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Crypto Coordination Takes Shape: An In-Depth Review of the Landmark SEC and CFTC Joint Release on Digital Asset Classification Alongside New Memorandum of Understanding

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On March 17, 2026, the U.S. Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC") jointly issued a landmark interpretive release, Release Nos. 33-11412 and 34-105020 (together, the "Interpretive Release" or the "Release"), clarifying how the U.S. federal securities laws apply to crypto assets.[1] The following day, the SEC approved a NASDAQ rule change enabling tokenized securities to trade on the exchange. Together, these developments represent significant steps forward in providing regulatory clarity to the crypto markets—steps that market participants have long requested. At the same time, close examination reveals that the Interpretive Release introduces certain novel analytical constructs that warrant continued consideration and

[1] U.S. SEC. & EXCH. COMM'N, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Release Nos. 33-11412; 34-105020 (Mar. 17, 2026), https://www.sec.gov/files/rules/interp/2026/33-11412.pdf (hereinafter, "Interpretive Release").

monitoring. This article summarizes the key clarifications provided by the Release, identifies open questions that practitioners should consider as the framework is applied in practice, and uses hypothetical token lifecycles to illustrate areas of residual risk.[2] We also discuss the SEC-CFTC Memorandum of Understanding ("MOU") on interagency coordination issued on March 11, 2026, which provides important context for the collaborative regulatory posture underlying these developments.

Key Takeaways

- *Five-Category Token Taxonomy*: The release identified five major categories into which crypto assets may be classified: (1) digital commodities, (2) digital collectibles, (3) digital tools, (4) stablecoins, or (5) digital securities. Only qualifying payment stablecoins are categorically excluded from security status by statute; all other stablecoins require facts-and-circumstances analysis. The Interpretive Release made clear that digital assets in categories (1)-(3) do not inherently fall within the definition of "security."

- *Interpretive Conclusions*: The Commission concludes that protocol mining, protocol staking, wrapping, and qualifying airdrops do not require SEC registration; provided that the specific conditions set forth in the Release are satisfied.

- *Investment Contract "Off-Ramp"*: Assets sold pursuant to an investment contract can later separate from securities regulation when the issuer fulfills or abandons its commitments.

- *Open Questions Remain*: The framework introduces novel constructs regarding secondary-market transactions, mixed-provenance token supplies, and potential retroactive investment contract attachment that warrant continued consideration and monitoring.

- *Tokenized Securities Trading*: The SEC approved NASDAQ's rule change, enabling tokenized Russell 1000 securities and exchange-traded funds ("ETFs") to trade on the exchange.

- *Residual Risks Illustrated*: Hypothetical token lifecycle analyses illustrate that, while consumptive-use tokens can fall cleanly outside the securities laws under *United Housing Foundation, Inc. v. Forman, 421 U.S. 837 (1975)*, tokens sold pursuant to investment contracts may face an uncertain path to "detachment"—particularly where issuers define their development commitments as open-ended.

- *Continued Agency Coordination Expected*: On March 11, 2026, the SEC and CFTC signed a historic MOU establishing a comprehensive framework for interagency coordination, harmonization in areas of shared

[2] *Id.*; *see also* U.S. SEC. & EXCH. COMM'N, Press Release 2026-30, *"SEC Clarifies the Application of Federal Securities Laws to Crypto Assets"* (Mar. 17, 2026), https://www.sec.gov/newsroom/press-releases/2026-30-sec-clarifies-application-federal-securities-laws-crypto-assets.

regulatory interest, and streamlined oversight of dual-registrant firms.[3] The Interpretive Release highlights the current close working relationship between the two agencies, sought to be institutionalized in the MOU, and is expected to be one of many examples of close coordination.

Regulatory Backdrop

The Interpretive Release is the product of sustained, coordinated effort by both the SEC and CFTC, building on the work of the SEC's Crypto Task Force (established January 2025), the joint "Project Crypto" initiative (launched by the SEC in July 2025 and joined by the CFTC in January 2026 following on other CFTC crypto asset-related initiatives), and the principles set forth in the March 2026 MOU.[4] The Release does not replace the *Howey* test, which is the Supreme Court's framework for determining whether a transaction constitutes an "investment contract" (and therefore a security).[5]

Rather, the Release articulates how *Howey* applies to crypto assets and supersedes all prior Commission frameworks, including the staff framework provided by the 2019 release titled "Framework for 'Investment Contract' Analysis of Digital Assets."[6]

Classification of Crypto Assets

1. *Digital commodities*: **Not securities** - Crypto assets whose value derives from programmatic operation of a functional crypto system and supply/demand dynamics, not from essential managerial efforts of others (e.g., BTC, ETH, SOL, and XRP).[7]

2. *Digital collectibles*: **Not securities** - Artwork, music, videos, and non-fungible tokens ("NFTs") are not securities, except that offers and sales of fractionalized collectibles may be securities transactions if they involve essential managerial efforts from which purchasers expect to derive profits.[8]

3. *Digital tools*: **Not securities** - Crypto assets performing practical functions (e.g., membership tokens, native token carbon credits, Renewable Energy Certificates, or Energy Attribute Certificates) are not securities, though as with the above two categories, they may be offered pursuant to an investment contract.[9]

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[3] *Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission regarding Harmonization in Areas of Common Regulatory Interest* (March 11, 2026), available here https://www.sec.gov/files/mou-sec-cftc-2026.pdf ("MOU").

[4] Interpretive Release *supra* note 1 at 3-4.

[5] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

[6] *See* Interpretive Release, *supra* note 1; SEC STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY (FINHUB), *Framework for "Investment Contract" Analysis of Digital Assets* (Apr. 3, 2019), https://www.sec.gov/files/dlt-framework.pdf.

[7] *Id.* at 15.

[8] *Id.* at 16 (digital collectibles taxonomy and fractionalization exception).

[9] *Id.* at 21 (digital tools taxonomy).

4. *Stablecoins*: **GENIUS Act stablecoins not securities** - The GENIUS Act excludes qualifying payment stablecoins from the definition of "security";[10] other stablecoins require case-by-case analysis.[11]

5. *Digital securities*: **Securities** – *Howey* investment contracts, tokenized stocks, bonds, and other financial instruments remain securities regardless of format.[12]

The Interpretive Release appears to articulate a new standard under which the SEC determines, at least in part, whether a particular instrument is a security. In concluding that digital commodities, digital collectibles, and digital tools are not securities, the SEC states that the preceding instruments do "not have intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor."[13] The SEC does not cite to a source for this standard. The standard does not appear in the definition of "security" under the Securities Act of 1933, the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or in the further definitions of security adopted in rules under those statutes. It is not the standard set out in *Howey* or *Reves v. Ernst & Young*, 494 U.S. 56 (1990).[14] Nevertheless, we believe that practitioners will need to consider the "intrinsic economic properties or rights" standard when analyzing whether an instrument is a security, at least in the context of digital assets, even though we do not have further clarity on what constitutes such properties or rights beyond what appears to be a non-exclusive list of examples.

Which Crypto Assets Are "Subject to an Investment Contract"?

A crypto asset that is not itself a security—such as a digital commodity, digital collectible, or digital tool—may nevertheless be offered and sold pursuant to an investment contract and thereby become subject to the federal securities laws. Under *Howey* and its progeny, an investment contract exists where there is:

1. an investment of money,

2. in a common enterprise,

3. with a reasonable expectation of profits derived from the managerial and entrepreneurial efforts of others.[15]

The Release emphasizes that the investment contract (not the underlying asset) is the security; however, offers and sales of, as well as secondary-market transactions in, assets subject to an investment contract must be registered or exempt unless and until the investment contract terminates.[16]

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[10] Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act), Pub. L. No. 119-27, § 17, 139 Stat. 419 (2025) (excluding "qualifying payment stablecoins" from the definition of "security").

[11] Interpretive Release, *supra* note 1 at 23.

[12] *Id.* at 13.

[13] *Id.* at 14, 16 and 20.

[14] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)*; Reves v. Ernst & Young*, 494 U.S. 56 (1990).

[15] *Howey*, 328 U.S. at 298-99.

[16] Interpretive Release, *supra* note 1 (investment contract analysis).

The Release focuses on the third prong of *Howey* and notes that investment contract creation requires an issuer's representations or promises that it will exercise essential managerial and entrepreneurial role (e.g., completing its road map or open-sourcing code). These representations must: (i) be attributable to the issuer, (ii) be sufficiently detailed and specific, (iii) be conveyed to purchasers before or contemporaneously with the transaction, and (iv) create a reasonable expectation in the purchaser that profits will be derived from the issuer's essential managerial efforts.[17] The Release helpfully affirms that representations or promises of essential managerial efforts that are "vague" or "contain no semblance of an actionable business plan, such as those lacking milestones, funding, or other plans for needed resources" are unlikely to create the requisite reasonable expectation of profits from others' efforts.[18]

The Commission explains that investment contracts can terminate, among other ways, when the issuer fulfills its essential managerial commitments, or when token purchasers could no longer reasonably expect the issuer to engage in the essential managerial efforts it promised—for example, if the issuer announces that it will cease such efforts, or if a sufficiently long period has passed during which it has become clear to investors that the issuer has not engaged in such efforts and has not indicated that it still intends to do so.[19] Issuers remain potentially liable for material misstatements or omissions even after termination.

Legal Status of Protocol Mining, Protocol Staking, and Wrapping

The Release sets out interpretive conclusions—rather than rule-based safe harbors—regarding protocol mining, protocol staking, and wrapping. Under these conclusions, and subject to the activity-specific conditions described in the Release, these activities do not involve offers or sales of securities requiring registration.[20]

- *Protocol mining*: Solo and pooled mining are "administrative or ministerial" activities; rewards accrue from protocol rules, not essential managerial efforts.

- *Protocol staking*: Staking activity undertaken to validate transactions or secure a network—including self-staking, delegated staking, custodial staking, and liquid staking—does not, without more, constitute an offer or sale of securities requiring registration. For non-security crypto assets, the issuance and secondary transfer of staking-receipt tokens that merely evidence a pro rata interest in the underlying staked assets and protocol-level rewards likewise are not securities transactions; *provided* that the conditions specified in the Release are satisfied.[21]

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17 *Id.* at 25–26.

18 *Id.* at 27.

19 *See id.* (separation of crypto asset from issuer's representations analysis).

20 *Id.* at 47, 52-54.

21 *See id.*

- *Wrapping*: One-for-one redeemable wrapped tokens are not securities, so long as the provider does not promise yield or lend/pledge the underlying assets and the original token that was wrapped is not itself a security (i.e., a tokenized "digital security") or subject to an investment contract.[22]

Airdropped Crypto Assets

Airdrops of non-security crypto assets where recipients provide no consideration do not involve investment contracts because the *Howey* "investment of money" prong is not satisfied.[23] Critically, the Release clarifies that consideration provided before any airdrop announcement—with no further conditions required to receive the airdrop—is not treated as consideration "in exchange for" the dropped tokens.[24] A general pre-announcement that an airdrop will occur, without specifying terms or conditions, is permissible. The Release provides illustrative examples:

- *Qualifying airdrops* (no securities registration required): An issuer airdrops tokens to wallets holding another crypto asset without prior announcement; an issuer rewards users who participated in a testnet prior to the airdrop announcement; an issuer distributes tokens to application users based solely on prior usage, without prior announcement.

- *Non-qualifying airdrops* (may involve securities): An issuer requires recipients to follow social media accounts, retweet posts, write articles, refer others, or fix bugs in exchange for tokens. These services constitute consideration satisfying *Howey*'s "investment of money" prong.

Open Question for Secondary-Market Participants

While the Release provides long-awaited clarity on many fronts, practitioners should be aware of a structural tension that may create compliance challenges, particularly for secondary-market participants. Even if a crypto asset was acquired outside an investment contract (e.g., via a qualifying airdrop), the Release suggests it may become subject to an investment contract created in connection with other transactions involving the same asset.[25] As such, the recipient of such a token cannot be certain that the asset will remain free of securities status through resale, as an associated investment contract created by the issuer, before or after the seller's acquisition, could subject the resale to federal securities laws. Consequently, heightened diligence surrounding resale of certain crypto assets is prudent.

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22 *See id.* at 52-54.

23 *Id.* at 56-57.

24 *Id.*

25 *Id.* at 61 n.146:

Although the non-security crypto asset disseminated in the airdrop may not be subject to an investment contract, there may be an investment contract associated with the non-security crypto asset created in connection with other transactions involving the non-security crypto asset, whether prior to or after the airdrop. In such cases, the non-security crypto asset disseminated in the airdrop may become subject to that investment contract in a subsequent transaction, which would constitute a securities transaction, such as where the airdrop recipient sells the non-security crypto asset in a secondary-market transaction. Any such transaction would have to be registered under the Securities Act or conducted pursuant to an available exemption from registration, such as the exemption in section 4(a)(1) of the Securities Act.

Applying the Framework: Hypothetical Token Lifecycles

To illustrate how the Release's framework operates in practice—and where it may create residual uncertainty—it is useful to trace hypothetical tokens through their lifecycles. The following examples highlight the interplay between the investment contract analysis, the consumptive use doctrine recognized in *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975), and the Release's guidance on when an investment contract may "attach to" and later "detach from" a non-security crypto asset.

Hypothetical 1: A Native Token Carbon Credit.

Consider a hypothetical issuer that creates a blockchain-based carbon credit—a "digital tool" under the Release's taxonomy. Each token represents one metric ton of verified carbon offset and is designed to be retired (i.e., consumed) by the holder to satisfy emissions reduction obligations. The issuer sells these tokens directly to corporate compliance departments and sustainability programs, marketing them solely on the basis of their offset value and retirement functionality—not on any promise to build out a platform, grow an ecosystem, or enhance the token's market value through managerial efforts. Under the Release's framework, this token illustrates the *Forman* principle at work: "[W]hen a purchaser is motivated by a desire to use or consume the item purchased . . . the securities laws do not apply."[26] Because the purchaser acquires the token to "consume" it by retiring the carbon credit it represents—not to profit from the issuer's essential managerial efforts—and because the issuer makes no representations about such efforts, the initial sale would likely not involve an investment contract, even though the transaction is between the issuer and the purchaser.[27] The carbon credit remains what it is: a consumptive-use digital tool, outside the scope of the federal securities laws. This is the clean case—a token whose purpose and marketing align with *Forman*, and where the investment contract analysis never attaches in the first place.[28]

This hypothetical underscores a key implication of the Release's representations-based framework: if the issuer of the same carbon credit token were instead to market it with promises about building a secondary trading marketplace, developing partnerships to enhance the token's value, targeting purchasers who do not plan to employ the token's consumptive use, or expanding the carbon offset registry to drive demand, the analysis could change—even though the underlying token remains functionally identical. Under those circumstances, the issuer's representations could create an investment contract under *Howey*, notwithstanding the token's consumptive character. The Release does not address a scenario like this directly.

Hypothetical 2: A Token Whose Network Has Not Yet Been Developed.

Now contrast the carbon credit token with a hypothetical token issued to fund the development of a decentralized data-sharing platform. Unlike the carbon credit, this token has no immediate consumptive use—the underlying network has not yet been built. The issuer sells tokens to early purchasers with detailed representations about its

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26 *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975).

27 *See* Interpretive Release, *supra* note 1 at 10-11.

28 *See id.* at 10-13.

plans to develop the platform and deliver functionality that will make the tokens valuable, even to purchasers never intending to use the tokens for data-sharing services. Under the Release's framework, this sale almost certainly involves an investment contract: purchasers invest money in a common enterprise with a reasonable expectation of profits derived from the issuer's essential managerial efforts.[29]

The critical question for this token is when—and whether—the investment contract "detaches" from it.[30] The Release provides that an investment contract terminates, *inter alia*, when the issuer has fulfilled its representations or promises to engage in essential managerial efforts.[31] This issuer-defined standard creates a practical problem that the Release does not resolve and that may require further Commission or staff guidance: when the issuer's commitments are described in broad or open-ended terms, it may be difficult to identify the moment of fulfillment—or whether that moment ever arrives.

Consider a concrete timeline. In its white paper and token sale materials, the issuer sets out the following road map for its efforts:

- Q1 2027: Launch testnet and begin onboarding validator nodes.
- Q3 2027: Deploy mainnet with core transaction functionality.
- Q1 2028: Release developer tool kit and open-source core protocol code.
- Q2 2028: Onboard initial decentralized applications and achieve target transaction throughput.
- Ongoing: The core team will continue to monitor network performance, address security vulnerabilities, release periodic software updates, and pursue additional feature development as the ecosystem matures.

The first four milestones are relatively discrete: one can identify a date on which each of those goals is met. The Release contemplates goals like these — representations or promises relating to "developing certain functionalities or features" and "achieving certain software development milestones on a road map" — and the satisfaction of these milestones, if these were the only milestones, would likely satisfy the investment contract detachment requirements in the Release.[32]

But the fifth commitment—the "ongoing" one—complicates the analysis. Many crypto projects include some version of this language: a commitment that the team will remain involved, improve the protocol, and develop new features as needs arise.[33] Under the Release's framework, if the issuer represented that it would engage in continuing development efforts, and if purchasers reasonably relied on those representations in expecting profits, then the issuer's essential managerial efforts may never be "fulfilled" in any clean sense—because the issuer defined them,

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29 *See id.* at 12, 23-24.

30 *See id.* at 24-34.

31 *Id.* at 29-31.

32 *Id.* at 29-31.

33 *See, e.g.*, ETHEREUM FOUNDATION, *Ethereum Roadmap*, www.ethereum.org/roadmap (last visited April 4, 2026) ("Think of Ethereum's roadmap as a set of intentions for improving Ethereum; it is the core researchers' and developers' best hypothesis of Ethereum's most optimal path forward.").

in part, as perpetual.[34] As a result, under the Release's interpretive approach, "the associated investment contract will continue to be transferred to subsequent purchasers of the non-security crypto asset in secondary market transactions" indefinitely.[35]

The Release distinguishes between "essential managerial efforts" (which, once completed, end the investment contract) and "administrative or ministerial" efforts (which do not create or sustain an investment contract).[36] But it does not explain how to classify ongoing software updates, security monitoring, or iterative feature development.[37] Issuers should consider these matters when determining how to frame their future development efforts, and token holders will need to consider these issues as well when contemplating token resales.

Airdrop Risks in Context.

The hypotheticals above also intersect with the Release's airdrop guidance in ways that warrant attention. Suppose the issuer of the data-sharing platform token conducts a qualifying airdrop of additional tokens after the platform is operational—distributing tokens to early users based solely on prior usage, without prior announcement. Under the Release, this airdrop would not itself involve an investment contract.[38] However, as noted, the Release's footnote 146 introduces an important caveat: even though the airdropped tokens were not sold pursuant to an investment contract, they may become subject to an investment contract associated with other transactions involving the same token.[39] If the issuer's original token sale (which did involve an investment contract) has not yet terminated—because the issuer has not yet fulfilled all of its essential managerial commitments—airdrop recipients who sell their tokens on the secondary market may inadvertently engage in securities transactions. This creates a scenario in which a token acquired for free, through no investment of money, could nonetheless require registration or an exemption to resell.

These hypotheticals underscore that, while the Release provides a welcome analytical framework, the fact-specific nature of the investment contract analysis—and the absence of bright-line rules for issues such as mixed-provenance token supplies and retroactive encumbrance—means that market participants must carefully evaluate the regulatory status of each crypto asset on an ongoing basis. Willkie's Digital Works team regularly assists clients

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34 *See* Interpretive Release, *supra* note 1 at 28-34.

35 *Id.* at 28.

36 *Id.* at 27-34.

37 The tension between the Release's classification framework and its detachment analysis is perhaps most visible in its treatment of ETH, which the Release categorizes as a "digital commodity." *Id.* at 14. The Release defines digital commodities as crypto assets deriving value from the programmatic operation of a functional crypto system rather than from the essential managerial efforts of others. *See id.* But the Ethereum Foundation maintains a permanent, open-ended development road map—organizing its work around continuous scaling, security hardening, and protocol upgrades with no defined end point—and funds the core developers who implement those upgrades. Under the Release's own investment contract detachment framework, ongoing issuer commitments of this nature would ordinarily raise the question of whether essential managerial efforts have been "fulfilled." *See id., supra* note 29. The Release does not address how ETH satisfies the detachment criteria it prescribes for other tokens that originate as investment contracts, or whether the digital commodity classification operates as a categorical exemption from the detachment analysis entirely.

38 *Id.* at 58-63.

39 *Id., supra* note 25.

in navigating these fact-specific analyses, including structuring token distributions, assessing investment contract risk, and developing secondary-market compliance frameworks.

NASDAQ Rule Change and the Progress of Digital Securities Trading

On March 18, 2026, the SEC approved NASDAQ's rule change enabling tokenized Russell 1000 securities and major ETFs to trade on the exchange.[40] The tokenized shares would be fully fungible with traditional shares and trade on the same order book.[41] The New York Stock Exchange has also announced plans of an affiliate to offer trading in tokenized versions of such securities.

The NASDAQ approval, together with the Interpretive Release, signals a coordinated regulatory posture treating blockchain technology as a legitimate component of U.S. market infrastructure.

Memorandum of Understanding: More to Come?

This Interpretive Release was in many ways foreshadowed by the MOU released the week prior. The MOU established five core principles to guide collaboration between the agencies:

(1) Respect for statutory mandates, ensuring each Agency's continued independence while rejecting a "turf war" mentality;

(2) Regulatory efficiency, to reduce regulatory gaps, avoid duplication and increase certainty for market participants;

(3) Good faith collaboration, including timeline consultation, open communication and constructive engagement;

(4) Regulatory clarity and consistency, promoting clear, consistent and predictable regulatory approaches; and

(5) Functional and risk-based regulation, focusing on economic realities, function, risk and market impact.[42]

The MOU identified six specific areas in which the Agencies will work together to harmonize their regulatory frameworks:

(1) Clarifying product definitions through joint interpretations and rulemakings;

(2) Modernizing clearing, margin, and collateral frameworks;

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40 U.S. SEC. & EXCH. COMM'N, *Self-Regulatory Orgs.; The Nasdaq Stock Mkt. LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Amend the Exchange's Rules to Enable the Trading of Securities on the Exchange in Tokenized Form*, (Mar. 18, 2026), https://www.sec.gov/files/rules/sro/nasdaq/2026/34-105047.pdf available here.

41 *Id.* (describing fungibility requirements, tokenization flag mechanics, DTC Pilot framework, and investor protection provisions); *see* No-Action Letter from Jeffrey S. Mooney, Assoc. Dir., Div. of Trading & Markets, to Brian Steele, Managing Dir., President, Clearing & Sec. Servs., DTCC, and Nadine Chakar, Managing Dir., Global Head of DTCC Digital Assets, DTCC (Dec. 11, 2025) (authorizing the DTC Pilot).

42 *MOU*, *supra* note 3 at 4-5.

(3) Reducing frictions for dually registered exchanges, trading venues, and intermediaries;

(4) Providing a fit-for-purpose regulatory framework for crypto assets and other emerging technologies;

(5) Streamlining regulatory reporting for trade data, funds, and intermediaries;

(6) Coordinating cross-market examinations, economic analyses, risk monitoring, surveillance, and enforcement.[43]

The MOU established a number of operational mechanisms to support cross-agency coordination, including regular meetings between leadership and staff, data sharing on matters of common interest (subject to applicable federal data security standards), notifications of significant regulatory developments and cross-training of personnel.[44] Of particular note in the MOU were the following themes:

- **Substituted Compliance and Super-Apps**: The CFTC has approved a series of broad comparability determinations for substituted compliance with non-U.S. regulatory regimes as compared to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the CFTC's regulations. Where a non-U.S. jurisdiction has been approved for "substituted compliance," non-U.S. market participants may be exempt from certain CFTC obligations, on the basis that they are subject to regulation in their home country that is comparable to and as comprehensive as a corresponding CFTC regulation.[45] Chairman Atkins extends this concept to dual registrants of the SEC and CFTC, stating in a recent speech that "where one agency's framework achieves comparable regulatory outcomes, then it should be capable of satisfying overlapping requirements of the other."[46] The MOU emphasizes this idea, indicating that the Agencies will "seek to facilitate alternative compliance and enable a path for appropriately tailored and regulated 'super-apps'".[47] The super-app concept is explained in more detail by Chairman Atkins in the aforementioned speech: "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."[48] Dual registrants may be optimistic that additional relief from overlapping or conflicting regulations is on the horizon, both regarding the topics discussed in the Interpretive Release and beyond.
- **"Minimum Effective Dose" Philosophy**: Both Chairman Atkins and CFTC Chairman Michael Selig have previously invoked a philosophy of the "minimum effective dose" of regulation to achieve the desired

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43 *Id.* at 5.

44 *Id*.

45 17 CFR Part 23.

46 Paul S. Atkins, Chairman, SEC. & EXCH. COMM'N, *Fostering Regulatory Harmony Between the SEC and CFTC* (March 10, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-fostering-regulatory-harmony-between-sec-cftc-031026 available here ("Chairman Atkins FIA Boca Remarks").

47 *MOU*, at pg. 6.

48 Chairman Atkins FIA Boca Remarks.

result.[49] This MOU explicitly notes that both Agencies share this commitment and that its purpose is to "foster lawful innovation, respect individual liberty, strengthen market integrity, and enhance U.S. global competitiveness in finance."[50] This phrase is quickly becoming a defining principle for the Agencies' agendas.

- **Coordinated Examinations and Enforcement**: Notably, Article V of the MOU is devoted to achieving efficiencies and cooperation in examinations and enforcement. The MOU notes that the Agencies will consider how to minimize the burden on a firm where each is planning an examination, including whether to conduct a coordinated examination. Such coordination could significantly reduce the time and resources required for dual-registrant firms for document production, interviews and on-site visits of the applicable firm. We expect coordination with respect to digital assets to be at the forefront.

In the press release announcing the MOU, the agencies encouraged dual registrants to engage through written comment and meetings with the staff, signaling the agencies' shared commitment to engaging with industry.[51]

The Interpretive Release furthers a number of these harmonization objectives for areas under overlapping agency jurisdiction, including promoting regulatory clarity and consistency, clarifying product definitions through joint interpretations and rulemakings, and providing a fit-for-purpose regulatory framework for crypto assets and other emerging technologies.

Conclusion

The Interpretive Release and the SEC-CFTC Memorandum of Understanding, taken together, represent a watershed moment for crypto asset regulation. The Release delivers long-sought clarity through a five-category taxonomy, interpretive conclusions for core crypto asset activities, and a pathway for assets to separate from investment contract status. The MOU underscores the Agencies' shared commitment to regulatory coordination and innovation-friendly oversight.

However, for certain aspects of the Interpretive Release—particularly secondary market treatment, mixed-provenance supplies, and retroactive encumbrance—edge-case uncertainty may remain.

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49 See, e.g., Paul S. Atkins, Chairman, U.S. SEC. & EXCH. COMM'N, *Remarks at the Investor Advisory Committee Meeting* (Mar. 12, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-031226 available here; Paul S. Atkins, Chairman, U.S. SEC. & EXCH. COMM'N, *Revitalizing America's Markets at 250* (Dec. 2, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250 available here; Michael S. Selig, Chairman, *WaPo Op-Ed: America's Financial Markets Are Ready for a Golden Age* (Jan. 20, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement012026 available here.

50 *MOU, at* 5.

51 U.S. SEC. & EXCH. COMM'N Press Release, *SEC and CFTC Announce Historic Memorandum of Understanding Between Agencies* (March 11, 2026), https://www.sec.gov/newsroom/press-releases/2026-26-sec-cftc-announce-historic-memorandum-understanding-between-agencies available here.

The current SEC and CFTC leaderships have signaled commitment to innovation over enforcement based on ambiguities, and the MOU provides a structural mechanism for joint agency pursuit of that commitment. Nevertheless, practitioners should structure transactions carefully, monitor for subsequent guidance and rulemaking, and consider engaging with the SEC and CFTC on areas of concern or opportunity as the framework continues to evolve.

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Willkie has a dedicated team of attorneys with extensive knowledge in all aspects of digital assets and CFTC and SEC regulations, including experience engaging with both the SEC and CFTC for examinations, enforcement, no-action relief and other advocacy. We would be pleased to assist with your matters.

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