

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11226 / August 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21585

<p>In the Matter of</p> <p style="text-align:center">Impact Theory, LLC</p> <p>Respondent.</p>

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Impact Theory, LLC (“Impact Theory” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. From October 13, 2021 to December 6, 2021, Impact Theory, a media and entertainment company, offered and sold crypto asset securities known as Founder’s Keys (“KeyNFTs”) in the form of purported non-fungible tokens (“NFTs”), raising approximately \$29.9 million worth of ether (“ETH”) from at least hundreds of investors, including investors across the United States. In advance of the offering, Impact Theory publicly stated that it would deliver “tremendous value” to KeyNFT purchasers. Impact Theory also stated that it would use the offering proceeds for “development,” “bringing on more team,” and “creating more projects.” Consistent with the foregoing, Impact Theory collected the proceeds from the KeyNFT sales in a single crypto asset wallet and used a portion of those proceeds to pay certain vendors providing services related to Impact Theory’s business.

2. Based on the facts and circumstances set forth below, KeyNFTs were offered and sold as investment contracts, and therefore securities, pursuant to the test laid out in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) and its progeny, including the cases referenced by the Commission in its *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 81207) (July 25, 2017). Purchasers in the KeyNFT offering had a reasonable expectation of obtaining a future profit based on Impact Theory’s managerial and entrepreneurial efforts. Impact Theory violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration.

Respondent

3. Impact Theory is a Delaware limited liability company with its principal place of business in Los Angeles, California. Neither Impact Theory nor its securities have ever been registered with the Commission in any capacity.

Facts

4. From October 13, 2021 to December 6, 2021, Impact Theory offered and sold crypto asset securities known as Founder’s Keys to the public in the form of purported NFTs (the “Offering”). The KeyNFTs were offered and sold at three tiers (which Impact Theory called “Legendary,” “Heroic,” and “Relentless”) and priced as follows: (i) 1.5 to 3 ETH per token for the Legendary tier; (ii) 0.75 to 1.5 ETH per token for the Heroic tier; and (iii) 0.05 to 0.1 ETH per token for the Relentless tier. Each KeyNFT contains a digital graphic that features a combination of four (out of 50 possible) symbols, as shown in the representative examples below.



Legendary Tier 1



Heroic Tier 2



Relentless Tier 3

5. In advance of the Offering, Impact Theory hosted several live speaking events on Discord (a voice, video, and text communication service), posted recordings of those events on the company's Discord channels for the public to view, and shared information on Impact Theory's websites and social media channels. Impact Theory also posted recordings of additional speaking events on YouTube and participated in public interviews on news and social media promoting the KeyNFTs.

6. Through those events and public statements, Impact Theory invited potential investors to view the purchase of a KeyNFT as an investment into the business, stating that investors would profit from their purchases if Impact Theory was successful in its efforts. Among other things, Impact Theory emphasized that the company was "trying to build the next Disney," and, if successful, it would deliver "tremendous value" to KeyNFT purchasers, and that the future value of the KeyNFTs would be significantly greater than their purchase price. For example, Impact Theory stated:

A. "If you're paying 1.5 [ETH], you're going to get some massive amount more than that. So no one is going to walk away saying, 'Oh man, I don't think I got value here.' I'm freakishly bullish on that. I will do whatever it takes to make sure that that is true."

B. "The project itself is called the Impact Theory Founder's Key and we like to say that it unlocks the future of everything that we're doing as a company. . . . As I really looked at the [NFT] technology, I realized what it allows you to do is reward your community. And for somebody like me who's trying to build the next Disney, what you need is a thriving community. And so we saw this as a tremendous way for our community to capture tremendous value from the things that we're building."

C. "Now as we're building out this IP, imagine that you could've gotten in on Disney when they were doing Steamboat Willie, and that's how we think of the Legendary tier. That's how we think of this whole first drop quite frankly."

7. Impact Theory also underscored that this purported value would be derived from the company's efforts, and that Impact Theory would use the proceeds from the Offering for "development," "bringing on more team," and "creating more projects." For example, Impact Theory stated:

A. "But yeah, I will make sure that we do something that by any reasonable standard, people got a crushing, hilarious amount of value."

B. "The key takeaway that I want you to have is that there is a lot of cool things coming in the next 18 to 24 months. And that is ultimately a tiny fraction of the things that will be coming in the next five years. The reason that we're only selling on the next 18-to-24 month hype is I want you guys to be able to capture 90 percent of the economic value of all the big things that we will do in the coming years beyond that. And the only way to do that is to only sell and set the price based on the things that we're doing in the short term, and that will leave the upside to be largely captured by you guys."

C. “We’re going to be investing that money into development, into bringing on more team, creating more projects, making sure that we’re delivering just an obscene amount of value. Until people are giggling thinking that they can’t believe that they paid – you know – whichever tier they come in on and are getting all this value – until that’s the sentiment – we will just keep stocking it with value.”

8. In addition, Impact Theory publicly shared its view that the fortunes of KeyNFT purchasers, Impact Theory, and Impact Theory’s founders were all linked together. For example, Impact Theory stated:

A. “Our goal is to make sure that as Impact Theory is enriched, as [its founders] are enriched, as our team here at Impact Theory is enriched, that you guys also are enriched. And so that is why we are so aggressively behind NFTs.”

B. “NFTs are the mechanism by which communities will be able to capture economic value from the growth of the company that they support.”

9. Given these statements, numerous prospective and actual purchasers of KeyNFTs stated on Impact Theory’s Discord channels that they viewed KeyNFTs as investments into the company and understood Impact Theory’s statements to mean that the company’s development of its projects could translate to appreciation of the KeyNFTs’ value over time. For example, prospective and actual purchasers stated:

A. “This is like being offered to invest in a booming company when they’re Series A.”

B. “Its like investing 10k with a 300k upside, for a small risk.”

C. “Everyone here is an early adopter! Buying a founders key is Like investing in Disney, Call of Duty, and YouTube all at once.”

D. “[T]here is at this point in time no investment that has such an amazing Risk to Reward Ratio. You are not investing in some key or PNG, you are investing in [the Impact Theory] team and regarding this is an opportunity that has never been there its like handing 20\$ to Mark Zuckerberg in his dorm room.”

10. In total, Impact Theory sold 13,921 KeyNFTs to at least hundreds of investors, including investors in multiple states. In so doing, Impact Theory raised \$29,896,237.16 worth of ETH, calculated based on the average of the open and close price of ETH in U.S. dollars on the day of each KeyNFT sale. Impact Theory collected the proceeds from the KeyNFT sales in a single crypto asset wallet and used a portion of those proceeds to pay certain vendors providing services related to Impact Theory’s business.

11. After the Offering commenced on October 13, 2021, the KeyNFTs also began trading on various secondary market crypto asset trading platforms. Impact Theory stated on its websites and social media channels that KeyNFTs could be purchased and sold on two such secondary market platforms. Impact Theory programmed the smart contract for the KeyNFTs so that the company received a 10% “royalty” on each secondary market sale. Secondary market sales of KeyNFTs generated approximately \$978,000 worth of ETH in royalties for Impact Theory between October 13, 2021 and July 20, 2023.

Impact Theory’s Offer and Sale of Securities Was Not Registered

12. Impact Theory’s offer and sale of KeyNFTs was not registered with the Commission, nor did Impact Theory’s offer and sale of KeyNFTs satisfy any exemption from registration.

Violations

13. As a result of the conduct described above, Impact Theory violated Section 5(a) of the Securities Act, which states that “[u]nless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.”

14. Also as a result of the conduct described above, Impact Theory violated Section 5(c) of the Securities Act, which states in relevant part that “[i]t shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security.”

Disgorgement and Civil Penalties

15. The disgorgement and prejudgment interest ordered in Section IV, paragraph D is consistent with equitable principles, does not exceed Respondent’s net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV, paragraph D in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

Impact Theory's Remedial Efforts

16. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent. Specifically, Impact Theory instituted repurchase programs in December 2021 and August 2022, whereby the company offered to buy back KeyNFTs purchased in the Offering or on the secondary market. In total, Impact Theory repurchased 2,936 KeyNFTs, returning approximately \$7.7 million worth of ETH to investors.

Undertakings

17. Respondent has undertaken to:
- A. Destroy all KeyNFTs in its possession or control within 10 days of the date of this Order.
 - B. Publish notice of this Order on Impact Theory's websites and social media channels, in a form not unacceptable to the Commission staff, within 10 days of the date of the Order.
 - C. Revise the smart contract(s) or any other programming code(s) or computer protocol(s) underlying the KeyNFTs to eliminate any royalty that Impact Theory might otherwise receive from any future secondary market transactions in KeyNFTs, within 10 days of the date of this Order.
 - D. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Judith A. Weinstock, Assistant Regional Director, Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.
 - E. Assist the Commission staff in the administration of a distribution plan, including any and all efforts to distribute to affected investors the monetary relief described in Section IV, paragraph D below, including, without limitation, promptly publishing on Impact Theory's websites and social media channels, upon request by the Commission staff, notice of a distribution and/or claims process, in a form not unacceptable to the Commission staff.
 - F. Respondent may apply to the Commission staff for an extension of the deadlines set forth above before their expiration and, upon a showing of good cause by Respondent, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Impact Theory's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Impact Theory cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent shall comply with the undertakings enumerated in paragraph 17 above.

C. Respondent shall, within 15 days of the entry of this Order, pay disgorgement of \$5,120,718.27, prejudgment interest of \$483,195.90, and a civil money penalty of \$500,000 to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Impact Theory as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon L. Pollock, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and civil money penalties referenced in paragraph D above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary