

Ether's Security Designation Creates Risk of Market Disruption

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Washington, DC Partner and Financial Markets and Regulation Co-Chair Daniel Davis and New York Financial Markets and Funds Senior Counsel Gary DeWaal authored an article for *Bloomberg Law* regarding the recent news that a special purpose broker dealer (SPBD) disclosed its intention to custody the digital asset ether (ETH) as a digital asset security. Generally considered a non-security by most of the crypto industry, if ETH is classified as a security, it could become a security future on a single security subject to joint Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) oversight, and may require industry participants to be dual-registered with the CFTC and SEC.

Currently, there is no public record suggesting that the SEC and CFTC are discussing or have formally agreed on authorizing security futures on ETH. The decision by the SPBD to custody ETH as a digital asset security has raised significant legal and regulatory questions. Dan and Gary concluded that industry participants and customers should consider the potential consequences of these developments. The chairs of the SEC and CFTC should determine together how to handle this potential development.

["Ether's Security Designation Creates Risk of Market Disruption,"](#) *Bloomberg Law*, April 2, 2024

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