

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11116 / October 3, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21197

In the Matter of

**KIMBERLY
KARDASHIAN,**

Respondent.

**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 Kimberly Kardashian (“Kardashian” 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 her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, 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. On June 13, 2021, Kardashian—a well-known media personality and businesswoman—touted on social media a crypto asset security that was being offered and sold. Kardashian did not disclose that she was being compensated for giving such security publicity by the entity offering and selling the security. Kardashian’s failure to disclose this compensation 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 such consideration from an issuer.

Respondent

2. **Kardashian**, age 41, is a resident of Hidden Hills, California.

Facts

3. Kardashian promoted a crypto asset security on her Instagram account in exchange for financial payment from the issuer. Kardashian received approximately \$250,000 for this promotion. At the time of her promotion, Kardashian had approximately 225 million Instagram followers.

4. Specifically, Kardashian promoted a securities offering conducted by EthereumMax, an online company with a public website (“EthereumMax” or the “Company”), in which it offered and sold digital “Emax tokens” (“EMAX”) to the general public. The EMAX tokens promoted by Kardashian were offered and sold as investment contracts and therefore securities pursuant to Section 2(a)(1) of the Securities Act.

5. Starting on approximately May 14, 2021, EthereumMax made the EMAX tokens available for public trading on a “decentralized” crypto asset trading platform.

6. Based on EthereumMax’s marketing materials, as well as public statements by EthereumMax affiliates, the EthereumMax website, and EthereumMax social media handles, purchasers of EMAX tokens would have had a reasonable expectation of profits from their investment in the tokens. EthereumMax frequently touted the token’s rise in price on its social media pages as it offered and sold EMAX tokens.

7. Based on EthereumMax’s public statements, purchasers of the EMAX tokens would have had a reasonable expectation that EthereumMax and its agents would expend significant efforts to develop the EthereumMax platform, which would increase the value of their EMAX tokens, resulting in investor profit. EthereumMax’s marketing materials highlighted that the Company and its agents would ensure a secondary trading market for EMAX tokens by creating a trading market for EMAX tokens. EthereumMax’s marketing materials also emphasized the purported expertise of the Company’s management.

8. EthereumMax’s marketing materials, moreover, contained numerous direct statements that the EMAX tokens would rise in value as a result of the efforts of the Company and its agents, including by touting future deals and relationships that would “drive value.”

EthereumMax also promised to develop certain “token enhancements,” including “additional tokenomics to enhance economic value,” future rewards and staking programs, national sporting and event partnerships, and a general expansion of the EMAX token ecosystem.

9. Kardashian promoted EthereumMax’s offering on social media by posting the following to her Instagram account on June 13, 2021, along with an introductory video stating she had a “big announcement.”



The post contained a link to the EthereumMax website, where instructions were provided for potential investors to purchase EMAX tokens. Kardashian also included #AD at the bottom of the post.

10. EthereumMax, through an intermediary, paid Kardashian \$250,000 for this promotion. Kardashian did not disclose that she had been paid by EthereumMax or the amount of compensation she received from EthereumMax for making this post.

11. Kardashian’s crypto asset security promotion occurred after the Commission warned in its July 25, 2017, DAO Report of Investigation that digital tokens or coins offered and sold may be securities, and those who offer and sell securities in the United States must comply with the federal securities laws.² The promotion also occurred nearly four years after the Commission’s Division of Enforcement and Office of Compliance Inspections and Examinations issued a statement reminding market participants that “[a]ny celebrity or other individual who

² 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).

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. A failure to disclose this information is a violation of the anti-touting provisions of the federal securities laws.”³

Kardashian Violated Section 17(b) of the Securities Act

12. Section 17(b) of the Securities Act makes it unlawful for any person to:
- publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

Kardashian violated Section 17(b) of the Securities Act by touting the EMAX token sale on her social media account without disclosing that she received compensation from the issuer for doing so, and the amount of the consideration.

Disgorgement and Civil Penalties

13. The disgorgement and prejudgment interest referenced in paragraph IV(C) is consistent with equitable principles and does not exceed Respondent’s net profits from her violations and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to paragraph IV(C) in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a 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 U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Respondent’s Cooperation

14. In determining to accept the Offer, the Commission considered cooperation Kardashian afforded the Commission staff.

Undertakings

15. Respondent has undertaken to:
- a. for a period of three (3) years from the date of this Order, forgo receiving or agreeing to receive any form of compensation or consideration, directly or indirectly, from any issuer, underwriter, or dealer, for directly or indirectly

³ See SEC Staff Statement Urging Caution Around Celebrity Backed ICOs (Nov. 1, 2017), available at <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos>.

publishing, giving publicity to, or circulating any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a crypto asset security for sale, describes such crypto asset security; and

b. continue to cooperate with the Commission's investigation in this matter.

16. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Securities Act.

B. Respondent shall comply with the undertaking enumerated in Section III, paragraph 15(a) above.

C. Respondent shall, within 20 days of the entry of this Order, pay disgorgement of \$250,000, prejudgment interest of \$10,415.35, and a civil money penalty in the amount of \$1,000,000 to the Securities and Exchange Commission. The Commission may distribute the funds paid pursuant to this paragraph if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

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 Kimberly Kardashian 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 Carolyn Welshhans, U.S. Securities and Exchange Commission, Division of Enforcement, 100 F Street., NE, Washington DC, 20549.

E. 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, she shall not argue that she is entitled to, nor shall she 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 she 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary