

SEC and CFTC Enter Historic Memorandum of Understanding, Launch Joint Harmonization Initiative

Client Alerts

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Last week, the Securities and Exchange Commission (the SEC) and the US Commodity Futures Trading Commission (the CFTC) announced that the two agencies had entered into a new Memorandum of Understanding (the MOU).^[1] According to the announcement, the MOU, which supersedes a 2018 MOU, was designed to “provide fair notice to market participants, respect individual liberty, and foster lawful innovation with the minimum effective dose of regulation to enhance U.S. competitiveness in finance.”^[2] In conjunction with the MOU, the agencies launched a Joint Harmonization Initiative (the Initiative) designed to “advance coordinated oversight and promote regulatory clarity in areas of common regulatory interest.”^[3] The MOU and the Initiative together could represent a significant shift in the regulatory landscape for market participants subject to the jurisdiction of both agencies.

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Background: A Structural Challenge Decades in the Making

The SEC and CFTC messaging was designed to signal that they were focused on creating a pro-business, more user-friendly regulatory environment. In addition to emphasizing limiting regulation to the “minimum effective dose,” SEC Chairman Paul S. Atkins stated that “regulatory turf wars, duplicative agency registrations, and different sets of regulations” “have stifled innovation and pushed market participants to other jurisdictions.”

These critiques of the imperfect harmony between the SEC and CFTC under prior administrations echo concerns from some in the industry that the jurisdictional divide between the two has grown increasingly strained as financial markets have evolved with market infrastructure, services, and products that “span securities and derivatives frameworks.”^[4] Today, many firms, products, and

trading venues fall under both agencies' remit simultaneously, often requiring dual registrants to navigate two separate, sometimes conflicting regulatory regimes.

A central challenge to determining each agency's place in the evolving landscape has been the digital assets market. Because crypto assets can exhibit characteristics of securities *and* commodities, both the SEC and CFTC have variously claimed authority to regulate them, sometimes with minimal coordination. The result has been years of shifting practice and guidance for crypto market participants. The 2026 MOU can be seen as part of a wider effort to harmonize the agencies, specifically with their approaches to crypto.

The 2026 MOU supersedes a prior coordination agreement the agencies executed in July 2018. That MOU focused primarily on information sharing and coordination in the oversight of swaps and security-based swaps, reflecting the post-Dodd-Frank reality that the agencies regulate increasingly close or even overlapping derivatives markets.^[5] While the 2018 MOU represented a meaningful step toward coordination in a specific area, it was narrower in scope and ambition than the agencies' current initiative.

Key Provisions

The MOU identifies six priority areas for harmonization:

- Clarifying product definitions.
- Modernizing clearing, margin, and collateral frameworks.
- Reducing friction for dually registered firms.
- Building a crypto/digital asset regulatory framework.
- Streamlining regulatory reporting.
- Coordinating examinations, surveillance, and enforcement.

Several notable provisions include:

Anti-“turf war” commitment.

The agencies explicitly commit to rejecting jurisdictional competition and pledge to abandon, in the MOU's own words, “a ‘turf war’ mentality that would plague collaboration.”^[6] The fact that the phrase “turf war”—a phrase more typically used by critics of government agencies than the agencies themselves—was used multiple times in the announcement underscores that they view this as a key pain point of the current system that needed to be fixed. The Joint Statement argues that the lack of SEC and CFTC coordination has resulted in innovative products ending up in what Chairman Atkins has described as a regulatory “no man's land.”^[7] Again, the turf war the MOU targets has been the most problematic in the digital assets markets, where market participants faced the prospect of

parallel investigations, duplicative examinations, and conflicting remedial obligations for the same underlying conduct.

“Super-apps.”

One of the primary hurdles for crypto exchanges is that existing rules generally prohibit having securities and non-securities on the same platform. For example, bitcoin and ether—which make up the majority of trading volume—were allegedly not securities, so registering with the SEC under the prior administration would have required choosing between those and other crypto.^[8] For the first time, the agencies commit to enabling a regulatory path for integrated securities/derivatives platforms (super-apps) where such approaches can achieve regulatory objectives effectively.^[9] The concept of super-apps, which Chairman Atkins has championed, draws on the technology industry’s model of platforms that integrate multiple services into a single seamless interface.^[10] In financial terms, a super-app would allow a firm to offer both securities and derivatives products through a single platform operating under one coordinated compliance framework. The MOU commits both agencies to developing alternative compliance pathways to make this possible, provided the firm can demonstrate it meets each agency’s core regulatory objectives through its integrated structure.^[11]

Coordinated examinations

Where a dually registered firm appears on both agencies’ exam schedules, the agencies will consider conducting a joint examination to reduce duplicative burdens on the firm.^[12] In a coordinated examination, the agencies will seek efficiencies across document productions, interviews, and on-site visits, and will share examination findings, risk assessment data, and registration information with each other on an ongoing basis.^[13]

“Minimum Effective Dose” Philosophy of Regulation

The MOU also announces a shared regulatory philosophy of using the “minimum effective dose” of regulation to foster innovation while preserving market integrity.^[14] It explicitly rejects regulation through enforcement, with both agencies recognizing the importance of providing market participants with fair notice.^[15] This is a departure from what many critics saw as the agencies’ (particularly the SEC’s) reliance on enforcement actions to establish de facto policy in areas where formal rulemaking had not occurred. Crypto and digital asset participants bore a disproportionate share of this enforcement burden: between April 2021 and December 2024, the SEC initiated 125 cryptocurrency-related enforcement actions,^[16] while the CFTC’s digital asset cases represented nearly half of its enforcement docket in fiscal year 2023 alone.^[17]

The MOU’s rejection of regulation by enforcement reflects a broader policy mandate from the second Trump administration. In February 2025, then-Acting CFTC Chairman Caroline Pham announced a reorganization of the agency’s enforcement division to “combat fraud and help victims

while ending the practice of regulation by enforcement”^[18] —a step toward implementing the Trump administration’s Executive Order on deregulatory governance.^[19] For market participants who have been navigating an enforcement-defined regulatory landscape, the MOU’s fair notice commitment represents, at minimum, a meaningful change in posture.

Implications for Market Participants

The MOU represents a watershed event at least in terms of the agencies’ tone regarding coordination, though it should be seen as a continuation of longer trends and as part of the general regulatory zeitgeist of the second Trump administration. Dually regulated firms, especially those offering crypto services or investments, stand to benefit greatly from a more coordinated interface with the two agencies. However, as the MOU represents more a culmination of longstanding trends rather than a break with the past, we expect that its practical implications will not appear immediately.

In the most immediate terms, we note an opportunity for firms to engage constructively with the agencies, and we also offer two cautionary points as firms look toward the future in assessing their legal and regulatory needs:

Engaging with the Joint Harmonization Initiative

Firms that have faced redundant exams or conflicting obligations may consider engaging with the Initiative’s public comment process, through which market participants may submit written input and request joint meetings with staff from both agencies.

[20]

This is not a notice-and-comment rulemaking proceeding with a fixed period; rather, it is an ongoing invitation for market participants to provide input on the areas of coordination identified in the MOU before the agencies’ positions on those issues are formally proposed. The agencies have also invited market participants to request a joint SEC/CFTC meeting.

[21]

The “minimum effective dose” philosophy does not alter existing obligations

While the MOU’s embrace of a “minimum effective dose” regulatory approach reflects a meaningful shift in both agencies’ stated priorities, it should not be read as a basis for scaling back existing compliance programs. The MOU is explicit on this point: it does not create legally binding obligations or supersede any applicable law or regulation.

[22]

All existing registration, reporting, examination, and conduct obligations remain in full force.

Two agencies, two independent mandates

Whatever coordination the MOU achieves in practice, it does not modify the fundamental structure of US financial regulation. The SEC and CFTC remain fully independent agencies operating under separate statutory frameworks. The MOU states expressly that nothing in it “alters, expands, or limits either Party’s statutory authority or jurisdiction” and that both agencies “remain fully independent in carrying out their respective responsibilities.”

[23]

Dually registered firms should continue to maintain compliance programs independently tailored to each agency’s requirements while it becomes clearer what agency coordination will mean at the operational level.

[Jenner & Block’s Securities and Capital Markets, Fintech and Crypto Assets, Markets and Trading, and Hedge, Investment, and Private Equity Funds practices are available to assist clients in assessing the implications of the MOU and the Joint Harmonization Initiative for their business and in preparing input for submission to the agencies.]

Footnotes

[1] SEC, *SEC and CFTC Announce Historic Memorandum of Understanding Between Agencies* (Mar. 11, 2026), available at <https://www.sec.gov/newsroom/press-releases/2026-26-sec-cftc-announce-historic-memorandum-understanding-between-agencies> [*hereinafter* SEC Press Release]; CFTC, *CFTC and SEC Announce Historic Memorandum of Understanding Between Agencies* (Mar. 11, 2026), available at <https://www.cftc.gov/PressRoom/PressReleases/9192-26> [*hereinafter* CFTC Press Release].

[2] CFTC Press Release; SEC and CFTC, *Memorandum of Understanding Regarding Harmonization in Areas of Common Regulatory Interest* (Mar. 11, 2026), available at <https://www.sec.gov/files/mou-sec-cftc-2026.pdf> [*hereinafter* MOU].

[3] SEC Press Release.

[4] MOU at 1.

[5] CFTC, *Memorandum of Understanding Regarding Coordination in Areas of Common Regulatory Interest and Information Sharing* (Jul. 11, 2018), available at https://www.cftc.gov/sites/default/files/2018-07/CFTC_MOU_InformationSharing062818.pdf.

[6] MOU at Art. II § 1.

[7] CFTC, *Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC*, press release 9115-25 (Sep. 5, 2025), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamatkinsstatement090525>.

[8] Committee on Capital Markets Regulation, *Cryptoasset Trading Platforms Cannot Register as Securities Exchanges* 3 (June 6, 2023), available at <https://capmksreg.org/wp-content/uploads/2023/06/CCMR-Crypto-Exchanges-Cannot-Register-With-the-SEC-06-06-23.pdf>.

[9] MOU at Art. II § 3.

[10] SEC, *Fostering Regulatory Harmony Between the SEC and CFTC, Remarks at the FIA Global Cleared Markets Conference* (Mar. 10, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-fostering-regulatory-harmony-between-sec-cftc-031026> ("In the technology world, a super-app integrates multiple services into a single seamless interface. The user does not toggle between separate systems to complete related tasks. Instead, integration occurs invisibly behind the scenes.").

[11] MOU at Art. III § 3 ("the Parties will seek to facilitate alternative compliance and enable a path for appropriately tailored and regulated 'super-apps,' where such approaches can achieve regulatory objectives more efficiently while preserving investor protection and market integrity").

[12] *Id.* at Art. V § 1(e).

[13] *Id.* at Art. V § 1(a), (b), (d).

[14] *Id.* at Art. III § 3.

[15] *Id.* at Art. II § 2 (the agencies "jointly recognize the foundational importance of fair notice to market participants and not regulating through enforcement.").

[16] See Akshay S. Ralhi, *Beyond Enforcement: The SEC's Shifting Playbook on Crypto Regulation*, *Georgetown Law Center on Transnational Business and the Law* (May 9, 2025), available at <https://www.law.georgetown.edu/ctbl/blog/beyond-enforcement-the-secs-shifting-playbook-on-crypto-regulation/>.

[17] CFTC, *CFTC Releases FY 2023 Enforcement Results*, press release 8822-23 (Nov. 7, 2023), available at <https://www.cftc.gov/PressRoom/PressReleases/8822-23>.

[18] CFTC, *CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement*, press release 9044-25 (Feb. 4, 2025), available at <https://www.cftc.gov/PressRoom/PressReleases/9044-25>.

[19] Executive Order, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Regulatory Initiative* (Feb. 19, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/>.

[20] CFTC, *CFTC-SEC Harmonization Initiative*, available at <https://www.cftc.gov/harmonization>; SEC, *Submit Written Input on Harmonization to the SEC and CFTC*, available at <https://www.sec.gov/featured-topics/sec-cftc-harmonization-initiative/submit-written-input>.

[21] SEC, *Request Form for Harmonization Meetings*, available at <https://www.sec.gov/featured-topics/sec-cftc-harmonization-initiative/request-meeting#no-back>.

[22] MOU at Art. III § 4 ("This MOU does not supersede any applicable laws or regulations nor does it create any legally binding obligations; [or] confer upon any person the right or ability, directly or indirectly, to obtain, suppress, or exclude any information or

to challenge the execution of a request for assistance under this MOU . . . The Parties agree that nothing in this MOU modifies in any way either Party's ability and responsibility to enforce its statutes and regulations.”).

[23] MOU at Art. II § 1.

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