

Practice Update

SEC Sues Influencer and Reality TV Star Kim Kardashian for Touting Crypto

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By Douglas B. Paul

This week's SEC settlement with influencer and reality TV star Kim Kardashian for promoting EthereumMax's EMAX tokens should come as no surprise to anyone (*See* "[SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security](#)"). Kardashian's post not only promoted EMAX tokens, but contained a link to the EthereumMax website, which provided instructions for potential investors to purchase EMAX tokens. This was done without disclosing that she was paid \$250,000 to publish the post on her Instagram account. Kardashian agreed to pay \$1.26 million, including \$260,000 in disgorgement of the promotional payment plus prejudgment interest, and a \$1 million penalty. Kardashian also agreed to not promote any crypto asset securities for three years.

Nearly five years ago, the SEC warned celebrities that "any celebrity... who promotes a virtual token or coin that is a security must disclose the nature, scope, and amount of compensation received in exchange for the promotion" and that the failure to do so "is a violation of the anti-touting provisions of the federal securities laws" and may also violate the anti-fraud provisions of the federal securities laws (*See* "[SEC Staff Statement Urging Caution Around Celebrity Backed ICOs](#)"). What is a surprise is that celebrities still continue to promote crypto products without disclosing that they are being compensated

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to do so. Another surprise is that SEC Chair Gensler felt it necessary to post a [video](#) warning investors not to make investment decisions based solely on the recommendations of a celebrity or influencer.

The 2017 statement sounded a similar warning to investors when the Division of Enforcement and the Division of Examinations (then called the Office of Compliance Inspections and Examinations) encouraged “investors to be wary of investment opportunities that sound too good to be true” and “encourage[d] investors to research potential investments rather than rely on paid endorsements from artists, sports figures, or other icons.”

The 2017 statement further noted that the endorsements by celebrities and others using social media networks to encourage the public to purchase stocks and other investments “may be unlawful if they do not disclose the nature, source, and amount of any compensation paid, directly or indirectly, by the company in exchange for the endorsement.”

Kardashian is not the first celebrity to be charged by the SEC for their failure to disclose that they were compensated for promoting crypto-related products. Just a year after issuing its warning, the SEC brought its first action involving celebrities for failure to disclose payments to a celebrity for touting an Initial Coin Offering (ICO).

On November 29, 2018, the SEC announced settled charges against professional boxer Floyd Mayweather Jr. and music producer Khaled Khaled (DJ Khaled) for failing to disclose payments they received for promoting investments in ICOs (*See “[Two Celebrities Charged With Unlawfully Touting Coin Offerings](#)”*). The SEC found that Mayweather failed to disclose promotional payments from three ICO issuers, including \$100,000 from Centra Tech Inc. and that Khaled failed to disclose a \$50,000 payment from Centra Tech, which he touted on his social media accounts as a “Game changer.” Mayweather’s promotions included a message to his

Twitter followers that Centra's ICO "starts in a few hours. Get yours before they sell out, I got mine..."

On February 27, 2020, the SEC settled charges against actor Steven Seagal for failing to disclose payments he received for promoting an ICO conducted by Bitcoin2Gen (B2G) (See "Actor Steven Seagal Charged With Unlawfully Touting Digital Asset Offering"). The SEC's order found that Seagal failed to disclose he was promised \$250,000 in cash and \$750,000 worth of B2G tokens in exchange for his promotions, which included posts on his public social media accounts encouraging the public not to "miss out" on Bitcoin2Gen's ICO and a press release titled "Zen Master Steven Seagal Has Become the Brand Ambassador of Bitcoin2Gen." This matter took some interesting twists and turns as Seagal failed to pay the full penalty imposed on him for touting Bitcoin2Gen. As a result, the SEC filed a Motion to Enforce Judgment. The motion was granted, Seagal defaulted, and the SEC garnished certain of his assets.

What is surprising about the Kardashian action is, given the SEC's warning (as well as its much-publicized focus on crypto), the Mayweather, DJ Khaled, and Seagal actions for touting and non-disclosure of compensation, that, in June 2021, Kardashian touted on social media a crypto asset security that was being offered and sold without Kardashian disclosing that she was being compensated for giving such security publicity by the entity offering and selling the security.

The question remains whether we will see a host of actions by the SEC against celebrities and social media influencers who promote crypto-related products as well as other securities. Bringing these cases enables the SEC to continue to focus on protecting investors, ensuring compliance with the securities laws, and re-enforcing its view that the vast majority of crypto products are securities.

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