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March 6, 2026

TO: The Honorable Kriselda Valderrama, Chair
Economic Matters Committee

FROM: Melanie Senter Lubin
Securities Commissioner
Maryland Office of the Attorney General, Securities Division

Max F. Brauer
Senior Assistant Attorney General, Enforcement Unit Chief
Maryland Office of the Attorney General, Securities Division

RE: House Bill 0859 – Financial Institutions Digital Assets and Digital Staking – Regulation (Maryland Financial Innovation Act of 2026) (OPPOSE)

The Office of the Attorney General's Securities Division strongly opposes House Bill 0859, the "Maryland Financial Innovation Act of 2026," sponsored by Delegates Boafo, Qi, and Amprey. The bill eliminates investor protections for our citizens and tilts the commercial playing field to favor one narrow special-interest group at the expense of its competition. This bill attempts to validate and codify digital asset staking firms' refusal to comply with Maryland law and register their digital asset staking program with the Securities Division, pay a nominal fee, and disclose all material information about their program to investors. Rather than register and provide full disclosure, the legislature has been presented with a bill that (1) interferes with our office's enforcement actions by overturning well-settled securities law (Section 12-1303) and (2) prevents the application of virtually any state law to digital assets, with two narrow exceptions (Section 12-1302).

<u>Staking Is Not Illegal</u>

Before diving into the details about how this bill attempts to eviscerate long-established, technology neutral laws, it is important to set the record straight regarding misrepresentations the Committee may be hearing from some digital asset staking firms and their lobbyists. Importantly, staking digital assets is not illegal in Maryland (or anywhere else in the country), nor is taking

custody of a digital asset, transferring digital assets, or accepting digital assets as a method of payment. Any person can stake their digital assets in Maryland. However, if a person starts a program to pool others' digital assets together as a security – just as if a person pools others' dollars together as a security – that person must comply with Maryland law and register the security or identify a valid exemption from registration.

Staking is no more illegal in Maryland than driving an automobile or building a house. But just as the law requires automobile registration, driver's licenses, and contractor's licenses, it requires securities registration (no matter the form of security). It is highly unlikely that serious consideration would be given to a bill lobbied by an unlicensed driver claiming that driving is illegal in Maryland or to an unlicensed contractor claiming that homebuilding is illegal in Maryland. This bill is no different. Staking is not illegal. It just requires registration when it is provided as part of a securities transaction.

Background About Digital Assets and Staking

While significant understanding of digital assets is not necessary to understand this bill, some brief background information might be helpful. The terms "digital asset," "crypto asset," or "token" generally refer to an asset issued and/or transferred using blockchain or distributed ledger technology, including assets referred to colloquially as "cryptocurrencies," "virtual currencies," and digital "coins". Thousands of different digital assets exist, each denominated by a unique digital "token" or "asset." All digital assets are secured using technology called blockchain. The blockchain is a recordkeeping mechanism, similar to a ledger, that is distributed across participants on a digital asset's entire network, with the transactions constantly being verified to ensure the accuracy of the ledger.

Most digital assets are created by validating transactions on the blockchain either through "mining" or "staking." Mining is associated with "Proof of Work" blockchains, such as Bitcoin. Bitcoin is mined when all the mining computer rigs around the world race to become the first to solve a complex math problem, which also verifies and updates the blockchain with new transactions. Each winner is awarded new Bitcoin. In contrast, staking is part of "Proof of Stake" blockchains, such as Ethereum. Rather than requiring a network of mining computers racing to solve a sophisticated puzzle, Proof of Stake transactions are validated by "nodes" comprised of people who pledge (or "stake") their digital assets. In exchange for staking digital assets, a node is rewarded with more assets from the blockchain network when the node validates a transaction.

Any person can stake their asset, but running a node can require a minimum number of digital assets, technical knowledge, security considerations, and a dedicated computer to perform validations at all times of day without downtime. Staking also involves risk. When a validator's assets are staked, they are locked up and bound to the node, unable to be withdrawn, traded, or transferred by the validator. If a validator suffers downtime, approves a fraudulent transaction, or otherwise fails to validate a transaction, that validator's staked digital assets can be slashed. Validators must apply their knowledge and expertise to their efforts to run successful nodes.

Some digital asset staking firms may claim that their program is no more risky than the chances of being struck by lightning. Lightning does carry a risk, which is why people do not stand under tall trees or go swimming in thunderstorms, and why the lightning rod was invented. Such risks depend how a particular firm runs its staking program to mitigate that risk.

Finally, the chances of a node being chosen to validate a transaction is typically proportional to the number of digital assets being staked. Such proportionality creates incentives for validators to amass a large aggregate stake, and benefits those able to run large nodes.

Section 12-1303 Would Overturn Well-Settled Securities Law Only for Staking Programs and Interfere With the Attorney General's Enforcement Actions

While staking is not itself a security, pooling others' digital assets together to stake can be an investment contract security. In the aftermath of the Great Depression, the Supreme Court's decision in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) articulated the standards for an investment contract, a defined term that is used in federal and state law, as: (1) an investment, (2) in a common enterprise, (3) with the reasonable expectation of profits, (4) derived from the efforts of others. The test is flexible, looking at the substance and economic realities of a transaction rather than its form.

For nearly 80 years, investment contract regulation has been an essential part of our nation's deep, robust markets. Any time an investor provides his or her assets – cash, digital assets, or anything else – to a common enterprise with the expectation of profits derived from others' efforts, a security exists and needs to be qualified under securities laws by registering that security. Such registration provides important investor protection, requiring among other rules full and accurate disclosure to potential investors of all material information regarding the investment.

Two courts have addressed whether staking programs could be securities, and both courts held that certain programs that this bill seeks to exclude were securities as alleged by the Securities and Exchange Commission. *See SEC v. Coinbase, Inc.*, 726 F. Supp.3d 260, 296-304 (S.D. N.Y. 2024) (holding that the SEC alleged that Coinbase's staking program was a security); *SEC v. Binance Holdings Limited*, 738 F.Supp.3d 20, 63-64 (D. D.C. 2024) (upholding the SEC's assertion that Binance's staking program was a security).

Despite these rulings, the current Securities and Exchange Commission abruptly dropped their staking enforcement cases and issued interpretive guidance that some staking programs were not securities, drawing a dissent from one Commissioner. *See* Securities and Exchange Commission, Statement on Certain Protocol Staking Activities, https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925 (May 29, 2025); Caroline A. Crenshaw, Response to Staff Statement on Protocol Staking Activities: Stake it Till You Make It?, https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-protocol-staking-052925 (May 29, 2025). As a result of the administration's actions, some states also dismissed related cases without prejudice due to resource constraints. Maryland currently has one pending enforcement action relating to a staking securities program.

Under Section 12-1303 of the proposed bill, "the provision of digital asset staking as a service does not constitute the offer of or the sale of an investment contract or other security under the Maryland Securities Act." This special-interest carve out would interfere with the Attorney General's pending enforcement actions and would endorse an uneven playing field by creating an advantage to digital asset staking firms by exempting one specific form of investment contract from regulation. While any other form of investment contract is subject to registration, staking securities would get a free pass. This proposal is no different than an electric vehicle owner asking for exemption from registering their automobile just because it is electric while ignoring the fact that it is an automobile. Just like any other investment contract, an investment contract about staking must be registered.

Section 12-1302 Could Preempt Almost All Maryland Law As Applied to Digital Assets

House Bill 0859 goes beyond a special carveout for staking programs and would exempt digital asset transactions from most laws. Section 12-1302 of the legislation provides that state or local governments may not "restrict, or otherwise impair" the ability of a person in the state to, among other things, "take custody of a digital asset," "transfer digital assets to another person," and "accept a digital asset as a method of payment." No law currently prohibits Marylanders from doing any of these activities in a lawful manner. However, virtually any law can be construed to "restrict or otherwise impair" the ability of a person to engage in prohibited conduct. As such, this exemption could preempt any laws if prohibited conduct were accomplished using crypto.

For example, in the regulatory context, numerous safekeeping requirements apply to third parties that maintain custody of others' assets. These requirements could be construed to potentially "impair" the ability of a third party to "take custody of a digital asset" through safekeeping and licensure. If this bill were enacted, the applicability of any potential licensure, safekeeping, bonding, or insurance safeguards could be in question because those important safeguards might "impair" the ability of industry participants to "take custody of a digital asset."

Under the same logic, numerous laws might be construed to "impair" the ability of wrongdoers to facilitate fraud and assorted crimes with digital assets, and be unenforceable in matters involving those assets. For example, wire fraud laws restrict the ability of a person to transfer or custody assets in furtherance of fraud. But if this bill were enacted, if a person engaged in wire fraud and in the process transferred, accepted, or took custody of digital assets, criminal prosecution could be prohibited. The same could be said for any circumstances where digital assets were used to facilitate a crime or otherwise engage in fraudulent conduct.

The preemptive scope of House Bill 0859 is of heightened concern because digital assets are frequently used for fraudulent and illicit transactions. This past December, the National Association of Attorneys General ("NAAG") highlighted digital assets "widespread use by criminal organizations for illicit transactions" and the challenges of states to seize digital assets with existing forfeiture laws. National Association of Attorneys General, Crypto-Crackdown: Criminal Forfeiture of Cryptocurrencies by States, https://www.naag.org/attorney-general-journal/crypto-crackdown-criminal-forfeiture-of-cryptocurrencies-by-states/ (December 19, 2025). This legislation would

arguably preempt states from engaging in any asset seizure because forfeiture "impairs custody" and criminal and antifraud laws "impair transfer" for fraudulent and other illegal purposes.

These are just some examples of laws that could be impacted by Section 12-1302.

While this bill does include two savings clauses for the Maryland Consumer Protection Act and the Maryland Money Transmission Act, these clauses are of limited value. The Consumer Protection Act applies to sales or offers for sale of goods or services for personal, family, or household purposes. Md. Code., Com. L. § 13-101(d). Second, the Maryland Money Transmission Act only covers digital asset transactions during the time that the asset is moving from location A to location B. This narrow scope is dwarfed by the universe of antifraud enforcement, criminal law, and financial regulation that would be thwarted by this bill.

Pending Federal Legislation

As this committee meets, Congress is actively considering legislation to bring digital assets more fully into the orbit of financial regulation. In particular, the CLARITY Act, which passed the House of Representatives, is currently being considered by the United States Senate in a bipartisan manner. Adopting State laws that exempt digital assets from most regulation not only is contrary to the approach that Congress is considering, but also is premature as a federal approach to regulation has not been finalized.

Conclusion

House Bill 0859 would severely harm the public interest through preemption so drastic it would kneecap the government from fully protecting investors through securities registration and potentially preempt numerous laws as they are applied to digital assets. The bill creates an uneven playing field that gives digital assets a free pass. For the reasons set forth, the Division requests that the Economic Matters Committee gives this bill an unfavorable report.

cc: The Honorable Adrian Boafo, Lily Qi, and Marlon Amprey
Members, Economic Matters Committee