

March Madness: “The Truth” Fined by the SEC for Not Shooting Straight in Crypto Promotion

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NBA Hall of Famer Paul Pierce, known by basketball fans as “The Truth,” has run afoul of the SEC. No, not that SEC—Pierce played college basketball at Kansas in the Big 12. No, this would be the U.S. Securities and Exchange Commission, which [on February 17](#) fined the former Boston Celtic over \$1.4 million for making false and misleading statements about EMAX tokens and for failing to disclose that he was paid by the token’s issuer, EthereumMax, to promote the tokens.

In May 2021, Pierce began touting the EMAX token to his Twitter followers, claiming to own over \$2.5 million worth of the token and to have made more money trading EMAX in one month than he made in an entire year as an analyst with ESPN. According to the SEC’s [Order](#), however, none of this was true. ESPN paid Pierce over \$1 million in the prior year, and Pierce owned at the time approximately \$46,000 worth of EMAX tokens, far less than the \$2.5 million he claimed.

The Order goes on to state that instead of holding out for EMAX to hit \$1 as he was telling his followers, which would have represented significant gains for a token trading at a fraction of a cent, Pierce was steadily selling his EMAX at a lesser valuation. Further drawing the SEC’s ire, Pierce did not disclose that EthereumMax paid him approximately \$244,000 worth of EMAX over a one-month period to promote EMAX.

The SEC concluded The Truth failed to tell the truth and violated Section 17(a)(2) of the Securities Act of 1933 (the “Act,”) which prohibits obtaining money or property by means of an untrue statement of a material fact or any omission of material facts necessary to make statements made not misleading in the offer or sale of securities. He also allegedly violated Section 17(b) of the Act which 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.

Pierce allegedly violated Section 17(b) by touting the EMAX token on his social media account without disclosing that he received compensation from EthereumMax.

As part of his settlement with the SEC, Pierce has agreed to not to receive compensation for even describing, much less promoting, anything the SEC classifies as a crypto asset security for the next three years. In light of the SEC's recent enforcement surge—in which the agency has argued that [FTT's exchange token](#), [Genesis Global Capital's loan products](#), [Kraken's staking service](#), and [Terraform's LUNA token and related UST stablecoin](#) are all unregistered securities—Pierce may just want to avoid any involvement in cryptocurrencies altogether.

Pierce's luck may have run out, and his EMAX woes may not even be over. In December, a federal judge dismissed a putative class action against EthereumMax, Pierce, and numerous other celebrities relating to the promotion of EMAX. The plaintiffs, however, took the judge up on his offer to amend their complaint, and the defendants' motion to dismiss the amended complaint is due to be heard in May.

Following on the heels of the SEC's settlement with Kim Kardashian related to the EMAX token, the FTC's crackdown on social media influencers, recent civil litigation against Tom Brady and other alleged promoters of FTX, and the U.S. Congress's investigation of a member's promotion of a politically themed cryptocurrency—read more in [our December blog post](#)—Pierce's settlement makes clear that celebrities who use their status to promote cryptocurrencies do so at their own risk if they aren't fully transparent about any stake they may have in the asset or any fee they may have received for the promotion.

Celebrities should also be mindful of the impact that their promotion of digital assets may have on organizations with which they are affiliated. Under Rule 506(d) of Regulation D, any individual who has been subject to certain civil or criminal penalties relating to violation of securities laws, including an SEC consent order related to a "scienter-based anti-fraud provision of the federal securities laws" within the last five years, is a "bad actor." An organization with a "bad actor" as a director, executive officer, 20 percent beneficial owner, or promoter cannot rely on the Rule 506(b) and 506(c) safe harbors from registration of securities under the Securities Act of 1933, curtailing its ability to raise funds via securities offerings.

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