

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:	)	
	)	CONSENT ORDER
NEXO CAPITAL INC.,	)	
	)	Docket No. E-2023-0008
RESPONDENT.	)	
	)	

**I. INTRODUCTION**

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Nexo Capital Inc. (“Respondent”) in connection with an investigation by the Enforcement Section of the Division (the “Enforcement Section”) into whether the activities and conduct of Respondent and its parents, affiliates, and control persons (the “Related Parties”) violated the Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A (the “Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”). Respondent has cooperated with the Division and the other state securities regulators that have been conducting investigations into Respondent’s activities (the “Multistate Investigation”) by responding to inquiries, providing documentary evidence and other materials, and providing access to facts relating to the investigations.

Respondent sold interest-bearing digital asset accounts called Earn Interest Product (“EIP”) accounts to Massachusetts investors. A claimed feature of these EIP accounts was to allow investors to earn interest on digital assets. Respondent will cease and desist offering or selling the EIPs or any security that is not registered, qualified, or exempt to

new clients in the United States and cease accepting further investments or funds in the EIPs by current U.S. clients, unless and until the EIPs or other securities are registered, qualified, or otherwise exempt. Respondent, solely for the purpose of settlement of the issues contained in this Order, does not admit or deny the findings of fact or conclusions of law contained in this Order, consistent with an Offer of Settlement executed on or about February 6, 2023, settling the claims brought hereby with prejudice. Notwithstanding the foregoing, Respondent does admit the Statement of Facts set forth in Section V and the Conclusions of Law set forth in Section VI for the purposes of exceptions to discharge in bankruptcy proceedings under any jurisdiction, including the proceedings set forth in Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523; 1192.

## **II. JURISDICTION**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities.
2. The Offer was made and this Order is entered in accordance with the Act and Section 10.10 of the Regulations. Respondent admits to the jurisdiction of the Division in this matter.
3. The acts and practices that were the subject of the Enforcement Section's above-captioned investigation occurred in Massachusetts within the meaning of Section 414 of the Act.

### III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of June 17, 2020, through December 6, 2022 (the “Relevant Time Period”).

### IV. RESPONDENT AND ITS AFFILIATES

5. Nexo Inc. (“Nexo”) is a Cayman Islands corporation formed in 2018 which provides virtual currency-related financial services to retail and institutional borrowers in the United States, including trading, borrowing, and lending services. Nexo Inc. wholly owns Nexo Capital, Inc. Nexo Inc. is not registered to do business in the Commonwealth of Massachusetts and is not registered with the Division in any capacity.

6. Nexo Capital Inc. (“Nexo Capital”) is a Cayman Islands corporation formed in 2018 with its principal place of business in Grand Cayman, Cayman Islands. Nexo Capital is not registered to do business in the Commonwealth of Massachusetts and is not registered with the Division in any capacity.

7. Nexo Financial LLC (“Nexo Financial”) is a Delaware limited liability company formed in 2018 with its principal place of business in London, United Kingdom. Nexo Financial holds certain licenses, including money transmitter licenses and lending licenses in some states but is not registered with the Division in any capacity.

8. Nexo Group comprises business entities organized primarily in European countries and territories, including but not limited to Nexo Inc., Nexo Capital Inc., and Nexo Financial LLC. The Nexo Group is not registered to do business in the Commonwealth of Massachusetts and is not registered with the Division in any capacity.

9. Antoni Trenchev (“Trenchev”) is a co-founder and Managing Partner of the Nexo Group and a director and manager of certain companies within the Nexo Group, including Nexo Capital. Trenchev is responsible for supervising day-to-day business activities of the Nexo Group companies, including ensuring their compliance with applicable legislation, rules, and regulations. Trenchev is not registered with the Division in any capacity.

## V. STATEMENT OF FACTS

### A. Nexo Offered and Sold Unregistered, Non-Exempt Securities in Massachusetts

10. During the Relevant Time Period, Nexo offered and sold interest-bearing digital asset accounts called Earn Interest Product (“EIP”) accounts to Massachusetts investors. A claimed feature of these EIP accounts was to allow investors to earn interest on digital assets.

11. The EIP enables investors to passively earn interest by loaning certain digital assets (“Eligible Earn Assets”) to Nexo.

12. Nexo’s EIP investors have no part in selecting, monitoring, or reviewing the revenue-generating activities that Nexo uses to earn this interest.

13. As of July 31, 2022, there were 1,399 Massachusetts EIP accounts earning interest with a total Massachusetts EIP savings wallet value of \$18,000,237.64. Nationally, there were 93,318 EIP accounts earning interest with a total EIP savings wallet value of \$800,260,000.

14. Nexo promoted their financial services, including the EIP, to investors primarily through their website at <http://www.nexo.io/> and their mobile Nexo app. On its website, Nexo provided information about its EIP and a list of supported virtual currencies and their corresponding interest rates. Nexo additionally promoted the EIP on social media through

various platforms including Twitter, Instagram, and YouTube. Through Nexo's website, blog, and social media accounts, Nexo represented interest rates on these EIP accounts of up to 36%, significantly higher than the rates offered for short-term, investment grade, fixed-income securities or for bank savings accounts.

15. In offering its EIP, Nexo failed to disclose material information about the investment, including, but not limited to, Nexo's EIP interest generation deployment activities, Nexo's legal and regulatory compliance, and the limitations of Nexo's financial representations.

16. Nexo allowed, with certain limitations, anyone at least 18 years of age, depending on the jurisdiction, to open an EIP account and access Nexo wallet services.

17. To open a Nexo account, investors were required to satisfy several user identity-verification protocols, including, at a minimum, the provision of an investor's legal name, date of birth, and address. Investors were then instructed to transfer fiat currency (EUR, GBP, and USD) from a bank account to their Nexo account. Investors were also permitted to add cryptocurrency to their Nexo wallet by transferring assets from another crypto exchange or wallet.

18. Nexo ceased offering its EIP to new investors in Massachusetts after August 2, 2021. From approximately August 2, 2021, until approximately February 19, 2022, existing Massachusetts investors could deposit additional fiat currency and cryptocurrency into their existing EIP accounts and could continue to earn interest on their invested EIP Eligible Earn Assets. Thereafter on February 19, 2022, Nexo disallowed any US investors who had not yet opened a Nexo Account from opening an EIP savings wallet. Also on

February 19, 2022, Nexo disallowed any existing US investors from adding additional assets into their existing EIP savings wallets.

19. In Nexo's EIP, an investor agreed to invest their Eligible Earn Assets with Nexo, in exchange for passively earning interest that was deposited into the investor's EIP savings wallet. EIP investors began accruing interest 24 hours after investing Eligible Earn Assets with Nexo.

20. Nexo offered their EIP in the form of either a Flex EIP Savings Wallet Term ("Flex Term Investment") or a Fixed EIP Savings Wallet Term ("Fixed Term Investment"). Interest from an investor's Eligible Earn Assets is credited to an investor's EIP savings wallets either at the expiration of the Fixed Term Investment, or daily for a Flex Term Investment.

21. For a Flex Term Investment, there is no required "holding" time for an investor to lend their Eligible Earn Assets, and these investors are able to withdraw their Eligible Earn Assets at any time subject to the terms and conditions of a Nexo wallet.

22. For a Fixed Term Investment, investors are unable to withdraw their Eligible Earn Assets for the duration of a defined term. When investing in a Fixed Term Investment, an investor can elect to utilize Nexo's "automatic renewal" feature to rollover their investment at the end of the defined term.

23. The interest rate Nexo pays an investor on their invested Eligible Earn Assets is determined by several factors, including the length of the Eligible Earn Assets loan, the type of cryptocurrency loaned, and whether the investor has a Flex Term Investment or a Fixed Term Investment. Generally, the longer that an investor agrees to maintain their Eligible Earn Assets with Nexo, the higher the rate of return.

24. After February 19, 2022, while Nexo disallowed additional deposits into existing EIP savings wallets, Nexo continued to allow existing investors enrolled in a Fixed Term Investment to rollover their EIP Eligible Earn Assets into a new Fixed Term Investment.

25. In accordance with the EIP terms and conditions, the EIP savings wallet interest rate is subject to revision from time to time, at Nexo's sole and absolute discretion.

Included in the EIP terms and conditions, investors are required to acknowledge that they:

understand and agree that we [Nexo] might convert, pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer, dispose of or use any amount of any Digital Assets in regard to which you use the Nexo Earn Interest Product, separately or together with other property, and for any period of time, and without retaining in our [Nexo's] possession and/or control for delivery a like amount thereof or any other assets, at our [Nexo's] sole and absolute discretion.

26. As such, any profit earned by Nexo investors is earned solely through the efforts of Nexo with means determined solely by Nexo.

27. Nexo groups and deploys investor Eligible Earn Assets with other investors' Eligible Earn Assets and similar, Nexo-owned assets (*e.g.*, Eligible Earn Bitcoin Assets with other Nexo-owned Bitcoin assets). To earn income to pay interest to EIP investors, Nexo engages in deployment activities including the staking, lending, arbitrage, and provision of liquidity on certain decentralized finance platforms, in addition to the lending of aggregated investor Eligible Earn Assets to retail and institutional borrowers.

#### **B. Nexo's Representations Regarding the Offer and Sale of EIPs**

28. In offering the EIP to Massachusetts investors, Nexo failed to disclose material information related to Nexo's EIP interest generation, Nexo's regulatory compliance, and Nexo's financial representations.

29. Nexo failed to disclose its lending agreements or the terms contained therein to EIP investors, and as such, Nexo's EIP investors are not provided with information as to whom

Nexo's institutional lending partners are, how long the term loan is, or whether these loans are over-collateralized, despite Nexo's assurances that all loans are provided in an over-collateralized fashion. Consequently, Nexo EIP investors cannot adequately evaluate the risk associated with their participation in the EIP prior to investing their Eligible Earn Assets with Nexo.

30. Nexo's website represents to EIP investors that "Nexo has gone the extra mile in ensuring compliance with the applicable regulatory frameworks. Together with our top-tier legal counsel and engaging proactively with the regulatory decision-makers we ensure the sustainability of our products for years to come."

31. Concurrently, Nexo makes the following statements on its website: "The Nexo Group has legal entities in various locations throughout the world . . . and is in compliance with all applicable global and local regulation . . . rest assured that Nexo is compliant everywhere it provides services and retains top-tier legal counsels in the jurisdictions of its operation." Further, within the footer of Nexo's website, Nexo displays the phrase "Licensed & Regulated Digital Assets Institution."

32. Through these representations, Nexo gives investors the impression that their investments are less risky.

33. On or about June 30, 2021, Nexo Co-Founder Trenchev appeared on a Yahoo Finance Live broadcast titled, "Crypto-focused banking: Nexo Co-Founder discusses his company's growth and business model." On this broadcast, Trenchev stated that he "would argue, from a financial perspective . . . that [Nexo is] safer, especially for the larger clients, than your average bank." On July 1, 2021, Nexo re-posted this broadcast to its YouTube channel, and re-named it, "Nexo is Safer than your Average Bank . . ."



34. Nexo Capital is the entity that operates Nexo’s website and conducts the EIP offering. This fact is not disclosed on the website; instead, the website often uses the name “Nexo” without further clarification. Of the licenses and registrations identified on Nexo’s website, Nexo Capital only held two—a money service business registration license in Canada and a registration as a foreign company in Australia. Notably, none of the Nexo respondents hold securities licenses in the Commonwealth of Massachusetts.

35. Nexo and its affiliates did not register any security with the Division prior to making any offer or sale of the EIP to Massachusetts investors.

36. As such, Nexo: 1) failed to specify Nexo Capital as the operator of the website and provider of the services offered therein; 2) listed the licenses of one or more entities that are not actually doing business in the relevant jurisdictions and that are not conducting the business offered and provided through the website on which the licenses and registrations are listed; and 3) made the false statement that the Nexo Group is in compliance with “all applicable ... regulations.”

37. Nexo represents on its website and through the Nexo YouTube video, “How to Earn Crypto Interest,” that an investor’s Eligible Earn Assets are secured at all times by Nexo’s asset-backed portfolio of over-collateralized loans. Nexo also states that the platform lends to individuals and institutions only on an over-collateralized basis, which is, in part, how Nexo states that they keep EIP interest rates consistent over time and “basically eliminate counter party risk.”

38. Further, on or about June 10, 2021, Nexo advertised a forthcoming “real-time audit” of Nexo’s custodial assets by Armanino LLP, which Nexo represented would show that the company’s assets exceed liabilities. In a Daily Hodl article published on June 10, 2021,

Antoni Trenchev stated, “We are happy to have opened our books to allow Armanino . . . to verify that our company’s assets exceed liabilities at all times and demonstrate how seriously we treat Nexo’s commitments to our customers.”

39. In a Nexo blog post published on September 23, 2021, Nexo presented the Armanino report, which purports to offer a “real-time audit of Nexo’s custodial assets, showing the company’s assets always exceed liabilities.” This Armanino report is updated daily and Nexo claims that it provides the following assurances: 1) “Fully Backed: Your holdings on Nexo’s platform are backed by assets by more than 100%”; 2) “Properly Managed: Third-party assurance that your funds on the Nexo platform are properly managed and accounted for”; and 3) “Always Available: 24/7 proof of Nexo’s ability to meet all liabilities owed to you at any time.” This Armanino report is publicly available online at <https://real-time-attest.trustexplorer.io/nexo>.

40. More recently, as a response to a competing cryptocurrency firm freezing customer withdrawals on June 12, 2022, Nexo issued the following statement through its Twitter account:

All Nexo products are operating normally – Borrow, Earn, Exchange...Nexo is the first and only blockchain finance company to have a real-time audit of its custodial assets, showing that the company’s assets exceed its liabilities at all times which attests to Nexo’s liquidity and ability to meet all of its obligations...Nexo is in a solid liquidity and equity position to readily acquire any remaining qualifying assets of Celsius, mainly their collateralized loan portfolio . . .

41. Nexo also provided a link to their real-time attestation Armanino report within the body of this tweet.

42. Nexo intended for its promotion and dissemination of the Armanino report contemporaneously with Nexo’s public claim to be financially stable to cause

Massachusetts investors to believe that Nexo would remain financially stable during turbulent market conditions.

43. Despite representations by Nexo, the information set forth in the Armanino report contain several material shortcomings, as described in the report's Agreed Upon Procedures, that limit the report's ability to provide assurances of Nexo's financial stability. These limitations include: 1) a failure to identify non-Customer Liabilities; 2) a failure to identify whether Customer Liabilities include the collateral that Nexo holds for over-collateralized retail loans; 3) a failure to identify the liquidity of Nexo's assets; 4) a failure to identify doubtful loan accounts (e.g. a distressed or non-paying borrower accounts); and 5) a failure to identify whether Nexo's deposit liabilities are secured or otherwise collateralized by Nexo's assets.

44. As such, the Armanino report is of such limited value that it does not support Nexo's claim that "Nexo's assets exceed their liabilities by more than 100%."

### **C. Failure to Comply With Registration Requirements**

45. During the Relevant Time Period, Respondents' EIP was a security subject to registration under the Act.

46. During the Relevant Time Period, Respondent offered and sold unregistered, non-exempt securities in Massachusetts in violation of Section 301 of the Act.

47. During the Relevant Time Period, Respondent offered and sold securities in Massachusetts without being registered as a broker-dealer or agent as required by Section 201 of the Act.

## **VI. CONCLUSIONS OF LAW**

### **Count I – Failure to Comply with MASS. GEN. LAWS ch. 110A, § 201**

48. Section 201(a) of the Act provides:

It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

MASS. GEN. LAWS ch. 110A, § 201(a).

**Count II – Failure to Comply with MASS. GEN. LAWS ch. 110A, § 301**

49. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the commonwealth unless:—

- (1) the security is registered under [the Act];
- (2) the security or transaction is exempted under [S]ection 402 [of the Act]; or
- (3) the security is a federal covered security.

MASS. GEN. LAWS ch. 110A, § 301.

**VII. ORDER**

**IT IS HEREBY ORDERED:**

- A. Respondent shall permanently cease and desist from further violations of the Act and Regulations in Massachusetts;
- B. Respondent shall cease and desist from offering or selling EIPs or any security that is not registered, qualified, or exempt from registration, to new investors in Massachusetts;
- C. Respondent shall cease and desist from accepting further investments or funds in the EIPs from current Massachusetts investors, unless and until the EIPs or other securities are registered in Massachusetts, or are otherwise exempt;
- D. It is further ordered that Massachusetts investors are the title, beneficial, and legal owners of all fiat currency and digital assets held in their EIP accounts;
- E. Respondent shall pay an administrative fine in the amount of \$424,528.30 (USD), subject to the following terms:

- a. Respondent shall make payments in the following installments:
  - i. \$141,509.44 within 14 days of the entry of a signed Order issued pursuant to this Offer;
  - ii. \$94,339.62 within 90 days of the entry of the Order;
  - iii. \$94,339.62 within 180 days of the entry of the Order; and
  - iv. \$94,339.62 within 270 days of the entry of the Order.
- b. If Respondent fails to make timely payments, additional interest shall accrue at a rate of six percent (6%) pursuant to Mass. Gen. Laws ch. 107, § 3;
- c. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered or mailed to Massachusetts Securities Division, One Ashburton Place, Room 1701, Boston, Massachusetts 02108; or wired per Division instructions to be supplied upon request; and (4) submitted under cover letter or other documentation that identifies the payor and the docket number of the proceeding;
- d. Respondent shall provide the Division with notice twenty-four (24) hours prior to each payment via email notification to *mathew.libby@sec.state.ma.us*; and
- e. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Division for the amount due.

F. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under the Order, including post-order interest, minus any payments made, shall become due and payable

immediately at the discretion of the staff of the Division and without further application to the Division;

G. Respondent shall require verification of the identity of all new account holders to ensure that it does not provide services within the Commonwealth of Massachusetts, and to implement IP-based geo-blocking restricting access by prospective new account holders from Massachusetts to Nexo's app, websites, and services;

H. This Order shall be binding upon Respondent's parent and affiliates, and their respective successors and assigns with respect to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions; and

I. This Order concludes the investigation by the Division and resolves any other action the Division could commence against Respondent and its affiliates, concerning the Statement of Fact and Conclusions of Law above, as it relates to the offer and sale of EIPs without registration, qualification, or otherwise complying with an exemption and the above-referenced statements regarding Respondent's collateral practices during the Relevant Time Period.

### **VIII. WAIVER**

By consenting to the entry of this Order, Respondent hereby waives any right to contest the Order, including challenging whether the Order is fair, reasonable, and in the public interest; any right to a hearing, to written findings of fact, conclusions of law or to any other process provided by MASS. GEN. LAWS ch. 110A, § 407A; and Respondent waives any right to judicial review of the Order entered pursuant to this Offer under MASS.

GEN. LAWS ch. 110A, § 411 and MASS. GEN. LAWS ch. 30A, § 14(7).

### **IX. NO DISQUALIFICATION**

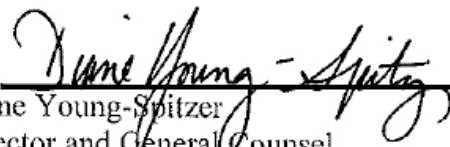
This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which Respondent may be subject. This Order is not intended to subject any Covered Person<sup>1</sup> to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or commodities regulator or self-regulatory organization, for example Section 3(a)(39) of the Securities Exchange Act of 1934, Rules 504(b)(3) and 506(d)(1) of Regulation D, Rule 262(a) of Regulation A, and Rule 503(a) of Regulation CF under the Securities Act of 1933, including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under SRO rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002. Except in an action by the Division to enforce the obligations pursuant to this Order, any acts performed or documents executed in furtherance of the Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability;

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<sup>1</sup> “Covered Person” means Nexo Capital Inc., its parent, or any of its affiliates and their current or former officers, directors, employees, or other persons that could otherwise be disqualified as a result of a signed Order issued pursuant to this Offer.

or (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of Respondent in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.

**WILLIAM FRANCIS GALVIN  
SECRETARY OF THE COMMONWEALTH**

By:   
Diane Young-Spitzer  
Director and General Counsel  
Massachusetts Securities Division  
One Ashburton Place, Room 1701  
Boston, MA 02108

Dated February 9, 2023