

Client Alert

Special Matters & Government Investigations

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Meme Coins: Collectibles, Not Securities.

INTRODUCTION

On February 27, 2025, the Securities and Exchange Commission's Division of Corporation Finance ("CorpFin") issued a Staff Statement announcing its view that meme coin transactions do not involve the offer and sale of securities under federal securities laws (the "Statement").ⁱ The Statement is a continuation of the Commission's efforts to provide clarity with respect to the federal regulatory framework for crypto assets.ⁱⁱ While the Statement does not diverge in substance from the prior Administration's actions with respect to meme coins, it underscores the current Administration's crypto-friendly approach to regulating digital assets.

The Statement echoes the 'buyer beware' approach that Commissioner Peirce laid out earlier in 2025 during an interview in which she stated that consumers have the right to make decisions for themselves and should "not look to Mama Government to tell them what to do or not to do, nor to bail them out when they do something that turns out badly."ⁱⁱⁱ Indeed, CorpFin cautioned that meme coins are "speculative" in nature and "tend to experience significant market price volatility."^{iv}

The Statement is in line with the SEC's move away from regulation by enforcement pursued by the prior administration,^v and arrives among a myriad of SEC actions in the crypto space, including a spate of dismissals of enforcement actions.^{vi} CorpFin's Statement, coupled with these recent actions, suggest the SEC will play a reduced role in the crypto regulatory environment as fewer digital asset transactions are deemed, by this SEC, to fall under the federal securities laws.

CORPORATION FINANCE DIVISION STATEMENT

According to the Statement, a “meme coin” is a crypto asset “inspired by internet memes, characters, current events, or trends for which the promoter seeks to attract an enthusiastic online community to purchase the meme coin and engage in its trading.”^{vii} CorpFin Staff explained that the purpose of a meme coin is typically entertainment, social interaction, and culture, while meme coin value is typically derived from “market demand and speculation.”^{viii}

Pursuant to this definition, the CorpFin Staff expressed the view that “the types of meme coins described in this statement[] do not involve the offer and sale of securities under the federal securities laws” and that individuals who participate in meme coin offerings and sales have no obligation to register these transactions under the Securities Act of 1933 (“Securities Act”).^{ix} At the same time, the Statement cautioned that this view is “not dispositive” of whether a specific transaction in a meme coin constitutes the offer or sale of a security because “[a] definitive determination requires analyzing the specific facts relating to the meme coin and the manner in which it is offered and sold.”^x The Staff emphasized that CorpFin will evaluate the economic realities of specific transactions and look beyond mere classification of an asset as a “meme coin” to ensure that meme coin transactors are not evading the federal securities laws by “disguising a product that otherwise would constitute a security.”^{xi} In other words, CorpFin will be on the lookout for individuals falsely classifying or naming their assets or transactions as meme coin sales or offerings to avoid application of the federal securities laws.

CorpFin Staff’s analysis considered the federal securities laws’ definitions of “security” as well as how the Supreme Court has interpreted the meaning of the term “security” in *Howey*. The term “security” is defined in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Securities Exchange Act of 1934 to include a number of common financial instruments including a “stock,” “note” and “bond.” CorpFin Staff concluded that a meme coin is not any of these instruments because, among other reasons, “it does not generate a yield or convey rights to future income, profits, or assets of a business.”^{xii}

The federal securities statutes also define the term “security” to include an “investment contract.” Applying *Howey*, CorpFin Staff came to the conclusion that meme coins are not “investment contracts” either:^{xiii} meme coins are not investment contracts because they do not involve an investment in an enterprise and are not “undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”^{xiv} While the purpose of the Statement is to express the view that meme coins will generally not constitute securities under *Howey*, it is noteworthy that CorpFin Staff performs the *Howey* analysis, implicitly accepting that the CorpFin Staff continues to view the *Howey* test as a key arbiter of what does, and does not, constitute an “investment contract.”

Consistent with its explanation of the purpose and value source of meme coins, the Staff noted that “the value of meme coins is derived from speculative trading and the collective sentiment of the market, like a collectible,” rather than through the efforts of others.^{xv} The Statement appears to distinguish collectibles with value derived from speculative trading and market sentiment, like meme coins, from other investment contracts with value derived from the efforts of others that more clearly satisfy the *Howey* test.^{xvi} While the prior administration generally avoided bringing litigation that would have required courts to grapple with whether transactions in pure meme coins constitute “investment contracts” under *Howey*, it declined to signal—as CorpFin Staff now does—that pure meme coins will generally not constitute securities. Former Chair Gensler, for example, once expressed the view that “nearly every crypto token —meme [] coins included—could be classified as a security if purchasers expected profits from the efforts of token sellers or their affiliates.”^{xvii} Statements such as these arguably contributed to regulatory ambiguity and confusion, which the current administration is now working to clear up through the Statement and other actions.

ENFORCEMENT IMPLICATIONS

Through this Statement, CorpFin makes clear that meme coins fitting the prescribed framework should not be subject to existing Commission registration or enforcement oversight. However, this does not signal that an outright lack of enforcement with respect to all purported meme coins is on the horizon. While true meme coins might receive less attention from the Division of Enforcement, that does not extend to “the offer and sale of meme coins that are inconsistent with the descriptions [above], or products labeled ‘meme coins’ in an effort to evade the application of federal securities laws by disguising a product that would otherwise constitute a security.”^{xviii} The Division of Enforcement will continue to review and evaluate these meme coins based on the particulars of the transaction.^{xix} Additionally, the Statement makes clear that fraudulent conduct relating to the offer and sale of meme coins (even though not involving securities) could still be subject to enforcement actions and prosecution under both federal and state laws aimed at combatting fraud and market manipulation.^{xx} For example, such frauds could be charged under the federal wire fraud statute, federal commodities laws, and applicable state law.^{xxi}

COMMISSIONER CRENSHAW DISAGREES WITH CORPFIN

Notably, Commissioner Caroline A. Crenshaw issued a same-day competing statement, opining that CorpFin’s Statement “advances an incomplete, unsupported view of the law to suggest that an entire product category is outside the bounds of SEC jurisdiction.”^{xxii} Commissioner Crenshaw’s statement criticized CorpFin’s definition of meme coins and application of *Howey* as overbroad and unclear, noting the possibility that crypto enterprises may use CorpFin’s Statement as a “roadmap” to work around *Howey* “with disclaimers and other window dressing designed to downplay the significance of managerial efforts.”^{xxiii} Specifically, Commissioner Crenshaw noted that, in addition to providing entertainment and social engagement, the purpose of issuing meme coins is to make money, which “may itself satisfy *Howey*’s requirement of a ‘common enterprise.’”^{xxiv} She also provided several examples of how meme coin purchasers’ expectations of profits may be based on the efforts of others to emphasize the point that “the individualized inquiry *Howey* requires simply cannot be reconciled with the staff’s conclusion that offers and sales of a vaguely defined category . . . are generally not securities.”^{xxv}

LOOKING FORWARD

While the CorpFin Statement is in line with the crypto-friendly approach that the SEC has taken since the start of the second Trump administration, it is important to note that the Statement is not a formal regulation (and was not published by the entire Commission).

While the Statement appears to be relatively clear on its face, it is likely future enforcement actions will continue even under the new Administration to refine and contour how the federal securities laws will or will not apply to meme coins and other digital assets.

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ⁱ See generally *Staff Statement on Meme Coins*, U.S. SECURITIES & EXCHANGE COMM'N DIV. CORP. FIN. (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>. We note that the issuance of a “statement” by a policy division is an uncommon procedure in-and-of-itself, as compared to the issuance of a staff legal or accounting bulletin.

ⁱⁱ See, e.g., J.C. Boggs et. al, *SEC Creates Crypto Task Force & Pivots Away from Regul. by Enf't*, KING & SPALDING (Feb. 25, 2025), <https://www.kslaw.com/news-and-insights/sec-creates-crypto-task-force-and-pivots-away-from-regulation-by-enforcement>; Ehren Halse et. al, *Could Stablecoin Legislation Be Finally Leaving the Stable?*, KING & SPALDING (Feb. 18, 2025), <https://www.kslaw.com/news-and-insights/could-stablecoin-legislation-be-finally-leaving-the-stable>.

ⁱⁱⁱ Cheyenne Ligon, *SEC Publishes Memecoin Stance Reinforcing Hester Peirce's Comments*, COINDESK (updated Feb. 28, 2025), <https://www.coindesk.com/policy/2025/02/27/sec-publishes-memecoin-stance-reinforcing-hester-peirce-s-comments>.

^{iv} *Staff Statement on Meme Coins*, supra note 1.

^v See id.; see also Alec Koch et. al, *Rebranding of SEC Cyber Unit Reflects Shift in Enf't Priorities*, KING & SPALDING (Feb. 25, 2025), <https://www.kslaw.com/news-and-insights/rebranding-of-sec-cyber-unit-reflects-shift-in-enforcement-priorities>.

^{vi} See, e.g., Hanah Lang, *US Securities Regul. Files to Dismiss Lawsuit Against Coinbase*, REUTERS (Feb. 27, 2025), <https://www.reuters.com/technology/us-sec-announces-dismissal-civil-enforcement-action-against-coinbase-2025-02-27/> (Feb. 28, 2025); J.C. Boggs et. al, supra note 2.

^{vii} *Staff Statement on Meme Coins*, supra note 1.

^{viii} Id.

^{ix} Id.

^x Id., n.4.

^{xi} Id.

^{xii} Id. We note this approach excludes meme coins from the definition of a security (and therefore from the SEC's antifraud jurisdiction as well) as opposed to identifying a new or potentially existing exemption from registration (which would retain antifraud jurisdiction).

^{xiii} See *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) (“The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.”).

^{xiv} *Staff Statement on Meme Coins*, supra note 1.

^{xv} Id.

^{xvi} See Id.

^{xvii} Jeffrey Alberts, *Meme Coins Unchained: Peirce Draws a Line on SEC Oversight*, PRYOR CASHMAN (Feb. 14, 2025), <https://www.pryorcashman.com/publications/meme-coins-unchained-peirce-draws-a-line-on-sec-oversight#:~:text=Under%20former%20Chair%20Gary%20Gensler,token%20sellers%20or%20their%20affiliates>.

^{xviii} *Staff Statement on Meme Coins*, supra note 1.

^{xix} See Id.

^{xx} See Id.

^{xxi} See 18 U.S.C. § 1343.

^{xxii} *Resp. to Staff Statement on Meme Coins: What Does it Meme?*, Comm'r Caroline A. Crenshaw Statement, U.S. SECURITIES & EXCHANGE COMM'N (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725>.

^{xxiii} Id.

^{xxiv} Id.

^{xxv} Id.

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