

SEC Approves Spot Ether ETFs

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On July 22, 2024, the Securities and Exchange Commission (SEC) declared nine registration statements effective under the Securities Act of 1933 for spot Ether ETFs, clearing the way for the ETFs to begin trading on July 23. Spot Ether ETFs are exchange-traded funds (ETFs) that invest directly in Ether, a digital asset that supports the Ethereum Network. The Ethereum Network is a decentralized network that operates on cryptographic protocols. Ether is the second-largest cryptocurrency after Bitcoin.

In May, the SEC approved the listing of spot ETF shares on U.S. exchanges. The SEC's approval of Securities Act registration for these products represents the removal of the last substantial regulatory hurdle to the public's access to spot Ether ETFs.

The approvals make Ether only the second digital asset available to be traded on a spot basis in an ETF wrapper. The SEC previously approved spot Bitcoin ETFs in January 2024. Ether presented different regulatory issues than Bitcoin. The Bitcoin and Ether protocols vary in terms of how they achieve consensus to validate transactions. While Bitcoin uses a "proof of work" system, Ether uses a "proof of stake" system. Proof of work relies on miners solving complex computational problems to validate transactions, while proof of stake selects validators based on the amount of cryptocurrency they hold and are willing to stake as collateral. In addition, there was remaining uncertainty as to whether ETFs investing in spot Ether would be treated (or regulated as) commodity ETFs or securities ETFs. That question appears to have been answered, as the spot Ether ETFs which were approved are commodities-based ETFs. This may be a result of the SEC's determination that the Ethereum Network is sufficiently decentralized such that there is no controlling group of others for purposes of the *Howey* test used to determine whether a contract is an investment contract, and thus a security.

The availability of spot Ether in an ETF may provide a channel for exposure to digital assets for investors that were leery of the largely unregulated exchanges and high commissions previously associated with trading Ether in real time.

The approvals by the SEC are another milestone in the maturation of the digital asset economy, and potentially foreshadow the emergence of additional ETFs based on other digital assets.

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