

SEC Settles with Steven Seagal for Failure to Disclose Payments for Promoting Cryptocurrency

The Bottom Line

- *When agreeing to promote or endorse a cryptocurrency, celebrities must think outside of the FTC box because the SEC's disclosure rules go above and beyond the FTC's requirements. Even if a celebrity is already described as a "brand ambassador," the SEC requires disclosure of the amount of compensation paid. The SEC's action against another celebrity, once again, reflects its concern around the increased popularity of cryptocurrency, the prevalence of fraud and the importance of endorsement disclosures.*

Hollywood actor and producer Steven Seagal settled allegations brought by the U.S. Securities and Exchange Commission (SEC) that he failed to disclose the compensation he received for promoting investments in an initial coin offering (ICO) conducted by Bitcoin2Gen (B2G).

Notably, this is not the first time the SEC has brought an action regarding false and misleading celebrity cryptocurrency endorsements. Music producer and rapper DJ Khaled and boxer Floyd Mayweather Jr. previously settled SEC allegations that they, too, failed to disclose payments they received for promoting ICO investments. See our previous alert, "Celebrity Endorsers of Initial Coin Offerings Settle with Securities and Exchange Commission."

As these actions make clear, celebrities and other influencers may be subject to action by the SEC, as well as the Federal Trade Commission (FTC), if they use their social media influence to tout securities without appropriately disclosing their compensation.

Background

An ICO is a fundraising mechanism for cryptocurrency. New coins solicit "investments" in the form of established cryptocurrency and, in exchange, the new coins gain exposure and generate value. The SEC has historically indicated that not all cryptocurrency qualify as securities subject to its regulation.

However, in November 2017, the SEC acknowledged the increasing visibility of celebrities promoting investments in the cryptocurrency space and issued a "Statement Urging Caution Around Celebrity Backed ICOs." At the same time, the SEC emphasized the importance of disclosure requirements for celebrities when accepting compensation in exchange for the promotion of a security or security offering, and issued an "Investor Alert" with respect to celebrity endorsements. Specifically, the SEC said, celebrity endorsements of a security "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."

SEC's Charges Against Seagal

The SEC alleged that, from approximately February 12, 2018 through March 6, 2018, Seagal used his social media accounts to promote B2G's ICO, a crowdfunding strategy in which B2G offered and sold digital tokens that, according to the SEC, were securities pursuant to Section 2(a)(1) of the Securities Act of 1933. The SEC found that Seagal was promised \$250,000 in cash and \$750,000 worth of cryptocurrency from B2G in exchange for endorsing and promoting the offering.

During this time period, Seagal's Facebook and Twitter accounts posted several times about the coin offering, in particular encouraging the public not to "miss out" on B2G's ICO, calling Seagal the "worldwide ambassador" for the company, announcing the B2G listing to Seagal's followers (which on Facebook, exceeded 6.7 million consumers) and asking them to "stay tuned for more information" on the offering.

The SEC concluded that Seagal did not disclose in his social media posts that he was paid or the amount of compensation he received, or was to receive, from B2G for making the promotions. According to the SEC, Seagal violated Section 17(b) of the Securities Act, which makes it unlawful for any person to promote a security without fully disclosing the receipt and amount of compensation they will receive in exchange for promoting the security.

Seagal agreed to settle the SEC's charges by paying \$157,000 in disgorgement (the portion of the promised fee that he had actually been paid), plus prejudgment interest, and a \$157,000 civil penalty. In addition, Seagal agreed not to promote any securities, digital or otherwise, for three years.

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