

Corporation Finance Issues Two Unusual Statements Regarding Regulation of Digital Assets



CONTRIBUTORS



Tamara Brightwell



Amy B. Caiazza

ALERTS

March 25, 2025

The Division of Corporation Finance (Division) of the Securities and Exchange Commission (SEC) recently issued two statements regarding whether certain tokens, or arrangements involving tokens, constitute “investment contracts” subject to SEC regulation as “securities.” The first is related to so-called “meme coins,” and the second to “proof-of-work” mining activities. Both statements were described by the Division as “part of an effort to provide greater clarity on the application of the federal securities laws to crypto assets.” Both are unusual steps for the Division to take and unprecedented in the digital asset space. The changing regulatory landscape underscores the importance of consulting with securities law counsel to determine the status of a product, including whether it is structured consistent with the Division’s guidance.

The Meme Coin Statement

In the “meme coin” statement,¹ the Division stated that “a ‘meme coin’ is a type of 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.” The statement described certain characteristics typically shared by meme coins, such as being purchased for entertainment, social interaction, and cultural purposes, and noted that the value of the coins is primarily driven by market demand and speculation. It viewed the coins as akin to collectibles. Further, the Division noted that meme coins typically have limited or no use or functionality and often have statements regarding their risks and lack of utility. The Division expressed the view that transactions in these types of meme coins do not involve the offer and sale of securities under the federal securities laws and that the transactions do not need to be registered or exempt under the Securities Act of 1933 (Securities Act).

The Division’s statement noted that a meme coin does not fit within any of the common financial instruments specified in the definition of security in the Securities Act and the Securities Exchange Act of 1934. It also examined the application of the “Howey”² test as to whether a meme coin would be an investment contract and concluded that the meme coins it described in the statement would not involve an investment in an enterprise or with a reasonable expectation of profits to be derived from the efforts of others. Specifically, it again analogized meme coins to collectibles, and noted that the value of the coins is derived from speculative trading and market demand. As such, purchasers could not reasonably expect profit from the efforts of the meme coin promoters.

The Proof-of-Work Statement

In the “proof-of-work” statement,³ the Commission discussed two forms of “protocol mining” used to develop consensus in validating transactions on the blockchain, both of which are used in “proof-of-work” systems. In one, miners validate on a solo basis and receive rewards based on that work. In the

other, miners join mining pools that combine their computational resources, typically with the coordination of a pool operator, and receive rewards based on their joint efforts, often based on the amount of computational power contributed.

The Division stated that neither constitutes an “investment contract” that is a security when they are structured consistent with the guidance in the statement:

- For solo mining, the Division noted that miners typically receive rewards based largely on their own efforts—not the entrepreneurial or managerial efforts of others, a key component of the analysis of whether something is an “investment contract.”
- For mining pools, the Division noted that the pooling component does not change the analysis under the Securities Act, because miners are still relying on the computational resources they provide to earn profits, and are not so reliant on the operator that they are dependent on that person.

In each case, the Division described mining as an “administrative or ministerial” activity supporting a network, contrasting that with an ability to earn profits passively from the efforts of someone else.

The Statements Represent an Unusual Approach

Historically, the Division staff have provided guidance about whether specific instruments may be securities through the issuance of no-action letters stating they would not recommend enforcement action if a specific product or instrument was not registered under the Securities Act.⁴ The Division’s statements differ in that they express a view on a category of product rather than on a specific entity’s instrument and its particular facts and circumstances.

The Division did caution in each case that the statement does not extend to products or activities that differ from those described in the statements or are efforts to avoid the federal securities laws. Each statement also noted that the analysis is facts and circumstances-driven and that the economic realities of a transaction will need to be considered to conclude it does not involve a securities transaction.

For practical purposes, this may mean it is difficult for a particular market actor to rely on the guidance. Actors in the space should consult with securities law counsel to determine whether a product is structured consistent with the Division’s guidance and the federal securities laws more generally.

Other Regulation May Still Apply

In the “meme coin” statement, the Division noted that purchasers and holders of “meme coins” as described in the statement are not protected by the federal securities laws because the offer and sale of these “meme coins” do not need to be registered or exempt under the Securities Act. It also highlighted, however, that fraudulent conduct related to such coins may be subject to enforcement action or prosecution under other federal or state laws.

Other regulators that may exercise jurisdiction over non-securities products include, for example, the Commodity Futures Trading Commission, which has jurisdiction over the commodities spot markets, and the Federal Trade Commission, which has jurisdiction over consumer fraud, as well as state regulators like the New York Department of Financial Services, which has actively regulated the crypto space. Importantly, the Division’s guidance does not preempt state law.

If you have any questions about the statements or crypto asset regulation, please contact [Tamara Brightwell](#), [Amy Caiazza](#), or a member of the [Fintech and Financial Services](#) practice.

[1] See Staff Statement on Meme Coins, Division of Corporation Finance (February 27, 2025) available at <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

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

[3] See Staff Statement on Certain Proof-of-Work Mining Activities, Division of Corporation Finance (March 20, 2025) available at <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>.

[4] *See, e.g.*, Turnkey Jet, SEC Staff No-Action Letter (Apr. 3, 2019) (tokens meeting specific conditions). In the digital asset space, the Division has also issued guidance in the form of a broader framework for assessing the securities law status of digital assets and related arrangements or transactions. Framework for “Investment Contract” Analysis of Digital Assets, Division of Corporation Finance (last updated July 4, 2024), <https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets>.