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DOJ Antitrust Division and SEC Sign Memorandum of Understanding on Cooperation

On June 22, the Antitrust Division of the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) announced that they have signed a memorandum of understanding (MOU) to enhance cooperation between the two agencies. According to the agencies' [press releases](#), the MOU (which has not yet been made available publicly) is the first of its kind between the two agencies and is meant to aid in the agencies' efforts to promote competition in the securities industry. This development also suggests that each agency recognizes the potential benefits of the other's expertise, and that the sharing of this expertise may serve to benefit both agencies. The MOU is said to contain "provisions to establish periodic meetings among the respective agencies' officials" and it further "provides for the exchange of information and expertise the agencies believe to be potentially relevant and useful to their oversight and enforcement responsibilities, as appropriate and consistent with applicable legal and confidentiality restrictions." The MOU, which formalizes ongoing cooperation between the agencies, may possibly signal a renewed focus on civil as well as criminal antitrust enforcement in financial markets.

The DOJ and SEC have engaged with each other on competition policy and enforcement in the securities industry in the past. For example, in the mid-2000s, the agencies worked together on an investigation of municipal bond guaranteed investment contracts (muni-GICs). As Assistant Attorney General Makan Delrahim mentioned in a [speech](#) announcing the MOU, in the muni-GIC case the Antitrust Division "worked closely with the SEC—which also brought its own actions. The Antitrust Division's investigation resulted in one financial services firm and seventeen individuals being convicted, as well as restitution, penalties, and disgorgement from four other financial institutions that entered into non-prosecution agreements." Mr. Delrahim also mentioned the Antitrust Division's inter-agency cooperation in its investigations and prosecutions related to alleged manipulation of interest rate benchmarks.

More recently, the Antitrust Division has submitted comments in connection with the SEC's promulgation of certain rules. In his speech, Mr. Delrahim discussed the Division's recent comments on the SEC's Market Data Proposal and [Proxy Rules Proposal](#). In these comments, the Division discussed the importance of lowering barriers to entry in accessing market data, and providing consumers better transparency and more accurate information when receiving proxy voting advice.

Beyond continuing cooperation in rulemaking, investigations and litigation, we expect the agencies will also consult with each other in other oversight and enforcement activities of mutual interest to the agencies such as reviews of mergers in the securities industry – potentially including fintech mergers – as well as future investigations of alleged collusion among financial services firms.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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