

## Article Information

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# Blockchain Bites: Passport panic: EU proposes expanded ESMA authority; ETF-initely a game changer? SEC clears the path for spot crypto ETFs; Flip the switch: Is Uniswap ready for the regulatory ripple effect?

**Steven Pettigrove, Luke Higgins and Tahlia Kelly of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.**

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### Passport panic: EU proposes expanded ESMA authority

The European Union is proposing a significant regulatory shift that could reshape how cryptocurrency firms and exchanges operate across the region. The European Securities and Markets Authority (**ESMA**) is drafting plans to transfer supervisory powers from national regulators to ESMA in an attempt to unify oversight.

Verena Ross, chair of ESMA, [told the Financial Times](#) that this transfer aims to:

*Ensure that we are addressing the continued fragmentation in markets and resolve that to create more of a single market for capital in Europe*

Under the EU's [landmark Markets in Crypto-Assets \(MiCA\) regulation](#), which came into force last year, ESMA was initially proposed as the central supervisor for crypto firms. However, concerns about ESMA's capacity led to oversight being delegated to the 27 national authorities, a decision Ross now describes as inefficient. This inefficiency was underscored in ESMA's July peer review, which [criticised the Malta Financial Services Authority](#) for approving a pan-EU crypto licence without fully assessing material risks.

Some claim this model has lead to inconsistent licensing standards and regulatory arbitrage with firms opting for jurisdictions with lenient requirements and ["passporting" them across the EU bloc, risking uneven oversight](#). Specifically, Malta, which has positioned itself as a crypto-friendly jurisdiction since 2018, has become a magnet for major exchanges. Some industry professionals have [likened the process of obtaining a MiCA licence in Malta to "ordering McDonalds"](#).

France, Italy and Austria have voiced concerns with the current framework, with President of France's securities watchdog, Marie-Anne Barbat-Layani, and Bank of France Governor, François Villeroy de Galha, calling for ESMA to centralise supervision. AMF warned that they would consider blocking passporting rights for crypto firms licensed in other EU countries, describing it as an "atomic weapon" to prevent regulatory loopholes.

The push for centralisation is not without resistance. Smaller EU countries like Luxembourg, Malta, and Ireland fear that empowering ESMA as the central watchdog could undermine their financial sectors. Specifically, Claude Marx, head of Luxembourg's financial supervisory body, warned that giving ESMA full control would [create a regulatory "monster"](#).

Despite these concerns, momentum is building. The EU's strategic priorities of defence, green energy, and digital transformation require substantial private capital. Ross argues that breaking down regulatory fragmentation is essential to unlocking these funds.

Former European Central Bank president [Mario Draghi's report](#) last year also identified ESMA's transformation into a unified regulator as a cornerstone for boosting Europe's capital markets, akin to the US Securities and Exchange Commission.

In a [speech last month Maria Luís Albuquerque, the EU Commissioner for financial services confirmed](#) that the Commission is considering transferring supervisory authority to ESMA for major cross-border entities, including crypto firms and stock exchanges.

ESMA has already gained new powers. From next year, it will oversee providers of consolidated tapes for equity and bond prices and agencies issuing ESG ratings.

These proposals aim to harmonise regulatory expectations across the EU, particularly in licensing and supervision. While they promise long-term benefits such as streamlined operations and greater consistency across the bloc for consumers, they could put greater discretion in the hands of a single pan European regulator and stifle competition and the development of local capacity across the bloc.

*Written by Tahlia Kelly and Steven Pettigrove*

#### **ETF-initely a game changer? SEC clears the path for spot crypto ETFs**

The [US Securities and Exchange Commission \(SEC\) voted recently to approve proposed rule changes by three national securities exchanges, enabling them to adopt generic listing standards](#) for new cryptocurrency and other spot commodity ETFs. This means exchanges can now list and trade Commodity-Based Trust Shares that meet these standards without needing to submit individual proposed rule changes to the Commission under Section 19(b) of the Securities Exchange Act. This approval removes the last listing hurdle to a series of new spot ETFs tied to cryptocurrencies ranging from Solana to Dogecoin.

In July, the [SEC voted to allow in-kind creation and redemption to facilitate in-kind contributions and distributions in digital assets](#) in connection with the issuance of interests in exchange traded products, similar to other commodity ETFs.

The new standards set out the criteria that asset managers and exchanges, including the NYSE, Nasdaq and Cboe Global Markets, must meet to obtain approval for listing a spot crypto ETF without a lengthy and customised regulatory review. Previously, each spot crypto ETF filing required two separate submissions and was reviewed on a case-by-case basis by the SEC, often taking up to 240 days or more. Under the new process, the timeframe is reduced to a maximum of 75 days.

This move is part of ongoing efforts by the Trump administration to bring crypto assets into the mainstream. SEC Chair Paul Atkins described the approval as way to [foster innovation and reduce barriers to digital asset products within America's trusted capital markets](#), reflecting the SEC's initiative to [modernise securities and enable America's financial markets to move on-chain](#).

Teddy Fusaro, president of Bitwise Asset Management told [Reuters](#):

*This is a watershed moment in America's regulatory approach to digital assets, overturning more than a decade of precedent since the first bitcoin ETF filing in 2013*

The generic listing standards offer limited pathways for asset managers to seek spot ETF approval. Commentary suggests that most applications are likely to rely on the provision allowing expedited approvals for crypto ETFs that have had futures contracts regulated by the Commodity Futures Trading Commission in existence for at least six months

[Steve Feinour, partner at Stradley Ronon said:](#)

*Not every token is going to currently qualify, but (the SEC approval) will open up the floodgates.*

This comes as the launch in September of the Dogecoin ETF via the Rex Shares-Osprey Dogecoin (DOJE) fund. While not a spot ETF, [DOJE offers futures-based exposure to dogecoin via a Cayman Islands subsidiary](#). This ETF is structured more like a mutual fund than a commodity trust, which sets it apart from the wave of crypto spot ETFs impacted by the recent SEC approval for commodity-based and asset-based products.

The SEC has shown increasing comfort with crypto ETFs since the introduction of various bitcoin and [ether products over the past year](#). The launch of these products is expected to open the door to more memecoin ETFs, expanding and blurring the lines of traditional finance. Several firms have already filed applications to launch spot DOGE ETFs, which would hold the memecoin itself.

These developments suggest a gradual easing of listing restrictions for compliance-orientated funds and may signal the beginning of a shift towards clearer regulatory frameworks and broader market participation. The ETP vehicle also allows a broader pool of investors, particularly institutions, to gain regulated exposure to crypto-assets via an investment vehicle which is well understood and more readily accommodated within their investment mandates.

*By Steven Pettigrove and contributors*

#### **Flip the switch: Is Uniswap ready for the regulatory ripple effect?**

Uniswap, one of the largest decentralised exchanges has [announced a proposal to activate its long-debated fee switch](#). The [proposal would see the protocol begin collecting fees and introduce a programmatic mechanism that enable users paid to burn UNI governance tokens](#).

#### **How will the fee switch work?**

The fee switch is a mechanism built into Uniswap's protocol that allows governance to redirect a share of trading fees from liquidity providers to UNI token holders. Until now, this feature had never been turned on, despite being part of the protocol design since its early days.

Instead of distributing revenue directly to token holders, [the proposal would allocate between one-quarter and one-sixth of protocol fees to a smart contract known as the "Tokenjar"](#). [UNI holders would burn their tokens in the "Firepoint" contract and withdraw an equivalent amount of cryptocurrency](#).

The timing appears influenced by the [evolving US regulatory environment and recent changes in leadership at the US Securities and Exchange Commission](#) that have sought to position the US as a hub for crypto innovation. Uniswap founder Hayden Adams [has previously expressed dissatisfaction with the former SEC chair's approach](#) and [Uniswap Labs, the developer behind the protocol, itself was the subject of a Wells Notice indicating potential enforcement action in the final year of the previous administration which action has since been dropped](#).

By activating the fee switch, Uniswap is taking a step that could have implications for how UNI is classified under US securities laws and in other jurisdictions such as Australia, where the regulator has [recently published its further views on the application of financial services laws to innovative cryptocurrency related offerings](#).

#### **Does this make UNI a security?**

Under US law, UNI tokens may be classified as securities if holders expect profits derived from the efforts of others. Distributing protocol fees to UNI holders could strengthen the argument that UNI meets this test, as holders would have a way to access financial benefits tied to the operation of the exchange.

While this does not automatically make UNI a security, the decision to activate the fee switch continues the debate over whether governance tokens qualify as securities.

#### **What about the Australian approach?**

[ASIC's recently updated INFO 225 provides guidance on when digital assets might be considered a financial product under Australian law](#). The key question is whether the UNI token gives holders certain rights which mean that the token qualifies as a financial product.

INFO225 provides guidance on a range of financial product definitions, including securities, managed investment schemes and financial investments. Businesses are encouraged to assess whether any tokens which they offer are likely to fall within those definitions. If a token qualifies as a financial product, a person dealing in that token will require a financial services licence and potentially other licences depending on their business model. Significant penalties can apply for offering services without a licence.

The fee switch introduces a way for governance token holders to access protocol fees, which gives them a right to vote and participate in the economic benefits of the protocol. While Uniswap's proposal has been broadly welcomed by tokenholders, if the proposal proceeds, the regulatory ripple effects will need to be carefully weighed for anyone offering

the token given the risks of breaching financial services laws.

*Written by Steven Pettigrove and Tahlia Kelly*