NFTs in Regulatory Sights

By: www.ProfitableInvestingTips.com

It would appear that the US Securities and Exchange Commission is shifting into high gear in its regulatory efforts regarding crypto. Now we have NFTs in regulatory sights of the SEC in their case against **Impact Theory**. The issue with the NFTs in question, as with a number of crypto tokens, is that the SEC says that they are unregistered securities. Impact Theory is a Los Angeles-based entertainment and media company. According to *Bloomberg*, the company raised about $30 million from its offering of NFTs.

Are NFTs Securities?

We have generally thought of NFTs, from images of funny-looking apes to William Shatner's dental x-rays, as being collectibles. This would make them like paintings, antiques, rare coins, and old baseball cards. Someone selling a Honus Wagner baseball card or a Picasso painting does not need to register these items as securities. What happened with Impact Theory? The SEC says that there were three levels of NFTS sold by Impact Theory. Investors were told that these tokens could be viewed as investments in their business as they were trying to create the "next Disney." Impact Theory promoted these NFTs further by saying that if the company was successful, holders of these NFTs would receive "tremendous value" for their investments. The SEC made their ruling based on the same decades-old legal test for a security that they have applied to various crypto tokens.

What Makes a Crypto Asset a Security?

Reuters provides a short and clear explanation of **what makes a crypto asset a security**. The SEC argument is based on a 1946 Supreme Court ruling regarding investors in an orange grove in Florida. The wording of the court's ruling is this:

An investment of money in a common enterprise with profits to come solely from the efforts of others is a kind of security called an investment contract.

When a person buys a painting, Honus Wagner baseball card, or a Bitcoin token, the value of that item stands on its own merits and not on the business efforts of others. Investments that rely on the efforts of others like a stock on the Nasdaq require specific disclosures about risk. The SEC is applying this thinking to a new business venture in LA that is essentially using NFTs as proxies for shares of stock.

What Happens to Impact Theory and Its Tokens?

Impact Theory is already settling with the SEC and paying a fine of $6 million. They are admitting no fault. Across the crypto world some have gone out of business and others have simply stopped dealing with the entities that got them in trouble with the SEC. The later appears to be the case with Impact Theory. These folks can sell NFTs if they wish. What they cannot do is link the value of these tokens to their business. The key regarding whether or not the tokens are securities is whether or not the profits of investors are linked to the continuing efforts of others. NFTs, like crypto tokens, that are linked to a “common enterprise” are likely to be designated as securities. Folks like Impact Theory will be able to create and sell such NFTs. However, they will need to jump through all of the hoops that are required for anyone registering a security like a stock on the New York Stock Exchange.

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