

Investing Under the Influence? SEC Issues Warning Letters to Celebrities and Social Influencers

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Earlier this month, the Securities and Exchange Commission (SEC) issued a [warning](#) to celebrities and social influencers who use social media to encourage consumers to invest and/or purchase stocks. Recent celebrity endorsements for investment in Initial Coin Offerings (ICOs) were highlighted as examples in the SEC's warning. In the future, if celebrities and social influencers do not disclose the nature, source, and amount of compensation paid, directly or indirectly, by the company in exchange for the endorsement, they may face action for violations of the anti-touting and anti-fraud provisions of the federal securities laws, participating in an unregistered offer and sale of securities, and for acting as unregistered brokers.

This warning follows a wave of enforcement brought by the SEC earlier this year. In April 2017, the SEC filed civil fraud actions against 27 companies for the fraudulent promotion of stocks. These included three public companies, seven stock promotions/communications firms, two company CEOs, six individuals at the firms and nine writers. The actions were filed under Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, as well as Rule 10b-5, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities. In an effort by public companies to generate publicity for their stocks, defendants allegedly hired communications firms that paid writers to publish articles endorsing the company's stocks. In one case, a firm allegedly had its writers sign non-disclosure agreements preventing them from disclosing that they were compensated.

More than 250 articles were published allegedly without proper disclosures regarding compensation received by the companies they were promoting. Seventeen parties have agreed to settlements with penalties ranging from \$2,200 to \$3 million based on the frequency and severity of the actions. One example of the kind of advertising that was targeted is shown here: It is a post on Seeking Alpha, an online forum dedicated to financial discussion, in which the post encourages investment in a particular Alzheimer's therapy. The author's name and picture allegedly were false as was a statement in the article that indicated that it was not sponsored content.

Here's the lesson: The FTC is very much interested in ensuring that advertisers and their agents disclose when they disseminate sponsored content (as we've repeatedly written about [here](#)), but the FTC isn't alone. The SEC clearly shares this concern, as does FINRA, which issued this [notice](#) in April 2017 addressing disclosure obligations relating to native advertising. For more information about how advertising standards apply to influencers and native advertising, check out our recent webinar [here](#).