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Venturestaking™: A Legal Analysis Under the Howey Test→

VentureStaking™: A Legal Analysis Under the Howey Test

Gerry Hays, JD, QAI
Professor of Venture Capital
gerry@doriot.com
Doriot.com

This paper presents a comprehensive legal and structural analysis of VentureStaking™, a novel pre-investment mechanism designed to democratize access to early-stage innovation. We argue that VentureStaking™ does not meet the legal definition of a security under the Howey Test, the prevailing framework used by U.S. courts and the Securities and Exchange Commission (SEC) to determine whether an offering qualifies as an investment contract. Through detailed examination of each prong of the Howey Test and relevant case law, we demonstrate that VentureStaking™ is fundamentally pre-investment, non-binding, and community-driven. It is structured to deliver educational value and strategic optionality—not financial return—and thus falls outside the regulatory scope of the SEC. We also address potential objections and mischaracterizations, affirming that VentureStaking™ represents a new legal and economic model for early-stage innovation—one grounded in transparency, access, and the empowerment of the retail investor.

Table of Contents

I. About Doriot………………………………………………………………… Page 3

II. About the Author…………………………………………………………… Page 4

III. Summary……………………………………………………………………….. Page 5

IV. Fixing the First Mile of Innovation……………………………………………….. Page 5

V. The Power Law Isn't a Theory—It's the Operating System of Venture………….. Page 6

VI. Pro-Rata Rights as a First Principle of Venture…………………………………... Page 7

VII. VentureStaking™ Explained…………………………………………………… Page 8

VIII. The Howey Test: A Legal Framework…………………………………………… Page 8

IX. Application of the Howey Test to VentureStaking™……………………………... Page 8

X. Steel Man Perspective: Addressing Potential Objections………………………… Page 10

XI. Conclusion……………………………………………………………………... Page 12

I. About Doriot

Doriot is an education-first venture company founded on the principle that everyone should have an equal opportunity to invest in the private markets, not just the wealthy and elite. According to the Board of Governors of the Federal Reserve System, the wealthiest 1 percent of households currently hold 32.1 percent of the total wealth, up from 23.4 percent in 1989. The top 10 percent of households owned $70 of every $100 in household wealth, up from $61 in 1989. The bottom half, whose share never exceeded 5 percent, now holds just 2 percent of household wealth.

As private market offerings—and their returns—increasingly outpace those in public markets, access to the private sphere, especially **fractional ownership in private companies**, is becoming critical for investors aged 18–35. This generation, with its longer time horizons and greater capacity for risk, is ideally positioned to benefit from early-stage investing. Yet, under the current **Financial Means Test**, only 3% of these investors qualify as accredited.

Doriot's mission is to change that. We aim to elevate retail investors to a level of sophistication equal to—or greater than—that which is merely *assumed* under today's wealth-based standards. Through rigorous education and dynamic learning experiences, we're building a future where access to private markets is not a privilege, but a pathway—earned through knowledge and calculated risk taking, not net worth.

Our flagship product, **Fantasy Startup®**, is a high-fidelity simulation designed to rigorously test and certify individuals across the Five Factors of Financial Sophistication in private investing. Since launch, over 14,000 global participants have downloaded and played the simulation — driving a measurable shift in how everyday people understand the Power Law of Venture. Fantasy Startup® doesn't just teach — it transforms perspective. In March 2021, we submitted a 64-page proposal to the United States Securities and Exchange Commission (SEC) under the newly expanded Accredited Investor Modernization Rules, requesting a license to test and certify financial sophistication.

QAI – the Qualified Accredited Investor Program, is our premium certification standard. Built as a 100-question exam spanning 14 modules — from startup scoring to advanced valuation strategy — QAI evaluates whether someone is actually sophisticated enough to make a venture investment. Since launch, over 350 individuals worldwide have earned certification — placing them in the top 20% of venture knowledge across the entire industry. These aren't casual learners — they're future funders, founders, and allocators. In August 2023, we submitted a 40-page proposal to the SEC for QAI's recognition under the same framework as above.

Doriot's venture education products have been embraced by institutions across the country, including—but not limited to—Indiana University, Washington University, Clemson University, the Colorado School of Mines, Notre Dame, Michigan State University, and East Tennessee State University as well as dozens of high profile private organizations.

Doriot is unbending in its belief that the best way to protect investors is to educate them. Period. Since day one, Doriot has operated as an active, good-faith participant in the effort to balance **venture democratization** with **investor protection** — through a rigorous, standards-based education pathway. While the SEC's mission is both expansion of capital markets and investor protections, the Commission, for nearly five years, has **neither responded to nor formally acknowledged receipt** of either of Doriot's certification proposals. Additionally, the SEC has offered **no guidance** on what constitutes an acceptable education pathway — leaving innovators and investors alike in a regulatory void.

Meanwhile, the movement to democratize venture must move forward — and Doriot intends to lead it. Through superior education and breakthrough products, we're committed to making the venture game winnable for anyone, regardless of socioeconomic status.

VentureStaking™ is Doriot's latest education-forward innovation. It's not just a mechanism—it's a mindset and strategy shift. One that puts knowledge, optionality, and truly universal access at the center of the innovation and entrepreneurial economy.

It flips the script on venture—transforming it from a gated marketplace reserved for the wealthy and well-connected into a **Global Venture Meritocracy**, where the best ideas—and those bold enough to join the frontier of innovation—receive the energy and capital they deserve. Venture Capital is the old operating system. VentureStaking™ is the full reboot—an entirely new codebase for how innovation gets funded.

II. About the Author

Gerry Hays, JD, is a nationally recognized expert in venture capital education, financial sophistication, and early-stage investing. With a career spanning academia, public policy, entrepreneurship, and private equity, Gerry brings a rare depth of experience to the frontier of investor education and innovation access.

He currently serves as a Senior Lecturer in Finance at Indiana University's Kelley School of Business, where he has taught since 2004. In this role, he developed and leads the school's Entrepreneurial Finance and Venture Capital curriculum at both undergraduate and MBA levels. His teaching has reached beyond Indiana, directing global immersion experiences in Hong Kong, China, and Singapore, and instructing at international institutions including the University of Ljubljana in Slovenia and Aspira University in Croatia. He has been recognized multiple times for teaching excellence, earning the prestigious Trustee Teaching Award and being twice named a MIRA Award Finalist for Most Innovative Higher Education Program, in 2014 and 2022.

Gerry holds a Doctor of Jurisprudence from the Indiana University Robert H. McKinney School of Law and a BA in Political Science from Indiana University Bloomington. His academic achievements have been complemented by a strong commitment to policy and governance, having served in several key public roles. As Director of Legislative Affairs for the Indiana Department of Environmental Management, and later as Director of Environmental & Energy Policy at the Indiana Chamber of

Commerce, Gerry shaped over 50 pieces of state legislation and led high-impact policy committees. He also served as Legislative and Regulatory Affairs Director for the American Automobile Manufacturers Association, representing the interests of Ford, GM, and Chrysler at both state and federal levels. Earlier in his career, he worked as Finance Director for Pam Carter's historic campaign for Indiana Attorney General and was selected as a Governor's Fellow under Governor Evan Bayh.

A prolific innovator, Gerry is the author of *The First Time Founder's Equity Bible*, a five-star guide to startup capitalization, and the inventor of multiple patents related to startup infrastructure. He passed the Indiana Bar in 1998, adding legal depth to his academic and entrepreneurial toolkit. Gerry's core strength lies in deconstructing gated industries to their first principles—and rebuilding them as open, accessible systems.

He first did this in 1999 with his first startup HomeYeah.com, pioneering commission-free residential real estate transactions. For two years in Indianapolis, IN, what many called "the future" was already reality. But when venture capitalists refused to back the model, it exposed the structural barriers of the industry — planting the seeds for what would eventually become Doriot.

III. Summary

VentureStaking™ is a strategy-first, education-forward model for validating early-stage innovation. It enables everyday participants to support the research and development phase of new ideas—not through investment, but through optional participation and informational access. In doing so, it replaces outdated and risky models like the family-and-friends round, which dominate the earliest stage of venture capital with informal, emotionally driven, and structurally flawed transactions.

Instead of offering profit-seeking instruments, VentureStaking™ provides a right to follow a journey and, if the project matures into a regulated investment opportunity, participate on equal footing with institutional investors. This structure dramatically reduces both upfront risk and the capital required to explore the Power Law of venture—making the game more accessible, fair, and winnable.

VentureStaking™ also restores balance to a venture ecosystem that has long favored insiders and gatekeepers. It reframes the first mile of innovation—making it a phase of open, merit-based discovery, not one of financial exclusion or legal ambiguity. Critically, it does so while adhering to legal precedent: it does not satisfy the Howey Test, and therefore, does not constitute a security under U.S. law.

IV. Fixing the First Mile of Innovation

In today's venture ecosystem, an entrepreneur or innovator just getting started must conduct research and development to test whether an idea is viable and worth pursuing. But the funding for that earliest stage—the exploration phase—has traditionally been reserved for one group: family and friends.

Family and friends remain the second-largest source of startup capital, with 38% of startups relying on them for their initial funding[1]. This money is often given out of love, trust, and belief—not necessarily from a clear, objective evaluation of the business opportunity. And while this practice is deeply embedded in startup culture, it comes with serious hidden costs. It's emotionally taxing, often discriminatory, and structurally flawed[2].

Worse, these early financings are rarely set up with long-term fairness in mind. When a breakthrough happens, later investors—especially venture capitalists—tend to structure deals that heavily favor themselves, frequently disadvantaging the very people who took the first risk. In simple terms, the venture industry gets a free ride on the back of over $60 billion[3] in family-and-friends capital.

This dynamic isn't just unfair—it's a drag on the innovation economy. It creates disincentives to explore bold or unconventional ideas, effectively leaving innovation in the hands of the wealthiest 1%, and stifling the kind of early-stage experimentation that fuels real breakthroughs.

V. The Power Law Isn't a Theory—It's the Operating System of Venture

Whether it's a venture capitalist or a retail investor, the only proven strategy to win in the game of backing innovative, early-stage companies is to take advantage of the Power Law. The Power Law—originally proven by Georges Doriot—describes a distribution in which a tiny fraction of investments generate the majority of returns, while most others yield little or nothing. In venture, this means a single breakout company can return the entire fund—and then some.

But triggering the Power Law isn't simple. According to Doriot's internal Monte Carlo simulations, an investor must place at least 50 equal bets to reduce the probability of total loss to near zero. This insight has been recently validated by actual performance data from both the Kauffman Foundation and AngelList[4].

For example, a single $1,000 investment in a startup carries roughly a 90% chance of total loss. However, if that same investor made 50 equal $1,000 bets across a diversified portfolio, the odds of losing the entire $50,000 approach zero. The catch? The investor won't know in advance which companies will win—the Power Law only reveals itself through volume and patience.

This is where the model breaks down for most people. To take advantage of the Power Law, an individual must have both the financial means to place multiple bets and access to high-quality early-stage deals.

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[1] Kauffman Foundation, 2023

[2] A recent study by professors Donald F. Kuratko, Greg Fisher, and Regan Stevenson of Indiana University's Kelley School of Business introduced the concept of **"funding-source-induced bias."** Their research shows that when founders are emotionally close to their investors, they experience **anticipated guilt**—a feeling that can distort strategic decision-making and hinder long-term growth.

[3] https://www.fundable.com/learn/resources/guides/investor/types-of-investors?utm_source=ventureclub.beehiiv.com&utm_medium=referral&utm_campaign=the-dark-side-of-family-friends-financing

[4] https://www.kauffmanfellows.org/journal/venture-returns-with-abe-othman-of-angellist

Most retail investors are gated out on both counts—and as a result, excluded from the upside of innovation.

VI. Pro-Rata Rights as a First Principle of Venture

Equally important in the game of venture is having the right to reinvest in companies that are actively winning in the market. This is how pre-seed and seed investors operate: they spread small amounts of capital across multiple startups, then "watch and wait" to see which ones gain traction. When winners begin to emerge, they allocate the rest of their capital into those companies. This is known as capital efficiency—and it's how smart portfolios amplify returns.

But here's the catch: the venture capital industry largely operates under the Golden Rule—"He or she who has the gold makes the rules." And those rules often exclude the earliest investors—family and friends—from participating in follow-on rounds. Just as the companies they supported begin to break out, they're locked out.

This exclusion blocks them from participating in the convexity of returns—the exponential value creation that happens when capital is concentrated into emerging winners. In other words, those who took the most risk are structurally denied access to the phase where risk converts into real return.

VII. VentureStaking™ Explained

VentureStaking™ is, at its core, a novel and simple way to fund research and development—designed to test whether an idea deserves serious consideration and has the potential for commercialization. But in its simplicity lies its power: VentureStaking™ places early participants in the position of the most powerful venture capitalists by enabling them to play a smarter, more winnable game.

At its core, VentureStaking™ does three key things:

1. Reduces upfront risk by up to 90%, allowing individuals to enter the venture space without overexposure.
2. Unlocks access to the Power Law, enabling participation in a diversified portfolio of early-stage opportunities with 90% less capital.
3. Gives participants the ability to follow winners, allocating follow-on capital to the most promising projects and increasing the likelihood of returns—often on shortened timelines—by up to 90%.

In the VentureStaking™ model, there are two primary roles: Innovators and VentureStakers. Innovators come to Doriot with a problem they believe needs solving. VentureStakers then choose whether to support the exploration of that opportunity—by purchasing a VentureStake™ to fund its R&D phase.

Importantly, the Innovator is not offering equity or debt at this stage. Instead, they are offering something far more strategic: a right to invest in all future funding rounds—should the project move forward. For example, if a VentureStaker contributes $10 to an Innovator, that amount is recognized as revenue to the Innovator, not investment capital. In exchange, the VentureStaker receives insider access to follow the journey and a first right to invest $100 any subsequent Regulation CF or Regulation A+ rounds.

In essence, the value being exchanged is education, transparency, and a seat at the table—with no obligation to invest further unless the VentureStaker chooses to do so. They fund the exploration phase knowing that the Innovator may ultimately decide not to move forward. That's part of the model's honesty—and its strength.

For Innovators, the benefits are clear: they can raise R&D capital without the regulatory complexity and expense of a traditional exempt offering. The funds they receive are recognized as revenue, not securities.

For VentureStakers, the upside is equally compelling: they can build a portfolio of early-stage opportunities at a fraction of the cost, benefit from the Power Law, and lock in the same investment rights and terms as future institutional investors—without needing access to insider networks or large pools of capital.

VentureStaking™ reframes the earliest stage of venture—making it transparent, accessible, and strategically aligned for everyone involved.

VIII. The Howey Test: A Legal Framework

The Howey Test originates from the U.S. Supreme Court case SEC v. W.J. Howey Co. (1946), in which the Court evaluated whether land sales combined with service agreements qualified as unregistered securities. The ruling defined an "investment contract" under the Securities Act of 1933 as a transaction that meets four specific criteria:

"An investment contract, for purposes of the Securities Act, means a contract, transaction or scheme whereby a person (1) invests his money (2) in a common enterprise (3) with the expectation of profits (4) to be derived solely from the efforts of others."[5] All four prongs must be satisfied for a transaction to be considered a security. If even one element is not met, the transaction falls outside the regulatory definition.

IX. Application of the Howey Test to VentureStaking™

Not only does VentureStaking™ fail to meet all four prongs of the Howey Test—it is arguably inapplicable to every prong. As such, VentureStaking™ falls outside the scope and regulatory purview of the SEC.

A. <u>No Investment of Money in a Venture</u>

[5] SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

First, there is no present investment in a venture. A core requirement of the Howey Test is that there must be an investment of money in a venture. VentureStaking™ does not involve such an investment. Instead, it is a purchase of strategic access — a right to participate in a future, fully regulated round (e.g., Regulation CF or RegA+), if and only if the participant chooses to do so. At the point of VentureStake acquisition: 1) There is no pooled capital or business entity receiving funds; 2) No equity or token is sold; No operational business exists; and the purchaser retains complete discretion over future actions. Thus, the initial payment is for optional, non-binding future access, not for ownership, participation, or passive financial gain.

B. <u>No Common Enterprise</u>

While VentureStaking™ involves a community of participants—multiple individuals expressing interest in the same potential innovation—this is a non-financial commonality. Stakeholders are not pooling funds into a shared enterprise with a profit-seeking motive; instead, they are signaling support to explore whether a specific problem is worth solving.

At the time of purchase, there is no centralized entity or promoter managing a business, and no capital is being invested with an expectation of profit. VentureStakers™ are essentially paying for a front-row seat—the opportunity to follow the development of a potential solution and determine whether a real market opportunity exists.

Only if and when that opportunity materializes does the potential for capital investment arise. At that point, any future company formation and funding activity would fall fully under the jurisdiction of the United States Securities and Exchange Commission, through appropriately regulated mechanisms such as Regulation CF or Regulation A+.

C. <u>No Expectation of Profit</u>

VentureStaking™ offers educational value and early access—not profit. It functions more like an exclusive membership than a traditional investment. Under the Howey Test, a key requirement is that the purchaser expects a profit based on the investment itself. VentureStaking™ does not meet this criterion.

At the time of acquisition, VentureStakers™ receive:

1. The opportunity to potentially invest in a future Regulation CF or RegA+ round;
2. An educational and data-driven interface to inform that future decision;
3. The freedom not to invest at all, with no obligation or penalty.

There are no dividends, no equity, no revenue sharing, no implied appreciation, and no secondary market for resale. The value of a VentureStake™ lies entirely in its informational and strategic access, not in any present or promised financial return.

D. <u>Not Derived From the Efforts of Others</u>

VentureStaking™ is community-driven, not promoter-led. The Howey decision emphasized that profits must come from “the efforts of others.” With VentureStaking™, success is not determined by the actions of a centralized promoter but by community validation.

Because each VentureStake™ transaction is intentionally modest in size, the model requires broad participation to succeed. If a significant number of individuals do not opt in, the problem simply won’t be explored. This is not a flaw—it’s a feature, by design.

Only when an Innovator has gathered sufficient evidence that a business can be built will they initiate a separately regulated business formation and funding process. At that point, and only then, the offering falls under the jurisdiction of SEC rules.

During the VentureStaking™ phase, there is no passive reliance on a promoter or centralized entity to build a business. Each participant engages with autonomy, intention, and agency.

This design structurally breaks the Howey model. There is no "other" doing the work at the time of purchase. The future business only comes into existence if the community says “yes.”

Howey Test	**VentureStaking™**
Investment of Money	No
Expectation of Profit	No
Common Enterprise	No
Derived from Efforts of Others	No

X. Steel Man Perspective: Addressing Potential Objections

We expect skeptics will argue that VentureStaking™ is a security simply because it appears new, unconventional, or speculative. This reflex is grounded in an outdated, old-paradigm view of venture finance—where any mechanism remotely associated with future startup investment is assumed to be a security by default. But the U.S. Supreme Court has made clear that assumptions are not the standard. The Howey Test is the standard.[6]

Howey does not rely on appearances or intent—it requires clear legal criteria. And VentureStaking™ is meticulously designed to fall outside of those criteria. Below is our strong refutation of those that will argue a VentureStake™ is a security.

[6] In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), the Court articulated a specific four-pronged test to determine whether a transaction qualifies as an investment contract and thus a security. This test has been consistently upheld and applied by courts across jurisdictions, reinforcing that form, structure, and actual expectations—not assumptions or perceptions—govern securities classification.

A. VentureStaking™ has speculative value due to future optionality.

Yes, VentureStaking™ provides optionality. But optionality is not profit, nor is it an expectation of profit.

Optionality is the right—not the obligation—to act in the future. In the case of VentureStaking™, it means having early access, the ability to follow an Innovator's journey, and the choice to invest later through a fully regulated offering. It is strategic, not financial. There is no guarantee, suggestion, or implied promise of financial return at the time of purchase. Profit, by contrast, implies an actual return on invested capital—something VentureStaking™ explicitly does not offer. There is no equity, no dividend, no rev share, no appreciation mechanism, and no liquidity. The value is informational and positional, not monetary.

Courts interpreting the Howey Test have been clear: speculation alone is not enough to classify something as a security. Optionality, access rights, or contingent opportunities do not constitute investment contracts unless there is a clear financial stake combined with a reasonable expectation of profit[7]. That condition does not exist here. VentureStaking™ is a pre-investment interface, not an investment instrument.

B. Community momentum could mimic the role of a promoter

This argument misunderstands both the function of a promoter under Howey and the nature of VentureStaking™. The Howey Test requires that profits are derived primarily from the efforts of others—specifically a promoter or third party actively managing the enterprise.

In the VentureStaking™ model, no business exists at the time of the transaction. There is no enterprise being promoted, no assets being managed, and no venture underway. Instead, the community itself decides whether a problem is worth exploring. The Innovator does not promote an investment opportunity—they present a problem. The community chooses whether to help fund the research and development of a possible solution.

This peer-driven model breaks the Howey framework: there is no managerial effort from a third party to rely on. There is only discovery, validation, and the possibility of formation—not enterprise execution at the time of purchase.

C. Participants may perceive that they are investing early in hopes of profit.

Even if some participants *perceive* the experience through an investor lens, perception does not meet the legal bar. The Howey Test demands more than subjective belief. It requires an objective structure that meets all four criteria:

1. An investment of money
2. In a common enterprise

[7] Mendelson, Michael. "From Initial Coin Offerings to Security Tokens: A U.S. Federal Securities Law Analysis." Stanford Technology Law Review, vol. 22, no. 1, Winter 2019, pp. 66.

3. With an expectation of profits
4. Derived solely from the efforts of others

VentureStaking™ fails all four. There is no investment of money in a venture (funds are classified as revenue, not capital), no enterprise at the time of transaction, no guaranteed or implied expectation of profit, and no centralized management.

Moreover, the Supreme Court and lower courts have emphasized form and substance over perception and marketing. If courts ruled based on what a participant might feel or hope for, nearly any transaction could be mischaracterized as a security. That is not, and has never been, the standard.

VentureStaking™ is fundamentally: 1) Pre-investment; 2) Non-binding; 3) Community-driven; 4) Regulatorily deferred until an actual investment opportunity exists. It is no more a security than a subscription to a crowdfunding platform, a membership to an innovation network, or a reservation on a waitlist. Any regulatory challenge would need to demonstrate that all four prongs of the Howey Test are met, not merely imply them. Given the intentional structure of VentureStaking™, we are confident that no such argument would withstand judicial scrutiny.

XI. Conclusion

In an industry built on assumptions, VentureStaking™ represents a deliberate break from convention. It does not rely on wealth to grant access. It does not package profit in disguise. It does not blur the line between participation and investment. Instead, it offers a legally sound, structurally clear, and radically inclusive framework for exploring innovation at its earliest and most uncertain phase.

The Howey Test remains the standard for determining whether a transaction is a security—and VentureStaking™ fails to meet any of its four prongs. It involves no investment of money in a business, no common enterprise with pooled capital, no guaranteed or expected return, and no reliance on a centralized promoter. It is pre-investment, non-binding, and entirely community-driven.

Speculative value alone does not create a security. Optionality is not profit. Perception is not precedent.

VentureStaking™ is not a workaround—it is a redesign. A forward-facing framework that creates both protection and possibility, rooted in law, backed by data, and driven by a belief that the first mile of venture must be open to all—not just the few.

We are confident that any attempt to classify VentureStaking™ as a security would fail both legally and factually. The future of innovation deserves models that are transparent, inclusive, and built to stand—not merely withstand—regulatory scrutiny.

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Legal Disclaimer

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