Alex More, Partner and Head of Litigation at Carrington Coleman, Quoted by Crypto News Outlet in their latest story “Could the SEC Have a Case Against Liquid Staking Protocols?”

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Overview: Alex More, Partner and Head of Litigation at Carrington Coleman, was recently quoted by crypto news outlet, Unchained, in their latest story, “Could the SEC Have a Case Against Liquid Staking Protocols?”

Staking is the process of locking up a token for a period of time to help secure a blockchain network and receiving interest in return for those locked up tokens. Liquid staking adds an additional step into this process, which is that when a user locks up the tokens, they also receive a utility token representing their share of staked tokens, which can be used elsewhere in the crypto ecosystem.

“If you’re really just facilitating for the user to stake and then get a token showing that the user has staked, for that to be a security then staking itself probably has to be a securities transaction,” said Austin Campbell, founder and managing partner of Zero Knowledge Consulting and adjunct professor at Columbia Business School.

“And I have some doubts there,” he added, referring to whether staking should be considered a securities transaction.

A core test for examining whether something is a securities transaction is the Howey Test, which is a four-prong test introduced in 1946. If the asset is an “investment of money in a common enterprise, with a reasonable expectation of profits to be derived from the efforts of others,” then it is considered a security.

On the face of it, staking protocols meet the first three prongs, said Alex More, head of litigation at Carrington, Coleman, Sloman, and Blumenthal. It’s the final prong, the “managerial efforts of others,” which is what gets litigated most frequently, he added.

Like Campbell, More believes it would be tough to argue that a user who is staking is participating in a securities transaction.

“There’s no managerial efforts going into it, it really is just protecting the integrity of the network,” More said.

The challenge is when an entity — decentralized or centralized — aids the user in the staking process.

If the entity truly acts as a pass through, then it is no different to a user staking directly, More said. However, if the entity does something to manage those staked assets then the SEC might have a stronger case that it's a securities offering.

The staking programs that have come under fire by the SEC are ones where staked assets were used in commingled vehicles or looked like an investment, Campbell said.

Click here to read the fully story.

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