

SEC Penalizes Kim Kardashian Over \$1 Million for Paid Crypto Post

The Bottom Line

- The SEC has issued repeated warnings that it will aggressively enforce Section 17(b) of the Securities Act against influencers who fail to disclose the nature, scope and amount of compensation received in exchange for their sponsored posts.
- This case serves as a reminder that influencers may be required to comply with any industry-specific regulations that may dictate additional disclosure requirements on their social media posts.

The Securities and Exchange Commission (SEC) settled with Kim Kardashian over allegations she violated Section 17(b) of the Securities Act (the “Act”) by publishing an Instagram post promoting the crypto-currency, EthereumMax token (EMAX), to her 250 million followers, without adequate disclosures. Kardashian received approximately \$250,000 for this post.

Under Section 17(b), it is unlawful for any person to publish or promote “any communication which describes a [purchasable] security for a consideration...without fully disclosing the receipt...of such consideration and the amount thereof.” Section 17(b)’s mandate to include the amount paid for a securities post goes over and above the more widely known Federal Trade Commission (FTC) requirement that all paid social posts be clearly and conspicuously disclosed as advertising.

On June 31, 2021, Kardashian posted the following alongside a link to the EMAX website, where instructions were provided for potential investors to purchase EMAX tokens:

“Are you guys into crypto???? This is not financial advice but sharing what my friends just told me about the Ethereum Max Token. A few minutes ago Ethereum Max burned 400 trillion tokens – literally 50% of their admin wallet giving back to the entire E-Max community.”

Kardashian’s post was marked with “#AD” at the bottom; however the SEC found that this hashtag was an insufficient

disclosure of the receipt and the amount of payment as required under the Act. The SEC noted that Kardashian should have known of the Act's obligations, as the SEC issued a Report of Investigation on digital tokens and a 2018 reminder that "[a]ny celebrity or other individual 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."

The Settlement Between Kardashian and the SEC

Under a settlement reached between Kardashian and the SEC, Kardashian is prohibited from receiving payment for promoting crypto products for three years, must return the \$250,000 EMAX paid her and must pay the SEC \$1 million in civil penalties.

Kim Kardashian Faces Other Charges in Federal Court Actions

As discussed in [a prior alert](#), the SEC action is not the only claim brought against Kardashian with respect to the EMAX post. In January, a complaint was filed in the U.S. District Court for the Central District of California alleging that Kardashian, along with other defendants, violated California consumer protection laws. Kardashian and EMAX's creators are alleged to have made false and misleading statements to investors about the ability to make money with EMAX. Kardashian is also accused of failing to appropriately disclose her paid relationship with EMAX, as the promotion disclosure was "tucked in the far bottom right of the post."

For More Information

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