

SEC KO's Mayweather

DECEMBER 4, 2018

On November 29, 2018, the Securities and Exchange Commission (SEC) brought and settled charges against, and imposed fines on, professional boxer Floyd Mayweather Jr. (Mayweather) and music producer Khaled Khaled, known as DJ Khaled (Khaled), for failing to disclose substantial payments they received for promoting investments in Initial Coin Offerings (ICOs). See *In the Matter of Floyd Mayweather Jr.*, Securities Act Release No. 10578 (November 29, 2018) (Mayweather Order) and *In the Matter of Khaled Khaled*, Securities Act Release No. 10579 (November 29, 2018) (Khaled Order). See also SEC Press Release No. 2018-263 (November 29, 2018).

By way of background, in a November 1, 2017 “Statement Urging Caution Around Celebrity ICOs” (ICO Statement), the SEC’s Division of Enforcement (DOE) and its Office of Compliance Inspections and Examinations (OCIE) cautioned ICO investors that although celebrity endorsements “may appear unbiased,” they could involve undisclosed paid promotions. In the Statement, DOE and OCIE encouraged investors “to research potential investments rather than rely on paid endorsements from artists, sports figures, or other icons” and warned that “[i]nvestment decisions should not be based solely on an endorsement by a promoter or other individual. Celebrities who endorse an investment often do not have sufficient expertise to ensure that the investment is appropriate and in compliance with federal securities laws. Conduct research before making investments, including in ICOs. If you are relying on a particular endorsement or recommendation, learn more regarding the relationship between the promoter and the company and consider whether the recommendation is truly independent or a paid promotion.”

In addition to cautioning investors, the ICO Statement warned celebrities who wish to promote ICOs that their endorsements may be unlawful “if they do not disclose the nature, source, and amount of any compensation paid, directly or indirectly, by the company in exchange for the endorsement...Any 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. A failure to disclose this information is a violation of the anti-touting provisions of the federal securities laws. Persons making these endorsements may also be liable for potential violations of the anti-fraud provisions of the federal securities laws, for participating in an unregistered offer and sale of securities, and for acting as unregistered brokers.”

The Mayweather Order

In the Mayweather Order, the SEC found that Mayweather—who has approximately 21 million Instagram followers, 7.8 million Twitter followers, and 13.4 million Facebook followers—promoted three ICOs on his Instagram, Twitter, and Facebook accounts, in exchange for financial payments from each of the ICO issuers, none of which was disclosed to potential investors. In total, Mayweather received approximately \$300,000 for these promotions. According to the Mayweather Order, each of Mayweather’s ICO promotions occurred after the SEC warned in the so-called Dao Report¹ that virtual tokens or coins sold in ICOs may be securities, and those who offer and sell securities in the U.S. must comply with the federal securities laws. However, it also appears that at least some of Mayweather’s promotions occurred prior to the issuance of the Statement.

One of the ICOs promoted by Mayweather was that of Centra Tech, Inc. (Centra), which sought to raise funds through its ICO to complete and operate what it termed the “world’s first Multi-Blockchain Debit Card and Smart and Insured Wallet,” a financial system that would, purportedly, allow holders of various hard-to-spend “cryptocurrencies” to easily convert their assets into legal tender, and spend these “cryptocurrencies” in “real time” using a Visa- or MasterCard-backed “Centra Card.”²

Centra paid Mayweather \$100,000 for posting, or allowing his agents to post:

- a picture of Mayweather, on Mayweather’s Instagram and Facebook accounts, at a shoe store with the caption: “Spending bitcoins ethereum and other types of cryptocurrency in Beverly Hills with my Titanium Centra Card. Join Centra’s ICO on Sept. 19th.”; and
- a picture of Mayweather, on Mayweather’s Twitter account, showing his boxing title belts with the caption: “Centra’s (CTR) ICO starts in a few hours. Get yours before they sell out, I got mine . . .”

In addition, Mayweather recorded a video at a department store in Los Angeles that purported to show him using the so-called “Centra Wallet” application on an iPhone and a “Centra Card” to buy several items at the checkout counter. Centra subsequently posted the video to YouTube under the headline “Centra Floyd Mayweather Jr Spending Bitcoin with Centra Card & Centra Wallet.”

Prior to his involvement in the Centra ICO, Mayweather promoted two other ICOs without disclosing the fact that he was being compensated, or the amount of his compensation, for posts by the ICO issuers. Mayweather promoted one of these ICOs by posting, or allowing his agents to post on his Instagram account, a comment predicting that he was going to make a tremendous amount of money from the ICO and suggested others follow his lead. Mayweather promoted the other ICO by posting or allowing his agents to post on his Twitter account: “You can call me Floyd Crypto Mayweather from now on [. . .] #ICO starts tomorrow! Smart Contracts for sports?!” Mayweather received \$100,000 from each ICO issuer.

According to the Mayweather Order, Mayweather’s activities violated Section 17(b) of the Securities Act of 1933 (Securities 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.”

As part of his settlement with the SEC, Mayweather agreed that he would not, for a period of three years, receive or agree to receive any form of compensation or consideration, directly or indirectly, from any issuer, underwriter, or dealer, for directly or indirectly publishing, giving publicity to, or circulating any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security, digital or otherwise, for sale, describes such security.

Mayweather also agreed to pay disgorgement of \$300,000, prejudgment interest of \$14,775.67, and a civil money penalty in the amount of \$300,000.

The Khaled Order

In the Khaled Order, the SEC found that Khaled—who has approximately 12.4 million Instagram followers and 3.9 million Twitter followers—promoted the Centra ICO by posting to his Instagram and Twitter accounts a picture of himself holding a Centra Card with the caption: “I just received my titanium centra debit card. The Centra Card & Centra Wallet app is the ultimate winner in Cryptocurrency debit cards powered by CTR tokens! Use your bitcoins, ethereum, and more cryptocurrencies in real time across the globe. This is a Game changer here. Get your CTR tokens now!”

Khaled received \$50,000 from Centra for the posting, but did not disclose the fact that Centra so compensated him, or the amount of such compensation, to prospective investors.

According to the Khaled Order, Khaled’s promotion of the Centra ICO, like Mayweather’s, occurred after the publication of the Dao Report. However, all of Khaled’s promotions appear to have occurred prior to the issuance of the Statement.

As was the case in the Mayweather Order, the SEC found that Khaled’s activities violated Section 17(b) of the Securities Act.

As part of his settlement with the SEC, Khaled agreed that he would not, for a period of two years, receive or agree to receive any form of compensation or consideration, directly or indirectly, from any issuer, underwriter, or dealer, for directly or indirectly publishing, giving publicity to, or circulating any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security, digital or otherwise, for sale, describes such security.

Khaled also agreed to pay disgorgement of \$50,000, prejudgment interest of \$2,725.72, and a civil money penalty in the amount of \$100,000.

¹ See *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Securities Exchange Act Release No. 81207 (July 25, 2017).

² In April 2018, the SEC filed a civil action against the founders of Centra alleging that Centra’s ICO was fraudulent. See <https://www.sec.gov/litigation/litreleases/2018/lr24117.htm>. The U.S. Attorney’s Office for the Southern District of New York filed parallel criminal charges.

6 Min Read

Related Locations

Charlotte

Chicago

Dallas

Houston

Los Angeles

New York

San Francisco

Silicon Valley

Washington, DC

Related Topics

Disruptive Technology

Related Capabilities

Litigation/Trials

Related Professionals



Basil Godellas



Kathi Vidal