

# Examining Trump Meme Coin And SEC's Crypto Changes

By **Eileen Robinett and Jennifer Post** (March 10, 2025)

Within the world of crypto-assets, meme coins are generally considered one of the more volatile and risky, subject to social media hype and in some cases "pump and dump" or "rug pull" schemes.[1]

Meme coins are generally focused on a particular internet theme, often humorous or satirical, that has captivated a social media audience and are viewed by many as collectibles to provide entertainment. Unlike other crypto-assets, meme coins do not represent fractional ownership of a business and have no underlying economic purpose or value.

As with all crypto-assets, neither Congress nor regulators have yet adopted a clear rules-based framework that specifically addresses how meme coins should be treated under federal securities laws. Instead, until recently, the U.S. Securities and Exchange Commission has relied on a regulation-by-enforcement approach, applying traditional securities law definitions to new forms of crypto-assets.

The legal approach to these assets, however, has already begun to change significantly under the Trump administration — foreshadowed in part by President Donald Trump's release of a meme coin of his own, \$Trump, just three days before Inauguration Day.

## **New Administration — and the SEC — Embrace Crypto**

In his first weeks in office, Trump established a working group that includes the leaders of key federal agencies and regulators to focus on establishing a legal framework to govern the issuance and operation of crypto-assets. He appointed crypto-friendly Mark Uyeda as the acting chair of the SEC, and Uyeda promptly established the SEC's Crypto Task Force.

Under Uyeda's leadership, the SEC recently dismissed several high-profile pending enforcement actions against leaders in the crypto industry, and the staff of the SEC issued a statement that it believes most meme coins are not securities.[2]

The crypto industry has welcomed the prospect of the Trump administration's promises to effect a well-reasoned regulatory framework for crypto-assets that recognizes crypto's role as a legitimate business tool. However, given that meme coins lack any identifiable business utility, are extremely speculative and have been exploited by bad actors to defraud investors, some in the crypto industry were disappointed by Trump's issuance of his own \$Trump meme coin shortly before his inauguration.

## **The \$Trump Meme Coin**

The \$Trump meme coin, focused according to its website on support for the ideals embodied by the "\$Trump" symbol and related artwork, was issued on Jan. 17. Its trading activity exemplifies the speculative nature of these crypto-assets. The \$Trump meme coin reached a market value of \$15 billion within hours of its launch, soon followed by a steep decline,



Eileen Robinett



Jennifer Post

settling to a market capitalization of approximately \$2.5 billion in early March.

Many holders of the \$Trump coins are small individual investors, and hundreds of thousands lost money on their purchases. According to the \$Trump website, two entities identified as possible affiliates of the Trump Organization own 80% of the total supply of \$Trump meme coins to be issued over a three-year period, and these entities or their owners will receive revenue derived from trading activities in the coin. The \$Trump meme coin website specifies that the meme coins are not intended to be securities, may be extremely volatile and may not maintain their value.

### **The Howey Test and Meme Coins**

As with most crypto-assets, the SEC has generally approached its ability to regulate and police meme coins based on whether the facts and circumstances demonstrate that they meet the traditional definition of a "security," including the "investment contract" analysis set forth in the 1946 U.S. Supreme Court case SEC v. W.J. Howey Co.[3]

Under the Howey analysis, a crypto-asset may be considered a security if it is (1) an investment of money by a person, (2) in a common enterprise, (3) with an expectation of profits, (4) to come solely from the efforts of others.

On Feb. 27, rather than maintaining the existing Howey "facts and circumstances" analysis for each and every crypto-asset, the SEC's Division of Corporation Finance concluded that the transactions described in its staff statement on meme coins do not meet all of the Howey requirements.

Meme coins with the following characteristics do not, in the staff's view, involve the offer and sale of securities: (1) "purchased for entertainment, social interaction, and cultural purposes," (2) whose "value is driven primarily by market demand and speculation," (3) with "limited or no use or functionality," (4) subject to "significant market price volatility," and (5) "accompanied by statements regarding their risks and lack of utility, other than for entertainment or other non-functional purposes."

This staff statement reflects a significant shift, for meme coins, from the position taken in 2019 by the SEC staff in its published list of factors to consider for crypto-assets under Howey's facts and circumstances analysis.[4] These factors focus, among others, on the manner in which the offering is undertaken (including broad marketing efforts and secondary market availability), the purpose and function of the crypto-assets (including use for consumer or commercial purposes), and expected future efforts of the issuers or promoters in the market for the crypto-assets (including whether the issuer or promoter retains portions of the crypto-assets or related intellectual property rights, thereby creating an incentive to increase their value).

In its meme coin statement, the SEC staff expressed its expansive view that "the offer and sale of meme coins does not involve an investment in an enterprise nor is it undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." The staff's explanation for this conclusion is because it does not perceive that meme coin purchasers are pooling their funds for use by the meme coin promoters to develop the meme coin or a related enterprise.

Further, the staff states that expectations of profits from meme coins are not derived from the efforts of others, but rather are based on speculative trading and the "collective sentiment of the market," and that meme coin promoters are not undertaking or promising

to undertake managerial or entrepreneurial efforts that purchasers are relying on for profit generation.

Commissioner Caroline Crenshaw strongly disagreed with the SEC staff's approach to providing meme coin guidance through the statement. Instead, she argues that "[i]t advances an incomplete, unsupported view of the law to suggest that an entire product category is outside the bounds of SEC jurisdiction" and that "the individualized inquiry Howey requires simply cannot be reconciled with the staff's conclusion that offers and sales of a vaguely defined category, consisting of hundreds of unique crypto assets, are generally not securities."<sup>[5]</sup>

While the meme coin statement signals the SEC's intentions with respect to its future treatment of meme coins generally, this statement is not a rule, regulation or law. True long-term clarity regarding the treatment of meme coins will only come with congressional approval of a revised crypto framework.

Further, notwithstanding a present inclination not to treat most meme coins as securities, the SEC staff noted that its statement does not extend to meme coins that fall outside of the parameters outlined above and that it will continue to evaluate the economic realities of particular transactions. Additionally, even if the offer or sale of a meme coin is not considered a transaction in a security subject to SEC regulation, these assets may be subject to regulation by other federal or state agencies, especially if fraud is involved.

### **Howey and \$Trump**

The organization issuing the \$Trump meme coins has been careful not to make promises about the type or amount of returns to be expected, and it has included cautionary statements warning prospective purchasers of the potential extreme volatility of the \$Trump meme coins.

However, the issuers and promoters of the coin have retained the vast percentage of total coins to be issued, providing them with an opportunity to profit from an increase in the value of the coins. Also, Trump and his affiliates have made social media statements regarding the existence, and their favorable view, of these coins, thereby increasing public awareness and interest.

As a result, it is possible that the plaintiffs bar could attempt to argue that a purchaser was relying on Trump, the issuer or related parties to drive profits in the meme coins by tying the success of the meme coins to Trump's continued popularity and the efforts of the president and his affiliates to pursue his leadership accomplishments, including his stated intent to reform the crypto regulatory framework. But given the SEC staff's meme coin statement, this does not seem a likely occurrence.

### **Treatment of Meme Coins as Something Other Than Securities**

While the SEC under former Chair Gary Gensler tended to view most crypto-assets as securities, as discussed above, the tide is rapidly changing under the Trump administration.

The SEC staff's meme coin statement was preceded on Feb. 11 by statements from SEC Commissioner Hester Peirce, the so-called crypto mom and chair of the SEC's Crypto Task Force, regarding her similar views about meme coins on "Bloomberg Crypto":

We always have to look at the facts and circumstances, but many of the meme coins that are out there probably do not have a home in the SEC under our current set of regulations. If that's something that Congress wants to address, they can do that. Maybe that's something the CFTC wants to address.

Similarly, Trump's crypto czar, David Sacks, recently stated that he believes meme coins and non-fungible tokens are collectibles and not securities.

All of these statements reflect the general trend of the Trump administration to favor a narrower interpretation of the definition of "security" when evaluating crypto-assets and to limit the scope of the SEC's regulation of certain of these assets.

In support of this position, the SEC is reviewing its outstanding crypto litigation and is taking action to resolve some of its pending cases and investigations that relate to its application of the Howey test to crypto-assets, including dismissal of its enforcement action against Coinbase Global Inc. and abandonment of its investigation of NFT marketplace OpenSea.

These dismissals allow the SEC more time and latitude to develop, through its Cryptocurrency Task Force and in conjunction with the Crypto Working Group, a new set of regulations generally focused on how to treat various crypto-assets under the federal securities and other federal laws.

However, some crypto enforcement actions, including the case against Ripple Labs Inc., remain outstanding, as do a number of class actions brought by meme coin purchasers, including in connection with the \$Hawk token and against Pump.fun in connection with meme coins launched on its system, including the \$PNUT token.[6] It remains to be seen what impact the meme coin statement will have on these class actions.

As the SEC's Crypto Task Force and the president's Crypto Working Group continue to make progress toward a workable framework for crypto-asset regulation generally, it appears likely that most meme coins will be excluded from the SEC's domain, although the broader structure for crypto regulation remains unclear, including possible consolidation, or reallocation of the regulatory reach, of agencies such as the SEC and the U.S. Commodity Futures Trading Commission.

Given the defined time frames for evaluating the current regulatory landscape and proposing new solutions, as outlined in the executive order issued by Trump when the Crypto Working Group was established, we are likely to learn more details regarding the intended legal framework for crypto-assets under the Trump administration in the coming months.

### **Next Steps and Conflicts of Interest**

While the development of a more reasoned and workable framework for crypto-assets under the federal securities law is desired by most who do business or provide legal advice in this industry, the changes expected to be made under Trump's administration may be tarnished to some extent by an arguable conflict of interest due to his affiliation with the \$Trump meme coin.

On the one hand, Trump is affiliated with and in a position to profit from his \$Trump meme coin and its success, including whether it is considered by regulators and others as a "security" under the federal securities law. On the other hand, he dictates to some extent

the policies of the SEC and the CFTC by appointing Senate-confirmed SEC and CFTC commissioners, and on Feb. 18, his administration issued an executive order titled "Ensuring Accountability for All Agencies"[7] to increase his oversight over various independent regulatory agencies such as the SEC and CFTC.

This executive order requires, among other things, that these agencies submit all draft regulations to the White House for review and consult with the White House on their priorities and strategic plans. This potential conflict of interest will unfortunately distract from, and possibly taint, any progress that is made to legitimize, and appropriately establish a workable framework for, the issuance and trading of a variety of crypto-assets.

Notwithstanding this potential conflict of interest, the crypto industry and those who advise it have struggled to apply traditional securities law concepts to the new and evolving crypto-asset market. The industry, its innovators, its advisers and its investors will benefit from more clearly defined, and specifically crafted, rules that tailor regulation to the nature of these assets and the risks to the public that should be addressed by federal regulators.

Hopefully, the potential conflict of interest associated with the issuance of the \$Trump meme coin, coincident to a long-needed reevaluation of the regulatory framework for crypto-assets, will not detract from the benefits achieved by implementing an improved regulatory environment.

Creation of a structured environment tailored to evolving crypto-assets that addresses their legitimate uses and prospects for innovation, balanced with appropriate protections to be afforded to investors in all such crypto-assets, will be an important next step for businesses, investors and regulators.

---

*Eileen Duffy Robinett is counsel and Jennifer A. Post is a partner at Thompson Coburn LLP.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] "Pump and dump" schemes occur when an issuer or promoter artificially inflates the price of the meme coin through positive social media statements, and then dumps a large number of coins on the market, selling at inflated prices to unsuspecting buyers, and thereafter the price falls significantly. "Rug pulls" occur when issuers or promoters market a meme coin to attract public interest and then abandon it, leaving participants with worthless tokens.

[2] Staff Statement on Meme Coins, SEC, <https://www.sec.gov/newroom/speeches-statements/staff-statement-meme-coins> (Feb. 27, 2025).

[3] 328 U.S. 293 (1946).

[4] Framework for "Investment Contract" Analysis of Digital Assets, SEC, <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets> [<https://perma.cc/6MA9-BKPX>] (Apr. 3, 2019).

[5] Response to Staff Statement on Meme Coins: What Does it Meme?, Commissioner

Caroline A. Crenshaw, <https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725> (Feb. 27, 2025).

[6] See Albouni et al. v. Schultz et al., EDNY, No. 1:24-cv-08650, Carnahan v. Baton Corp. Ltd., SDNY, No. 1:25-cv-00490 and Aguilar v. Baton Corp. Ltd, SDNY, No. 1:25-cv-00880.

[7] Executive Order "Ensuring Accountability for All Agencies," Feb. 18, 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-accountability-for-all-agencies/>.