

Law360 Talks With James Brady About Recent SEC Ether Approvals

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Financial Markets and Funds Partner James Brady spoke with *Law360* regarding the Securities and Exchange Commission's (SEC) recent approvals of exchange-traded products (ETPs) holding ether (ETH) and what that means for other cryptocurrencies waiting to determine what is considered a security and subject to SEC regulation. James sees this as an explicit acknowledgment by the SEC that ETH is a commodity rather than a security, which places it outside the SEC's jurisdiction. He states, "We finally have something definitive from the SEC that states that ETH is not a security, it's a nonsecurity commodity."

However, he notes that the approvals lack the clarity the industry desires. They do not overtly state that ETH trading is under the jurisdiction of the Commodity Futures Trading Commission (CFTC). James adds that they lack a detailed analysis of why ETH is treated as a commodity in this instance, leaving some ambiguity in the SEC's overall stance.

He does interpret the approvals as at least indicating that ETH trading does not need to be conducted through a broker-dealer, which is a requirement for securities. He also suggests that there is the potential difficulty for the SEC to take action against exchanges that trade only in ether and bitcoin, given the paper trail from the SEC that suggests both are commodities under the CFTC.

James thought it was interesting to note that the issuers of the ETH ETPs removed references to staking the funds' assets from submissions, likely indicating the SEC continues to have concerns about whether the activity implicates securities laws. "I know that's sort of a vague and unhelpful statement, but I think that's where we're at, market participants in the future are sort of on notice that staking of a crypto asset may raise concerns," he said.

["SEC's Ether Orders Spur Hope For Crypto, Caution From Attys,"](#) *Law360*, June 18, 2024

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