

ARIZONA STATE UNIVERSITY
CORPORATE AND BUSINESS LAW JOURNAL
FORUM

VOLUME 2

MARCH 2021

NUMBER 25

COMMENTARY

BITCOIN ETFS: IS THE SEC READY FOR CRYPTO?

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Recent filings with the U.S. Securities and Exchange Commission (SEC) may soon provide investors the opportunity to gain exposure to bitcoin without needing to custody the digital asset, allowing investors to execute trades through their existing brokers.¹ A New York-based investment firm, Skybridge Capital, joined several other companies in filing for bitcoin ETFs in recent months.² Several major financial services firms submitted applications in the hopes of offering bitcoin ETFs, including Morgan Stanley, Fidelity, and VanEck.³ While many of these firms filed to offer the ETFs, none completed the process by filing the requisite 19b-4 form needed to kick off the SEC review process until recently.⁴ The investment management company Van Eck Global recently filed the 19b-4 form, which kicks off a 45-day review period where the SEC has to decide whether to approve the application.⁵ If the SEC approves the ETF application, investors would be able to participate in this new digital asset class without having to endure the process of setting up digital wallets or transferring portions of their investment portfolios onto complicated crypto exchanges.⁶ Theoretically, if approved, investors could buy and sell bitcoin investments much like traditional stocks.

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¹ Brian Quarmby, *SkyBridge Capital latest to file Bitcoin ETF application with US SEC*, Cointelegraph (March 22, 2021), <https://cointelegraph.com/news/skybridge-capital-latest-to-file-bitcoin-etf-application-with-us-sec>.

² Nathan DiCamillo, *SEC Publishes VanEck's Bitcoin ETF Application, Kicking Off Decision Clock*, Coindesk (March 18, 2021), <https://www.coindesk.com/sec-vaneck-bitcoin-etf-2021>

³ Chris Matthews, *Bitcoin, crypto investors will be watching these 5 questions facing the Biden administration*, MarketWatch (March 22, 2021), <https://www.marketwatch.com/story/bitcoin-crypto-investors-will-be-watching-these-5-questions-facing-the-biden-administration-11616442245>

⁴ Nikhilesh De, *State of Crypto: Will 2021 Finally Be the Year of the Bitcoin ETF?*, Coindesk (Feb. 16, 2021), <https://www.coindesk.com/bitcoin-etf-2021>

⁵ *Id.* (Noting that the SEC can say it needs more time and/or provide feedback. The agency can extend the review period up to 240 days).

⁶ Matthews, *supra* note 3.

New Hopes

While the SEC has historically rejected bitcoin ETF applications, recent news provides investors with new hopes.⁷ Last month, the Ontario Securities Commission approved the first bitcoin ETF in North America.⁸ The ETF, which is a retail-friendly, regulated bitcoin investment vehicle, allows Canadian investors to trade bitcoin in popular brokerage apps, a product that the industry has long desired.⁹ Many believe the recent ETF approvals in Canada may hint an ETF approval is on the way in the United States.¹⁰ Eric Balchunas, a senior ETF analyst at Bloomberg, stated that the “U.S. usually follows shortly after” Canadian regulators in approving such products.¹¹ Three ETFs have begun trading on the Toronto Stock Exchange, with one seeing roughly \$500 million in assets under management within its first few days.¹² Balchunas estimates the SEC will approve these applications by late September, 2021 and predicts \$50 billion in inflows over its first year.¹³

Implications

ETFs historically act as an instrument that could be used as a hedge to provide a new ecosystem of liquidity, alleviating pressure and volatility on the underlying securities.¹⁴ During downdrafts, this basket of stocks essentially act as liquidity shock absorbers.¹⁵ A bitcoin ETF could provide the same function in the world of cryptocurrencies as well as bringing transparency and accessibility to costs and execution.¹⁶

Currently, an investor looking to invest in bitcoin has few choices. Investors can invest in bitcoin through cryptocurrency exchanges like Coinbase or through Fintech firms such as Robinhood.¹⁷ These methods largely replicate a traditional retail brokerage where investors can buy and hold the asset in digital accounts.¹⁸ However, these options offer limited accessibility as they are closed off from retirement accounts like IRAs and 401ks.¹⁹ A well-structured ETF can lessen these hurdles for investors seeking to gain exposure to bitcoin.²⁰ Investors could manage their bitcoin investments in the same brokerage account as other stocks, bonds, and ETFs.²¹

The ETF structure will also provide transparency into trading costs.²² This transparency provides investors with more information into bid/ask spreads and premium/discounts allowing investors the power to choose the most cost-efficient structure.²³

⁷ DiCamillo, *supra* note 2.

⁸ De, *supra* note 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Anita Rausch, *Could the ETF Wrapper Democratize Crypto Investing?*, Nasdaq (March 21, 2021), <https://www.nasdaq.com/articles/could-the-etf-wrapper-democratize-crypto-investing-2021-03-21>

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

Lastly, a bitcoin ETF will provide an additional layer of liquidity. Like bonds, cryptocurrency liquidity is traded on many different exchanges, which prohibits a centralized location that shows the best bid, offer, or ability to aggregate liquidity.²⁴ Since an ETF is exchange-listed, centralization will be a natural result.²⁵

Conclusion

With the accessibility, transparency, and liquidity provided by a bitcoin ETF, many expect crypto investments to be more secure and to transform the way investors access cryptocurrencies within their investment portfolios. Many hopeful investors will be eagerly awaiting the SEC's decision on the matter.

²⁴ *Id.*

²⁵ *Id.*