel payment types such as cross-border interest rate swaps and qualified fails charges, any rules that result in withholding should not be applied with retroactive effect.

Treasury and the IRS have previously released IRS Notices to provide interim relief on withholding and information reporting tax obligations until Treasury regulations or other guidance is available. IRS Notice 2018-08 suspended withholding obligations under IRC §1446(f) from any amounts realized from a disposition in a publicly traded partnership until further guidance is released. IRS Notice 2024-57 relieved brokers of the obligation to file or furnish Forms 1099-DA for certain digital asset transactions, including locking and unlocking transactions related to staking, until Treasury and IRS determine the appropriate information reporting framework. Given the complexity of withholding on staking rewards, we request Treasury and the IRS adopt a similar approach and not require any withholding until clear guidance is issued.

III. Request for Guidance by Treasury and IRS on Character, Source and Timing of Withholding

Staking rewards present a challenge for withholding agents, including members of SIFMA. If a unitholder is a non-U.S. person and the rewards are considered FDAP income, a custodian who holds those units for the unitholder will need to consider both whether to withhold and when to withhold, as well as how to comply with information reporting requirements. The answers depend on the source, character and timing of the income. If staking rewards are U.S. source income to non-U.S. holders of units in staking ETPs, withholding agents will be required to withhold tax under Chapters 3 and 4 and report on Form 1042-S. Given the lag between the earning of staking rewards, the distribution of those rewards, and annual trust information statements from the staking ETPs under the WHFIT rules, it is not clear when withholding is applicable. Any guidance provided by Treasury and the IRS should cover not only staking ETPs, but rather all the different scenarios where income is generated from staking rewards across various digital asset products.

A. Source and Character

Courts and the IRS often try to determine the source of novel types of income by analogy to more familiar types that have defined sourcing rules.⁷ However, staking is unique to digital assets and the analogies between staking rewards and other types of income are not strong.

⁷ See, e.g., *Bank of America v. United States*, 680 F.2d 142 (Ct. Cl. 1982); See Rev. Rul. 2009-14; Rev. Rul. 2004-75.

Sourcing rules generally rely on the tax residence of the payer (e.g., interest and dividends) or the location of economic activity (e.g., services, rents, royalties). Staking rewards do not easily fit into these analytical frameworks. They are not paid by an issuer of a cryptocurrency (like interest or dividends) or by a recipient of the service of validation (like a fee). No taxpayer takes a deduction when staking rewards are minted. It would be nearly impossible for withholding agents or investors to identify a location of staking activity on their own since that activity could happen anywhere there is a computer, and any location-of-activity-based sourcing rule could easily be manipulated by re-locating the equipment.

The sourcing rule most consistent with sound tax administration is sourcing to the residence of the beneficial owner. Treasury and the IRS have concluded that residence-based sourcing is appropriate for several types of income from investment activities – notional principal contracts,⁸ qualified fails charges,⁹ and most recently, borrow fees.¹⁰ Residence-based sourcing for staking rewards would allow withholding agents to make their withholding decisions based on the Forms W-8 and W-9 provided by customers. Given the inadministrability of other possible sourcing rules, SIFMA supports a rule that sources staking rewards to the residence of the beneficial owner.¹¹

Irrespective of the source, clarity is needed from Treasury and the IRS on the characterization of staking rewards in order to ensure accurate information reporting and withholding for both U.S. and non-U.S. investors. For example, if a U.S. person receives a staking reward, it may be appropriate to report the income as “other income” on Form 1099-MISC, absent any further guidance. For non-U.S. investors, if staking rewards are determined to be U.S. source FDAP income, the characterization of the staking income is critical, as it will determine how to report such income on Form 1042-S and how to apply U.S. tax treaties to staking rewards. Absent contrary guidance from the Treasury Department and the IRS, SIFMA members generally intend to treat staking rewards as not covered by treaty articles that apply to defined types of income. If a treaty includes an article for Other Income, that article or the Business Profits article are likely to apply if an appropriate treaty claim is made on Form W-8BEN or W-8BEN-E. Guidance would also be needed on whether staking rewards are exempt from U.S. tax under IRC §892

⁸ See Treas. Reg. § 1.863-7(b).

⁹ See Treas. Reg. § 1.863-10.

¹⁰ See Notice 2025-63.

¹¹ SIFMA also would support a rule determines the source of staking rewards paid to foreign flow-through entities, like partnerships, grantor trusts and simple trusts, by the tax residence of the ultimate partner, owner, or beneficiary of the flow-through entity, i.e. the beneficial owner. In situations where the identity of the ultimate beneficial owner in a foreign flow-through entity cannot be determined, a withholding agent should be able to presume that the recipient is an exempt recipient, in line with Treas. Reg. § 1.6049-5(d)(3)(ii) as applied to foreign source income.

(foreign governments and international organizations), §115(2) (U.S. territory governments), or §501(c) (foreign tax-exempt organizations). To the extent such treatment depends on whether the staking constitutes a commercial or business activity, rather than an investment activity, of the beneficial owner, withholding agents should be permitted to presume that the activity is investment in nature unless they have actual knowledge that the beneficial owner undertook validation activities.

B. Timing

Rev. Rul. 2023-14 provides that staking rewards are taxed upon receipt. If Treasury and the IRS provide a rule that sources staking rewards to the residence of non-U.S. beneficial owners, the timing of the income will not make a difference for Chapter 3 or 4 withholding purposes—there would be no withholding or reporting of those rewards.

On the other hand, if Treasury and the IRS provide a rule that results in U.S. source income being paid to non-U.S. unitholders, withholding agents will need to know when they are expected to withhold. It is not practical for withholding agents to withhold tax at the time staking rewards are earned by a staking ETP because they have no way to determine at that time how much is being earned by the investor. Moreover, until the rewards are distributed by the ETP, a withholding agent would have no payment to withhold from. SIFMA recommends that the rules should provide that withholding is required no earlier than the time cash (or other assets) are distributed by the ETP to its unitholders. This has the benefit of providing a source of funds for the withholding, as well as a clear and administrable rule for withholding agents to implement over time. As noted above, however, SIFMA is most supportive of a rule that results in residence-based sourcing.

If there is reporting of income from a distribution of staking rewards to U.S. persons on a Form 1099-MISC, any applicable backup withholding should be required no earlier than the time cash (or other assets) are distributed by the ETP to its unitholders. This is in line with the current backup withholding rules.¹² In addition, there should be no obligation to report gain or loss (i.e., the difference in price from the time the staking rewards are earned and the time they are distributed).

IV. Conclusion

SIFMA appreciates your consideration of our comments regarding the request for guidance surrounding the treatment of staking income from a source, character, and withholding perspective. Given the urgency of our request for a moratorium, we felt it was important to

¹² See IRC § 3406; Treas. Reg. § 31.3406(a)-1.

submit this letter as soon as possible. However, we also thought it was important to highlight the most significant issues related to the source, character, and timing of any withholding on staking rewards. We may expand upon this analysis in future correspondence. SIFMA welcomes the opportunity to discuss the issues in this submission with you and your colleagues. You can contact me at jbarker@sifma.org.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jessica Barker". The signature is written in a cursive, flowing style.

Jessica Barker

Managing Director, Tax & Associate General Counsel

cc:

Erika Nijenhuis, Senior Counsel, Office of Tax Policy, U.S. Department of Treasury

Peter Blessing, Associate Chief Counsel for International Tax, Internal Revenue Service