

# Regulatory Alert

Regulatory Insights for Financial Services

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## Crypto/Digital Assets: SEC Approves Firsts in Listing/Trading of Spot Bitcoin Exchange-Traded Products

### *KPMG Insights:*

- **Landmark Decision:** Further opens U.S. markets for bitcoin exchanges and trading via approved ETPs.
- **Fees Matter:** SEC approval process confirms that fees matter, including fee structure and introductory waiving of fees.
- **Regulatory Scrutiny:** Expect regulatory scrutiny with respect to existing federal securities laws and investor protections, including frauds, scams and “market manipulation”.

The Securities and Exchange Commission (SEC) approves [several applications](#) for the listing and trading of spot bitcoin exchange-traded products (ETPs). The SEC notes that the approval is limited to ETPs holding only bitcoin, which is a non-security commodity, and does not necessarily signal a “willingness to approve listing standards for crypto asset securities.”

In a statement announcing the approvals, the SEC Chair noted the following key points:

1. Sponsors of bitcoin ETPs will be required to provide “full, fair, and truthful disclosures” about the products. “Investors in any bitcoin ETP that is listed and traded will benefit from disclosures in public registration statements and required periodic filings.”
2. These ETPs will be listed and traded on registered national securities exchanges (exchanges), which are already required to have existing rules designed to prevent fraud, manipulation, and conflicts of interest, and to protect investors and the public interest. SEC will closely monitor these products’ listing and trading to ensure that the exchanges enforce those rules and will investigate any fraud or manipulation in the markets, including schemes that use social media platforms. Specifically called forth by the SEC:
  - Existing rules and standards of conduct apply to the purchase and sale of the approved ETPs (e.g., Regulation Best Interest when broker-dealers recommend ETPs to retail investors, fiduciary duty under the Investment Advisers Act for investment advisers).
  - The SEC’s approvals do “not approve or endorse crypto trading platforms or intermediaries”.
3. The SEC is separately completing the review of registration statements (applications) for additional spot bitcoin ETPs simultaneously, which it believes will help create a level playing field for issuers and promote fairness and competition, benefiting investors and the broader market.

**Key Areas of Regulatory Focus.** Of note, during the application process the SEC asked for additional information relative to:

- Fee structure, especially those that notably reduced fees to attract investors (e.g., waiver of the management fee for six (6) months following the listings, applicable to the first \$1 billion in assets under management (AUM)).
- Initial seeding strategies (i.e., use of proceeds from seed creation baskets to purchase cryptoassets).

Additionally, (and prior to approvals) in a post on social media, the SEC Chair noted several inherent risks and

regulatory challenges related to crypto and digital assets, including:

- Potential compliance risks for asset managers around federal securities laws.
- The need for investor education and awareness of, and protections from, “fraudsters” and scams (e.g., bogus coin offerings, Ponzi and pyramid schemes, outright theft, etc.).

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