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Staff Statement on Meme Coins Signals Significant Shift in SEC Position on Digital Assets

In an action that could have broad implications, U.S. Securities and Exchange Commission Staff (Staff) **issued a statement** on February 27, 2025, through its Division of Corporation Finance, providing clarity on the application of federal securities laws to meme coins. This statement offers crucial insights for crypto market participants and potentially signals a significant change in the SEC's interpretation of what does and doesn't constitute a security. Below, we summarize the key points and explore the potential implications of this guidance.

Key Points from the SEC Staff Statement

- **Definition and Characteristics of Meme Coins:** Meme coins are crypto assets inspired by internet memes, characters, or trends. They are primarily purchased for entertainment, social interaction and cultural purposes, with their value driven by market demand and speculation, akin to collectibles. These coins typically have limits or no use or functionality and are not tied to any business or revenue stream, leading to significant market price volatility. While the guidance provided clarity on meme coins that have no functionality or use, it may not be applicable to ones that do have functionality or are offered in a different manner.
- **Meme Coins and Securities Laws:** The Staff clarified that transactions involving memecoins do not constitute the offer and sale of securities under federal securities laws. Consequently, participants in memecoin transactions are not required to register with the SEC under the Securities Act of 1933 ("Securities Act"), nor do they need to fall within the Securities Act's exemptions from registration. The Staff also points out that while the registration obligations in respect of the Securities Act do not apply to creators of memecoins, others in the memecoin ecosystem - users, buyers/sellers and collectors – also are not afforded protections under the Securities Act.
- **Investment Contract Analysis:** The Staff notes that a meme coin does not fall within the enumerated list of common financial instruments (e.g., "stock," "note," "bond") in the definition of "securities" provided in the Securities Act (as well as the Securities Exchange Act of 1934). Interestingly, the staff tied that to the generation of yield or conveyance of rights to future income, profits or assets of a business. The Staff then applied the "Howey test" to determine whether a meme coin might be offered and

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sold as part of an “investment contract”. The Howey test evaluates whether there is an investment in an enterprise with a reasonable expectation of profits derived from the efforts of others. The Staff concluded that meme coins do not meet these criteria, as their value is derived from speculative trading and market sentiment, instead of the managerial efforts of promoters. Distinguishing the contract from the coin itself in this manner also marks a break from the SEC’s long-standing yet eroded position that the tokens themselves might be investment contracts.

- **Fraudulent Conduct and Other Legal Considerations:** While meme coins may not be subject to federal securities laws, fraudulent conduct related to their offer and sale could still be subject to enforcement action by other federal or state agencies under different laws.

Implications for the Cryptocurrency Market

The Staff’s statement provides much-needed clarity for the cryptocurrency market, particularly for traders and issuers of meme coins; however, it is worth noting that projects building businesses and investors investing in businesses are not directly impacted by the Staff’s statement – as tokens that derive value based on the operations of the business (i.e., *there is an expectation of profits derived from the efforts of others*, through the lens of the Howey test) are not meme coins, and they may be considered “securities” pursuant to the Howey test. By confirming that meme coins are not securities, the Staff has removed a regulatory overhang from meme coin related transactions. However, this does not mean that meme coins are free from all legal scrutiny. Industry participants must remain vigilant against fraudulent practices, as these could still attract enforcement actions or private lawsuits under other legal frameworks.

Further, while the Staff statement only specifically applied to memecoins, the rationale articulated could also apply to other assets. For instance, the same rationale could apply to NFTs that only represent artwork or collectibles. In addition, it could apply to other speculative assets where the value of the asset does not rely on the efforts of others, such as sneakers and sports cards.

Ongoing Legal Considerations

Persons dealing with meme coins should still consider the following legal implications:

- **Compliance with Other Laws:** While meme coins may not be securities, organizations or memecoin creators must ensure compliance with other applicable federal and state laws, particularly those related to anti-money laundering, fraud and consumer protection. Further, these assets might still be regulated or restricted in other countries, particularly since the “investment contract” test is fairly unique to U.S. securities laws.
- **Risk Disclosures:** Given the speculative nature and volatility of meme coins, organizations or memecoin creators should provide clear risk disclosures to potential purchasers, emphasizing the lack of utility and the potential for financial loss.
- **Commodities:** If meme coins are not securities, then they clearly are commodities. While the Commodity Futures Trading Commission does not have the power to regulate the spot market, it does have the power to enforce illegal abuses of the spot market. Further, much like Bitcoin, dealing in derivatives of meme coins may be a regulated activity.
- **Monitoring Regulatory Developments:** The Staff’s statement is not a rule or regulation and does not have legal force, but is merely a statement from a portion of the SEC’s staff (and not the portion that brings enforcement actions). Industry participants should stay informed about any future regulatory changes or guidance that may impact the treatment of meme coins.

In conclusion, the statement on meme coins offers insight into the fundamental question of “Which crypto assets are securities?” Further, it signals a potential shift in how the SEC regulates the industry by proactively providing informal guidance. We see the statement as a sensible step towards regulatory clarity and a very overdue shift away from the SEC’s recent history of “regulation by enforcement” and “regulation by speechmaking” before that.