

Navigating the Meme Coin Maze – SEC Opinion and Canadian Implications

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On February 27, 2025, the US Securities and Exchange Commission (SEC) released a Staff Statement on meme coins (the [Statement](#)). In the Statement, the Division's Staff shared its views that meme coins, generally speaking, do not typically constitute securities, nor does their transfer constitute the sale of securities under federal securities laws.¹ The Staff makes clear, however, that the Statement does not negate the possible finding of an investment contract involving meme coins, depending on the facts and circumstances. These facts and circumstances include, but are not limited to, marketing/promotional efforts and pooling of funds for business purposes.² Regardless of how caveated, the Statement has sparked internal debate within the SEC. Commissioner [Caroline Crenshaw](#) criticized the Statement for its lack of a clear definition of a meme coin. She emphasized that the "economic reality" of most meme coins — in her view, to make money and generate profits based on the efforts of others, which implicate the finding of an investment contract and thereby a security — is neglected in the Staff Statement.³ As this article will discuss, the ongoing debate surrounding the classification of meme coins are important for Canadian businesses operating in the digital asset space, particularly given the overlapping investment contract tests and securities policies between Canada and our neighbors to the south.

What is a Meme Coin?

Meme coins are a subset of cryptocurrencies that are often inspired by internet memes, jokes and current events. Unlike traditional cryptocurrencies such as Bitcoin, meme coins usually gain popularity through social media and online communities, and oftentimes lack real-world applications. They are often highly volatile and speculative, with their value largely driven by online trends, social media hype, and community sentiment rather than fundamental economic or technological factors.⁴

Ongoing Discussion of Cryptocurrency: Security or Commodity?

As we have communicated in [prior Cassels Comments](#), the classification of cryptocurrencies has been a topic of debate for quite some time in the United States. In the US, the Commodity Futures Trading Commission (CFTC) views Bitcoin and other cryptocurrencies as commodities.⁵ However, the previous SEC administration has, in numerous staff comments and enforcement actions, indicated that certain crypto assets may be considered, or the manner by which they are sold may be considered, securities

transactions, implicating registration and disclosure requirements.⁶

SEC's Analysis: the Howey Test

Under the [U.S. Securities Act](#), the defined term "security" includes in its definition reference to an "investment contract," though the statute does not define the term investment contract itself.⁷ The US Supreme Court established the test for an investment contract in *SEC v. W.J. Howey Co.*, which requires that a financial arrangement meet specific criteria including investment of money in a common enterprise, reasonable expectation of profit, and reliance on the efforts of others.⁸

Applying the *Howey* test, and demonstrating the new policies of the SEC set down by the Trump Administration, the Statement posited that the offer and sale of meme coins generally do not meet these criteria. Specifically, meme coins do not typically involve an investment in an enterprise, nor are they purchased with the reasonable expectation of profits derived from the managerial efforts of others. As such, the Statement provided that most meme coins likely fail the *Howey* test and would not be classified as securities under US federal securities laws.⁹

This determination, however, does not provide a blanket exemption. The SEC explicitly cautioned that the characterization of certain meme coins as non-securities does not preclude other forms of civil or criminal liability, such as fraudulent conduct,¹⁰ insider trading or money laundering. They further cautioned that the facts and circumstances would govern, and that it remained possible that an arrangement involving meme coins may still implicate securities laws.¹¹

Commissioner Caroline Crenshaw dissented, expressing concerns about the Statement's broad pronouncements and lack of clarity regarding the definition of meme coins. She argued that the vagueness could be exploited by those seeking to evade regulatory oversight and emphasized the importance of analyzing the "economic reality" of meme coin transactions. Crenshaw highlighted that meme coins are often issued to generate profits for both promoters and holders, and that promoters can influence market demand through various on and off chain activities (e.g., marketing/promotional efforts, insider trading, front-running, sniping etc.). She concluded that the Statement's broad generalizations about meme coins do not align with the individualized inquiry required by the *Howey* test.¹²

Implications for Canada

In Canada, the regulatory landscape for cryptocurrencies, including meme coins, is still evolving. While the SEC's guidance provides valuable context, Canadian provincial securities regulators and our courts will necessarily be tasked with determining the classification of these assets for offers and sales to Canadians.

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Both the Ontario and BC Securities Acts define security to include investment contracts.¹³ The [*Pacific Coast Coin Exchange v. Ontario Securities Commission*](#) case from the Supreme Court of Canada adopted a nearly identical *Howey* framework for determining whether an investment contract (and thereby a security) exists based on *ad hoc* factual considerations.¹⁴ Canadian courts have routinely applied this test to crypto assets and related contractual relationships.¹⁵ Given the similarities between the *Howey* and *Pacific Coin* tests, and the fact that the Statement included a fairly robust *Howey* analysis, its possible that our regulators find such analysis compelling, or at the very least worthy of a Canada specific analysis in the form of a future CSA Staff Notice.

Conclusion

The SEC's staff statement and Crenshaw opinion on meme coins provides useful guidance on the regulatory treatment of these digital assets in the United States. The bottom line is that even if meme coins may not generally qualify as securities under the *Howey* test, people's misconduct issuing or purchasing meme coins can still subject to other legal liabilities. In Canada, the question of whether meme coins constitute securities is still pending, but companies engaged in digital asset transactions should be aware of the potential regulatory implications under Canadian law.

At Cassels, we will be keeping a close watch on the Canadian regulatory landscape to determine if changes in US regulations prompt Canadian authorities to adopt changes to their regulatory framework. In the meantime, if you or your organization have questions regarding fulfilling obligations to Canadian regulators, we encourage you to reach out to members of our [Blockchain & Digital Assets Group](#) for assistance.

¹ US Securities and Exchange Commission, "Staff Statement on Meme Coins" (27 February 2025), https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins#_ftn2 [Statement].

² *Ibid.*

³ US Securities and Exchange Commission, "Response to Staff Statement on Meme Coins: What Does it Meme?" (27 February 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-response-staff-statement-meme-coins-022725> [Crenshaw].

⁴ Statement.

⁵ Commodity Futures Trading Commission, "Federal Court Finds that Virtual Currencies Are Commodities" (3 October 2018), <https://www.cftc.gov/PressRoom/PressReleases/7820-18>.

⁶ US Securities and Exchange Commission, "Crypto Assets" <https://www.sec.gov/securities-topics/crypto-assets> (accessed 10 March 2025).

⁷ U.S. *Securities Act of 1933*, 15 U.S.C. § 77a et seq.

⁸ See *SEC v Howey Co.*, 328 U.S. 293 (1946) (*Howey*). *Howey* provides that a "contract, transaction, or scheme" is an investment contract where there is: (1) an investment of money (2) in a common enterprise, (3) with an expectation of profits from the efforts of others.

⁹ Statement.

¹⁰ Statement.

¹¹ Statement.

¹² Crenshaw.

¹³ [Securities Act, RSO. 1990, c.S.5](#); [Securities Act, RSBC. 1996, c 418, s 1](#).

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¹⁴ *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.

¹⁵ See *Manticore Labs OU (Re)*, 2024 ONCMT 19.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.