

## Keeping Up With the SEC: the Securities and Exchange Commission’s Hard-Fought Battle Against Celebrity Cryptocurrency Endorsements

As social media has skyrocketed, so too has the tension between celebrity endorsements and SEC rules surrounding cryptocurrency. On October 3, 2022, the Securities and Exchange Commission (SEC) agreed to settle with Kim Kardashian for violating Section 17b of the Securities Act of 1933.<sup>1</sup> Kardashian had posted on social media information regarding a crypto asset security sold by EthereumMax, but had not disclosed the payment she received for the promotion, as statutorily required by the SEC.<sup>2</sup> Although Kardashian had included the hashtag, “#ad,” as a signal to her followers, without disclosure of the exact amount made from the post and who had paid her, she was liable for a fine of \$1.26 million dollars.<sup>3</sup> The payment may not be a “sting financially” for Kardashian, but it represents a small win for the SEC as part of a long string of cases against celebrity violations of Rule 17b.<sup>4</sup>

Indeed, this slap on the wrist for Kardashian, however minor, is far from the SEC’s first fine for celebrities failing to follow Rule 17b. For example, in 2018, the SEC settled charges against professional boxer Floyd Mayweather Jr. and music producer DJ Khaled, after they promoted their investments in Centra’s Initial Coin Offerings, without disclosing their payments from the company for the endorsements.<sup>5</sup> From TV personality Paris Hilton to rapper 50 Cent, celebrities have touted their support for cryptocurrency offerings on various social media platforms, raising billions in capital.<sup>6</sup>

Critics of the SEC’s rulings argue that the fines like Kardashian’s are mere “drops in a bucket” for celebrities, and are just as easy to pay off as it is to violate the rules.<sup>7</sup> However, the SEC has characterized the Kardashian case as a “bigger win” of a public service announcement to think twice about taking investment advice from a celebrity on social media.<sup>8</sup> Whether the SEC’s characterization is correct remains yet to be seen, as celebrities will continue to weigh the costs of a Rule 17b violation with the benefits of promoting cryptocurrencies under the guise of a simple hashtag, “#ad.”

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<sup>1</sup> *SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security*, SEC (Oct. 3, 2022), <https://www.sec.gov/news/press-release/2022-183>.

<sup>2</sup> *Id.*

<sup>3</sup> *SEC Charges Kim Kardashian with Violating Anti-Touting Law, Signals to Celebrities that Payments for Endorsements Must Be Disclosed*, NAT’L L. REV., Oct. 18, 2022, <https://www.natlawreview.com/article/sec-charges-kim-kardashian-violating-anti-touting-law-signals-to-celebrities>.

<sup>4</sup> Michelle Singletary, *Kim Kardashian’s \$1.26 Million SEC Fine is Pocket Change for the Star*, WASHINGTON POST, Oct. 5, 2022, <https://www.washingtonpost.com/business/2022/10/05/sec-kim-kardashian-crypto-settlement/>.

<sup>5</sup> Nicolas Morgan, et. al., *Broader Implications of SEC Charges Against Celebrities for Unlawfully Touting ICOs*, Paul Hastings, Dec. 13, 2018, <https://www.paulhastings.com/insights/client-alerts/broader-implications-of-sec-charges-against-celebrities-for-unlawfully-touting-icos>.

<sup>6</sup> *Id.*

<sup>7</sup> See Singletary, *supra* note 4.

<sup>8</sup> Benjamin Pimentel, *Gary Gensler is Keeping Up With Kim Kardashian*, Protocol, Oct. 4, 2022, <https://www.protocol.com/newsletters/protocol-fintech/kim-kardashian-emax-crypto-sec>.