

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 11157 / February 17, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3 - 21305**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>PAUL ANTHONY PIERCE,</b></p> <p><b>Respondent.</b></p>
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**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 Paul Anthony Pierce (“Pierce” 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 him 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 finds<sup>1</sup> that:

**Summary**

1. Between May 26, 2021, and June 5, 2021, Pierce—a former professional basketball player and sports analyst—touted on Twitter a crypto asset security that was being offered and

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<sup>1</sup> 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.

sold. Pierce, at least negligently, made materially false and misleading misstatements in his Twitter posts promoting the crypto asset security, including statements regarding the amount he had earned from holding the crypto asset security, and statements indicating that he was holding—and intended to increase—his investment in the crypto asset security while contemporaneously selling the securities. Pierce’s conduct violated Section 17(a)(2) of the Securities 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.

2. In addition, Pierce did not disclose that he was being compensated by the entity offering and selling the security for giving the crypto asset security publicity. Pierce’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**

3. **Pierce**, age 45, is a resident of Los Angeles, California.

### **Facts**

4. Pierce promoted a crypto asset security on his Twitter account in exchange for financial payment from the issuer. He received crypto asset securities worth approximately \$244,116 for his promotions. At the time of his promotions, Pierce had in excess of approximately 4 million Twitter followers.

5. Specifically, Pierce 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 Pierce were offered and sold as investment contracts and therefore were securities pursuant to Section 2(a)(1) of the Securities Act.

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

7. 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.

8. 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.

9. 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.

10. On May 24, 2021, EthereumMax and/or its agents began transferring EMAX tokens to Pierce in exchange for his agreement to make social media posts promoting the tokens. Pierce received at least 8 transfers of EMAX tokens through June 18, 2021. Pierce accepted the tokens as compensation for his promotional services in lieu of payments in dollars.

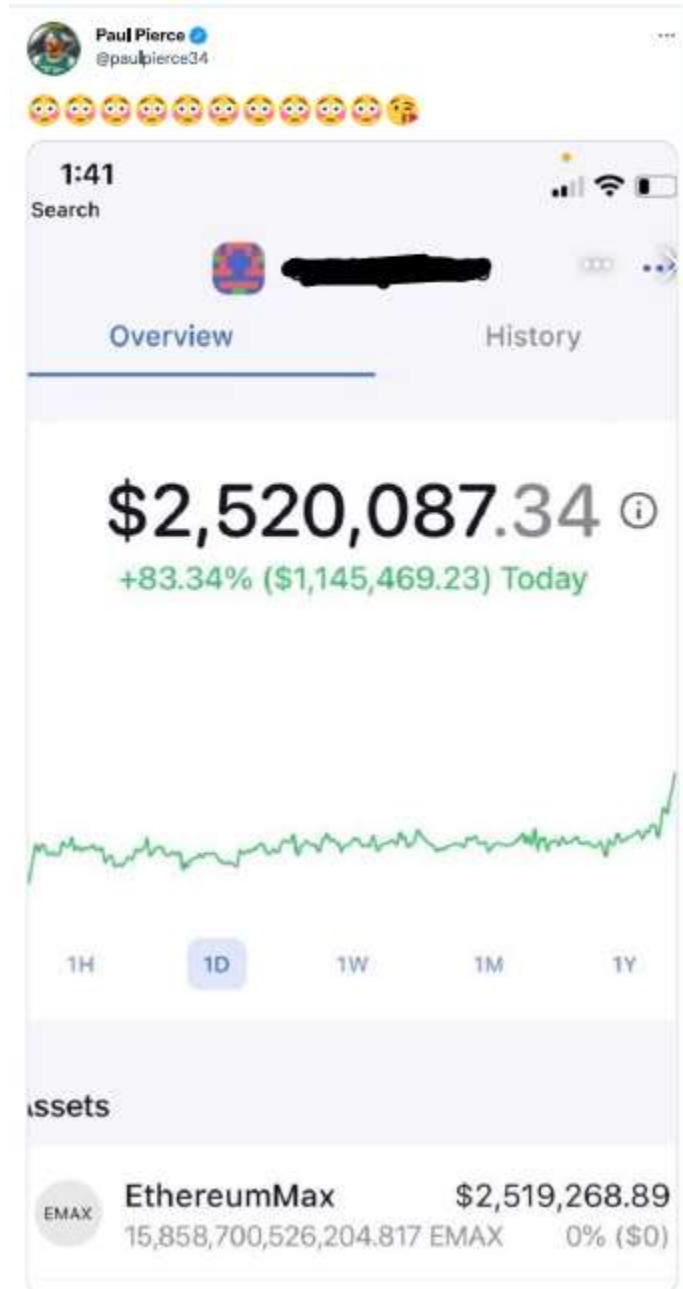
11. On May 26, 2021, Pierce—who had been let go by ESPN in April 2021—promoted EthereumMax’s offering on social media by posting the following to his Twitter account:



The post contained a link to the EthereumMax website, where instructions were provided for potential investors to purchase EMAX tokens. Pierce did not disclose that he was compensated by the issuer for the promotion, nor did he disclose the amount and nature of the compensation.

12. Despite the claim in this Tweet that he “made more money with this crypto in the past month than [sic] [he] did with [ESPN] in a year[,]” Pierce was at least negligent in not knowing that this statement was materially misleading. Pierce, whose gross compensation from ESPN was over \$1 million the prior year, only received EMAX tokens two days prior to the post, the value of which was approximately \$46,000 at the time he was paid.

13. On May 28, 2021, Pierce made the following post on Twitter promoting the EMAX offering without disclosing that the issuer was compensating him for the promotion or the amount of the compensation and without revealing that his own personal holdings were in fact far lower than the \$2,520,087 in the screenshot in the Tweet:



14. Pierce was at least negligent in not knowing that this Tweet was materially misleading because it omitted the fact that the screenshot did not reflect his own holdings of EMAX, but instead was a screenshot of another person's holdings provided to him for promotional purposes.

15. On May 29, 2021, Pierce Tweeted “The Goal is 1\$ @ethereum\_max only then will be out[.]”

16. On May 30, 2021, Pierce posted the following to Twitter: “People asking if they should jump on the @ethereum\_max train I’m n [sic] for the long haul if u missed out on the 1<sup>st</sup> wave now is the time to jump on board . . . .”

17. Pierce was at least negligent in not knowing that the statements in Paragraphs 15 and 16 above were materially false and misleading because he was in fact selling EMAX tokens while promoting them. In fact, Pierce had sold large portions of the EMAX tokens that he received as compensation for his posts as early as May 26, 2021, and continued selling EMAX—including on May 29 and May 30, 2021—after making these posts.

18. Moreover, Pierce did not disclose that he was paid by the issuer for the posts in Paragraphs 15 and 16 above nor did he disclose the amount of compensation he received.

19. On May 30, 2021, Pierce also made the following Twitter post promoting the EMAX offering without disclosing that he was compensated by the issuer for the Tweet or the amount of the compensation:



The rocket ship image—along with other space images, analogies, and phrases such as “to the moon”—are widely-used in the crypto asset space to signal expectations that a token will dramatically increase in value.

20. On June 5, 2021, Pierce Tweeted: “Gonna double down know [sic] @ethereum\_max[.]” indicating that he was going to increase his investment in the crypto asset security. In fact, Pierce continued selling his tokens over the next week, including at least one sale on the date of the post. Pierce was at least negligent in not knowing that this post was false and misleading.

21. In addition, Pierce did not disclose that he was paid by the issuer for the posts in Paragraphs 19 and 20 above or the amount of compensation he received.

22. In total, Pierce received approximately 1,622,319,996,192 EMAX tokens, worth approximately \$244,116 at the time he received them, from EthereumMax and/or its agents between May 24, 2021 and June 18, 2021 in exchange for his promotional tweets.

23. Pierce’s crypto asset security promotion occurred after the Commission warned in its July 25, 2017, DAO Report of Investigation that crypto 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.<sup>2</sup> 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 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.”<sup>3</sup>

### **Pierce Violated Section 17(a)(2) of the Securities Act**

24. As a result of the conduct described above, Pierce at least negligently violated Section 17(a)(2) of the Securities Act, which prohibits obtaining money or property by means of a 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.

### **Pierce Violated Section 17(b) of the Securities Act**

25. 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.

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

### **Disgorgement and Civil Penalties**

26. The disgorgement and prejudgment interest referenced in paragraph IV(C) is consistent with equitable principles and does not exceed Respondent’s net profits from his 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 Securities Exchange Act of 1934.

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<sup>2</sup> 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).

<sup>3</sup> 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>.

## Undertakings

27. Respondent has undertaken, for a period of three (3) years from the date of this Order, to 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 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.

### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest 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, cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(b) of the Securities Act.

B. Respondent shall comply with the undertaking enumerated in Section III, paragraph 27 above.

C. Respondent shall pay disgorgement of \$244,116, prejudgment interest of \$15,449, and a civil money penalty in the amount of \$1,150,000 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. Payment shall be made in the following installments:

1. Within twenty (20) days of the entry of this Order, Respondent will pay \$500,000.
2. Within one hundred and eighty (180) days of the entry of this Order, Respondent will pay \$300,000.
3. Within three hundred and sixty (360) days of the entry of this order, Respondent will pay \$609,565.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application.

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 Paul Anthony Pierce 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 David Hirsch, 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, he shall not argue that he is entitled to, nor shall he 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 he 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