

ALERTS

SEC's Division of Corporation Finance Says Meme Coins Are Not Securities

March 3, 2025

On Feb. 27, 2025, the SEC's Division of Corporation Finance ("Division") issued guidance that meme coins — defined as speculative crypto assets inspired by internet memes, cultural trends, or social media phenomena — do not constitute securities under federal securities laws.[1] However, the Division's guidance, which does not bind the Commission, was met with swift opposition from Commissioner Caroline A. Crenshaw, who criticized the guidance as "an incomplete, unsupported view of the law" and warned that it suggests, without sufficient legal basis, that an entire category of assets falls outside the SEC's jurisdiction.[2]

Although it does not have the force of law (e.g., it is not an act of Congress or the result of a judicial decision), the Division's guidance is encouraging to many.[3] The statement does not resolve the regulatory uncertainty regarding crypto assets (including meme coins), but we expect formal Commission guidance on that topic in the near future.

The Division's Meme Coin Guidance

The Division defined meme coins as those that "do not generate a yield or convey rights to future income, profits, or business assets." Meme coins, according to the Division, are "typically purchased for entertainment, social interaction, and cultural purposes," and are akin to collectibles. Their value, the Division argues, is primarily driven by speculative trading and market sentiment rather than any expectation of profits derived from a common enterprise or the efforts of others — factors central to the *Howey* test for determining whether an asset is a security. The Division

opined that these meme coins do not qualify as “securities” under any definition in the Securities Act of 1933 (“Securities Act”) or the Securities Exchange Act of 1934.^[4]

Because they are not “securities,” the Division reasoned that participants in the offer or sale of meme coins are not required to register their transactions with the SEC under the Securities Act or seek an exemption from registration. While this determination is not binding on the Commission, it will make it more difficult for another government agency to classify meme coins as securities. It also does not shield fraudulent or other unlawful activity involving meme coins from enforcement actions, including by the DOJ, CFTC, FinCEN, and state and foreign regulators, and it does not prevent a court from determining that meme coins are securities.

The Division’s stance comes with an important caveat: tokens that do not demonstrate the characteristics of meme coins and those that are marketed as “meme coins” to sidestep securities laws — but that functionally resemble securities — will still be evaluated based on their economic realities, not their labels. Participants should continue to exercise caution in evaluating whether a particular coin qualifies as a meme coin under the guidance.

Commissioner Crenshaw’s Criticism

Commissioner Crenshaw — the only Democrat on the SEC’s current three-person Commission — strongly opposed the Division’s guidance, arguing that it raises “more questions than it answers” about what qualifies as a meme coin and whether such a category has any meaningful legal distinction.

She criticized the guidance as a potential loophole for promoters seeking to circumvent the *Howey* test, arguing that, in reality, “meme coins, like any financial product, are issued to make money.” Crenshaw emphasized that the market exists on a continuum, with some meme coins being tied to fraudulent schemes and some functioning similarly to traditional securities. She concluded that *Howey*’s individualized inquiry “cannot be reconciled” with the Division’s broad determination that meme coins are “generally not securities.”^[5]

Takeaways

We expect continued formal and informal guidance from the SEC on meme coins and crypto more broadly. While the Division's guidance should create new opportunities to offer, trade and list meme coins (on exchanges or other platforms), Commissioner Crenshaw's sharp criticism of the Division's guidance highlights that the SEC's overall position on crypto remains unsettled. In addition, while the guidance does indicate that the SEC will not be particularly focused on meme coins, at the same time it may also bolster the CFTC's nexus; if not a security, meme coins may be classified as commodities. While the CFTC's direct jurisdiction would then only cover meme coin derivatives, it could also utilize its general anti-fraud and anti-manipulation authority over spot commodities for the meme coins themselves.

To mitigate risks and ensure regulatory compliance, firms should:

- Stay ahead of evolving regulations by maintaining rigorous compliance protocols.
- Evaluate whether investing in speculative assets, like meme coins, is consistent with the firm's investment strategy and disclosures.
- Conduct legal assessments of tokens to determine potential classification as securities.
- Maintain thorough records of crypto transactions.
- Vet counterparties, platforms, and custodians rigorously to minimize exposure to regulatory scrutiny.

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For assistance in navigating the CTA and Reporting Rule's reporting requirements, please contact one of the authors or your attorney at Schulte Roth & Zabel.

[1] See SEC Division of Corporation Finance, "Staff Statement on Meme Coins" (Feb. 27, 2025), available at https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins?utm_medium=email&utm_source=govdelivery.

[2] Caroline A. Crenshaw, "Response to Staff Statement on Meme Coins: What Does it Meme?" (Feb. 27, 2025), available at

https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725?utm_medium=email&utm_source=govdelivery.

[3] The Division's guidance follows the Commission's decision to dismiss its enforcement action against Coinbase. See Joint Stipulation to Dismiss, and Releases at 1, SEC v. Coinbase, No. 23-cv-4738 (S.D.N.Y. Feb. 27, 2025); Press Release, SEC Announces Dismissal of Civil Enforcement Action Against Coinbase (Feb. 27, 2025).

[4] See SEC Division of Corporation Finance, "Staff Statement on Meme Coins" (Feb. 27, 2025), available at https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins?utm_medium=email&utm_source=govdelivery.

[5] *Id.*

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