CLIENT ALERTS & INSIGHTS

What the Future May Hold for Crypto Asset Litigation and Regulation

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Authors: William E. Walsh, Patrick Beisell, Ruddy S. Abam, Juan Mata, Amakie Amattey

The Trump Administration has espoused-both on the campaign trail and in recent administrative actions-a strong interest in deregulating cryptocurrency laws and advancing the United States itself as a player in the cryptocurrency space. This is a marked departure from the previous presidential administration. With this backdrop in mind, this publication analyzes recent crypto asset litigation, including the burgeoning realm of “meme coin” litigation, and the federal regulatory landscape to assess where crypto asset law and regulation are headed.

Recent Federal Cryptocurrency Litigation

One issue that has been considered for years is the question of whether certain digital assets should be classified as regulated securities. In 2023, this issue was the subject of two high-profile court decisions in the Southern District of New York. In *SEC v. Ripple Labs, Inc.*, 682 F.Supp. 3d 308 (S.D.N.Y. 2023)-which was dropped by the SEC on March 19, 2025-the court applied the *Howey* test to Ripple Labs' XRP tokens which were an unregistered cryptocurrency. In brief, the *Howey* test examines whether an instrument is an "investment contract," and thus a security, under the Securities Act. In applying the *Howey* test, courts consider whether the instrument involves: (1) an investment of money, (2) a common enterprise, and (3) a reasonable expectation of profits derived from the efforts of others. *S.E.C. v. W.J. Howey Co.*, 151 F.2d 714 (5th Cir. 1945) (note that sometimes the third prong is separated and presented as two separate elements). The *Ripple* court determined that XRP tokens sold to institutional buyers (sophisticated individuals and entities) were securities because elements of the *Howey* test were satisfied. However, the court also held that the same tokens sold via programmatic sales (public/secondary buyers) were *not* securities because the buyers did not have a reasonable expectation of profits. And in *SEC v. Terraform Labs Pte. Ltd.*, 684 F.Supp.3d 170 (S.D.N.Y. 2023), another judge in the same court held that the cryptocurrency met all elements of the *Howey* test, thereby classifying the crypto assets as securities. However, the court declined to distinguish the manner of sale, rejecting the approach in *Ripple Labs*, and noting that the *Howey* test does not distinguish between institutional and secondary buyers.

These decisions underscore how applications of the *Howey* test may not always be suitable for identifying an "investment contract" given the complexity of digital asset characteristics and demonstrate that even the same District Court may be willing to deviate from a strict application of the *Howey* test when determining whether crypto assets are securities. *Ripple Labs* and *Terraform Labs* both suggest that courts may begin to consider shifting away from applying the *Howey* test to certain crypto assets (or take a more critical approach in applying the test), given that many are ill-suited to classification as investment contracts under *Howey*. And, of course, the Supreme Court or Congress could impose an explicit change in direction in this area.

Another important challenge to the ongoing application of *Howey* may come soon. In November 2024, Kentucky and 17 other states challenged the SEC's authority to regulate digital assets as investment contracts, specifically challenging whether a crypto asset transaction is an investment contract and so qualifies as a securities transaction under the Securities Act of 1933 and the Exchange Act of 1934. *See Kentucky et al. v. U.S. Securities and Exchange Commission et al.*, Case No. 3:24-cv-00069 (E.D. KY). For example, the plaintiffs define "securities" as involving an "ongoing relationship between the purchaser and issue/seller" and therefore posit that an investment contract is limited to instances when the parties enter into an ongoing relationship involving a common enterprise. Plaintiffs argue that these ongoing relationships consist of continuing obligations for the issuer/seller to put certain capital to work for the enterprise and to share resulting profits. In grappling with whether secondary market transactions-in digital assets bought or sold on trading platforms-are a security, this case will likely have a significant impact on the SEC's regulatory authority over crypto assets.

Newly Developing Litigation on Meme Coins

Unlike other cryptocurrencies that arguably provide technological or economic functions or involve underlying assets, a meme coin's value is in its cultural virality and ability to promote social media. The lawsuits identified below show that not only are creators and promoters of meme coins facing liability, but trading platforms (*e.g.*, Pump.Fun) and control persons (*e.g.*, platform founders and executives) are also in the line of fire. Meme coins are arguably a brand of securities manipulation primed to leverage social media and target unsophisticated investors. Even though meme coins are relatively new on the scene, the vehicles of liability are straightforward and can become easy copy-and-paste arguments for plaintiffs' lawyers to take and push forth a wave of meme coin lawsuits.

Web personality Haliey Welch, known as the "Hawk Tuah Girl," rose to the height of her fame in mid-2024, and later, with some help, launched her own coin: the $HAWK meme coin. The meme coin's traction on decentralized exchanges rose quickly, only for it to collapse by over 90% just a few hours later after hitting its peak. In *Albouni et al. v. Schultz et al.*, Case No. 1:24-cv-08650 (E.D.N.Y),the class of purchasers of the meme coin allege that the meme coin's sellers and promoters (1) violated Section 5 of the Securities Act by failing to register the $HAWK token with the SEC and (2) violated Section 12(a)(1) of the Securities Act by proceeding to sell the meme coin as an unregistered security.

Unlike *Albouni*, the *Carnahan v. Baton Corp. Ltd., et al.,* Case No. 1:25-cv-004900 (S.D.N.Y) lawsuit targets Pump.Fun's business model which provides automated tools that allow anyone to create and sell digital tokens. The named plaintiff's damages derive from the PNUT meme coin (based on the Peanut the Squirrel image), which reached a $1 billion market cap in only 11 days. While Pump.Fun is alleged to have violated Sections 5 and 12(a)(1) of the Securities Act, like in *Albouni*, the other named defendants here are being accused of violating Section 15 for participating in or being aware of the Company's operations by virtue of their positions as executives, founders, and/or controlling shareholders.

In both cases, the central theme of liability is control. For Pump.Fun, token developers are framed as "participants" within Pump.Fun's mandatory framework instead of "independent issuers." Whereas Ms. Welch and associates were the ones driving the promotional materials and the unity among investors. Ultimately, courts may have to answer who is open to liability in meme coin cases and how they are categorized. Is it the drivers of token success (*i.e.,* individual developers/promoters), or can a platform be a focus of liability, particularly when individual developers are harder to identify due to the anonymity potential of the crypto sphere? Notably, Pump.Fun may prove to be a flash-in-the-pan as the survival rate of its meme coins fell below 1% in recent weeks. This shift underscores the aforementioned speculative and risky nature of meme coin investments, but also suggests that investors may be shifting toward more stable and proven digital assets.

Federal Administrative Guidance on Crypto Assets and Anticipated Changes

On January 3, 2025, President Trump signed an Executive Order titled "Strengthening American Leadership in Digital Financial Technology." The Executive Order emphasizes the policy of the administration to promote the lawful use by individuals and companies of public blockchain networks and digital assets without persecution; to preserve U.S. dollar sovereignty, including through U.S. dollar-backed stablecoins; to enable participation in mining, validating, and self-custody of digital assets; to provide regulatory clarity and certainty; and to ensure open access to banking services for individuals and businesses engaged in digital asset activities. The most notable aspect of the Executive Order was the establishment of the President's Working Group on Digital Asset Markets.

The Working Group is tasked with proposing a "Federal regulatory framework governing the issuance and operation of digital assets, including stablecoins, in the United States" and evaluating "the potential creation and maintenance of a national digital asset stockpile and propose criteria for establishing such a stockpile, potentially derived from cryptocurrencies lawfully seized by the Federal Government through its law enforcement efforts." The Working Group must submit its recommendations to President Trump by July 22, 2025.

In addition to the anticipated proposals from The Working Group on Digital Asset Markets, the SEC is actively revisiting prior rules and priorities.

First, SEC Acting Chair Mark Uyeda announced the creation of a new Crypto Task Force on January 21, 2024. Commissioner Hester Peirce, who heads the SEC's newly-created Crypto Task Force, issued a statement laying out the task force's top ten priorities. These priorities include, among others, examining the security status of crypto assets, providing temporary prospective and retroactive relief for token offerings, charting a path for registered offerings, and establishing a regulatory framework for custody solutions, crypto-lending, and staking.

Second, on February 27, 2025, after *Albouni* and *Carnahan* were filed, the SEC issued a statement that has seemingly provided a safe harbor for the promoter defendants in *Albouni* and, potentially, the *Carnahan* defendants. The Division of Corporation Finance stated that the meme coins described in the statement "do not involve the offer and sale of securities under the federal securities laws." The Division labeled these types of meme coins as a "collectible" rather than a "security" because they have no use or functionality, they are purchased for entertainment or social interaction, and their value is driven primarily by market demand and speculation. In its statement, the Division explicitly applied the *Howey* test to meme coins to demonstrate why meme coins are not securities. The Division explained that (1) "meme coin purchasers are not making an investment in an enterprise," (2) "any expectation of profits that meme coin purchasers have is not derived from the efforts of others" because "the value of meme coins is derived from speculative trading and the collective sentiment of the market, like a collectible," and (3) "promoters of meme coins are not undertaking (or indicating an intention to undertake) managerial and entrepreneurial efforts from which purchasers could reasonably expect profit."

However, the Division left open the potential for certain memes to be considered a security. This highlights the need for case-by-case analysis of whether a specific meme coin constitutes a security based on the characteristics of the meme coin and the manner in which it is offered and sold. The Division's statement did not specify how many of the "shared characteristics" must be met to qualify

or under which situations a meme coin with some or all of these would not qualify as a non-security meme coin. How this affects non-promoter defendants, like in *Carnahan*, remains unclear.

Third, the SEC recently suggested it may change or scrap the proposed Biden-era regulation that would have required investment advisors to keep custody of cryptocurrencies and other assets to meet stricter standards. Registered investment advisers are subject to a custody rule, which requires them to maintain those assets with a qualified custodian, such as a bank or broker-dealer. The proposed rule at issue would extend those standards to the crypto industry. Additionally, Acting Chair Uyeda recently suggested that the SEC's proposed "Regulation ATS" would be re-reviewed to avoid implicating decentralized crypto exchanges. These regulatory re-evaluations and priority re-alignments have come on the heels of the SEC's voluntary dismissal of its enforcement action against Coinbase. In a statement regarding the dismissal, Acting Chair Uyeda noted that the Trump Administration's SEC will "develop crypto policy in a more transparent manner." We expect that the SEC, as currently constituted, will dismiss additional enforcement actions, pursue fewer enforcement actions, and continue to issue a wide range of policy changes.

We intend to publish additional analysis and commentary in the coming months as this topic continues to evolve.

William Walsh is a Partner of Benesch's Litigation Practice Group. He can be reached at wwalsh@beneschlaw.com or 312.517.9543.

Patrick Beisell is a Senior Managing Associate in Benesch's Litigation Practice Group. He can be reached at pbeisell@beneschlaw.com or 312.624.6338.

Ruddy Abam is a Managing Associate in Benesch's Litigation Practice Group. She can be reached at rabam@beneschlaw.com or 312.624.6362.

Juan Mata is an Associate in Benesch's Litigation Practice Group. He can be reached at jmata@beneschlaw.com or 312.212.4944.

Amakie Amattey is an Associate in Benesch's Litigation Practice Group. She can be reached at aamattey@beneschlaw.com or 312.506.3444.