

FinTech, Crypto, Trading & Markets

March 13, 2026

CFTC and SEC Strengthen Regulatory Coordination Through Memorandum of Understanding

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Key Takeaways:

- The Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) announced a new memorandum of understanding (MOU) and related Joint Harmonization Initiative intended to improve coordination between the two agencies on matters involving overlapping regulatory jurisdiction, such as digital assets and other hybrid products that may implicate both securities and commodities regulatory frameworks.
- The MOU establishes mechanisms for enhanced information sharing, coordinated regulatory engagement, and joint discussions with market participants regarding new products, market developments, and regulatory questions.
- While the MOU signals a policy shift toward greater regulatory coordination, it does not alter the statutory jurisdiction of either agency, change existing regulatory obligations, or eliminate the threat of enforcement by both agencies for the same conduct.

Background

On March 11, the SEC and the CFTC (the Agencies) announced a new MOU designed to strengthen coordination between the Agencies on regulatory matters involving overlapping jurisdictions.

The MOU reflects the increasing complexity of modern financial markets, where certain products or market structures may implicate both federal securities laws (administered by the SEC) and commodity laws (administered by the CFTC). In recent years, questions surrounding the regulatory treatment of digital assets, tokenized financial instruments, and other novel financial products have frequently required engagement with both Agencies, in part due to the lack of regulatory clarity. However, too often, the Agencies sought to assert their own jurisdiction rather than jointly interpret the proper characterization of a product to simplify compliance. This was evident in the aftermath of Archegos Capital Management's recent collapse. Despite Congress expressly endorsing joint interpretations in Section 712(d)(4) of the Dodd-Frank Act—requiring the Agencies to issue joint interpretations where Dodd-Frank mandates joint rulemaking—and directing them to further define certain statutory terms to avoid jurisdictional conflicts, the Agencies made limited use of the mechanism.

Although the Agencies jointly defined the terms *swap*, *security-based swap*, and *mixed swap*, they have issued only one joint interpretation (addressing energy products) and lacked coordination related to an attempt to invoke the Section 712(d)(4) process the Agencies had codified in their rules. The MOU seeks to address these challenges by creating formal mechanisms for collaboration and communication between the SEC and the CFTC, with the goal of improving regulatory clarity and reducing duplicative regulations and Agency engagement (e.g., in exams). Although the MOU speaks in expansive terms about its scope (e.g., “novel derivative products, crypto asset

products, or other products”), buried in an endnote is a statement that “this MOU addresses Swaps and Security-Based Swaps . . . ,” which raises questions as to how expansive the scope really is.¹

Key Elements of the MOU

Enhanced Interagency Coordination

The MOU establishes processes intended to facilitate ongoing coordination between the Agencies with respect to matters involving potentially overlapping jurisdictions. This includes structured channels for sharing information regarding market developments, regulatory initiatives, and potential supervisory or enforcement matters.

Coordinated Engagement With Market Participants

The MOU also contemplates mechanisms for market participants to engage with both Agencies simultaneously when seeking feedback or regulatory clarity regarding new products or business models. This may include coordinated meetings or discussions involving staff from both Agencies.

Focus on Emerging Financial Products

Although the MOU applies broadly to markets where SEC and CFTC jurisdiction may overlap, the announcement highlights the importance of interagency coordination in areas involving emerging technologies and financial innovation. Digital asset markets, tokenized financial instruments, and other hybrid financial products have increasingly raised questions regarding the boundaries of securities and commodities regulations. The MOU noted that the coordination “should consider the economic realities of market activity, focusing on function, risk, and market impact.”

Reduced Compliance Burdens

The Agencies 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.” However, it remains to be seen if or how this will reduce compliance burdens in practice. SEC Chairman Paul Atkins stated in a July 2025 [speech](#) that allowing market participants to innovate with super apps is a “key priority” during his term. He explained in his speech his view that “securities intermediaries should be able to offer a broad range of products and services under one roof with a single [federal] license.”

No Change to Existing Jurisdiction or Law

Importantly, the MOU does not (i) supersede any applicable laws or regulations, (ii) create any legally binding obligations, or (iii) modify the statutory authority of either Agency. Instead, it is intended to improve coordination within the existing regulatory framework and to reduce potential friction or duplicative engagement or regulation where both Agencies may have jurisdiction.

Implications for Market Participants

The announcement signals a continued effort by federal regulators to address jurisdictional overlap in modern financial markets. For firms operating in areas that may implicate both securities and commodities regulations, including broker-dealers, trading platforms, clearing firms, derivatives intermediaries, and digital asset market participants, the MOU may result in more coordinated regulatory engagement.

In practice, this could (and should) lead to more streamlined discussions with regulators when evaluating new products or market structures that fall near the boundary between securities and commodities regulations. At the same time, firms should expect that both Agencies will continue to exercise their respective authorities, particularly in areas where regulatory classification remains uncertain.

Looking Ahead

While the MOU represents an important step toward improved regulatory coordination, it does not itself resolve long-standing jurisdictional questions between the SEC and the CFTC. Instead, the MOU may serve as a foundation for more coordinated policymaking and regulatory oversight as financial markets continue to evolve. However, the MOU sets out the Agencies' intent to "[c]larify[] product definitions through joint interpretations and rulemakings[,]” which they have the authority to do under Dodd-Frank Section 712(d)(2)(A) and Section 712(d)(4).

Market participants should continue to monitor developments from both agencies, particularly as regulators consider additional guidance or rulemaking addressing emerging financial products and digital asset markets.

¹ Perhaps the introduction to the endnote was meant to read “*Where* this MOU addresses Swaps and Security-Based Swaps, the Parties will . . .” rather than “*While* this MOU addresses Swaps and Security-Based Swaps, the Parties will . . .”

Contacts

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