

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 28, 2023

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COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

2023 APR 28 4:04

v.

CASE NO. SEC-2023-00004

NEXO CAPITAL INC.,
Defendant

CONSENT ORDER

Nexo Capital Inc. ("Nexo Capital") is a financial services company that was incorporated in the Cayman Islands in 2018. Pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code"), the Division of Securities and Retail Franchising ("Division") of the Virginia State Corporation Commission ("Commission") participated in an investigation ("Investigation") in cooperation with state securities regulators from multiple jurisdictions ("Multistate Working Group")¹ and the U.S. Securities and Exchange Commission, to determine whether Nexo Capital's offer and sale to customers of interest-bearing digital asset accounts called Earn Interest Product ("EIP") accounts to customers from at least June 17, 2020 through December 6, 2022 ("Relevant Period") violated securities laws. Nexo Capital has never been registered in Virginia to offer and sell securities. In addition, Nexo Capital has never applied for the registration of any securities with the Division, or otherwise notified the Division of an applicable registration exemption.

¹ State regulators from Washington, California, Kentucky, New York, Oklahoma, Indiana, Maryland, South Carolina, Vermont, and Wisconsin led this multi-state investigation as part of a North American Securities Administrators Association Working Group.

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Nexo Capital has cooperated with state securities regulators and the Multistate Working Group conducting the Investigation by responding to inquiries, providing documentary evidence and other materials, and providing access to facts relating to the Investigation.

Nexo Capital has reached an agreement with the Multistate Working Group to resolve the Investigation with respect to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands (collectively, the "53 Jurisdictions").

Nexo Capital has advised the Multistate Working Group of its agreement to resolve the Investigation pursuant to the terms specified in this Consent Order (the "Order") and pursuant to the resolution recommendation by the Multistate Working Group (collectively, "multistate settlement"). As part of the multistate settlement, Nexo Capital agrees to: (1) cease and desist offering and selling the EIPs or any other security that is not registered or exempt from registration, to new clients in the United States; (2) cease accepting further investments or funds in the EIP accounts from current U.S. clients, unless and until the EIPs or other securities are registered or exempted from registration; and (3) make payment of up to a total of \$22,500,000.00 in settlement payments divided equally among the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands and paid to each of the 53 Jurisdictions that enter into a consent order pursuant to the terms of the multistate settlement.

As of the date of entry of this Order, Nexo Capital has amended and updated its terms of services, and any other terms or conditions of Nexo Capital's relationship with residents of the 53 Jurisdictions, to reflect that those residents of the 53 Jurisdictions are the title, beneficial, and legal owners of all fiat currency and digital assets held in their EIPs.

The Division has jurisdiction over this matter pursuant to § 13.1-518 of the Act. Nexo Capital further admits to the jurisdiction of the Commission in this matter and acknowledges its

waiver of the right to a hearing set forth in § 13.1-521 of the Act. Solely for the purpose of terminating the Investigation and in settlement of the issues contained in this Order, Nexo Capital, without admitting or denying the facts and allegations contained herein, voluntarily consents to the entry of this Order and also waives any right to a hearing under § 13.1-521 of the Act and §§ 12.1-28 and 12.1-39 of the Code regarding this Order. Notwithstanding the foregoing, Nexo Capital will admit the findings of fact and conclusions of law 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.

I. BACKGROUND²

1. Nexo Capital is a Cayman Islands corporation formed in 2018 with its principal place of business in Grand Cayman, Cayman Islands, that provides virtual currency-related financial services to retail and institutional borrowers in the United States, including trading, borrowing, and lending services. Nexo Capital has never applied for registration of any securities with the Division, or otherwise notified the Division of an applicable registration exemption.

2. Nexo Inc. is a Cayman Islands corporation formed in 2020. Nexo Inc. wholly owns Nexo Capital. Nexo Inc. has never applied for the registration of any securities with the Division, or otherwise notified the Division of an applicable registration exemption.

3. 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.

² The following sections set forth information gathered over the course of the Investigation.

4. Nexo Group comprises business entities organized primarily in European countries and territories, including, but not limited to, Nexo Inc., Nexo Capital, and Nexo Financial. The Nexo Group has never applied for the registration of any securities with the Division, or otherwise notified the Division of an applicable registration exemption.

5. 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.

6. From approximately September 26, 2022 to November 3, 2022, multiple states from the Multistate Working Group filed various regulatory orders and administrative notices alleging that Nexo Capital, Nexo Inc., and/or Trenchev were: 1) offering and selling unregistered securities in the form of EIPs; 2) transacting business as an unregistered broker-dealer or agent; 3) making untrue statements of fact or omitting material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading; and/or 4) engaging in dishonest or unethical practices in the securities or investment advisory business.

7. Beginning on February 19, 2022, Nexo Capital disallowed any new U.S. customers from opening an EIP account with Nexo Capital and disallowed any preexisting U.S. customers from adding additional EIPs into their current Nexo Capital accounts. On December 6, 2022, Nexo Capital ceased offering EIPs to customers nationwide, including to customers in Virginia.

A. The Division's Allegations Regarding the Offer and Sale of Securities Nationwide

8. During the Relevant Period, Nexo Capital offered and sold securities in the form of EIPs and marketed, offered, and sold those securities to over a thousand Virginia residents. The EIP enables customers to passively earn interest by loaning certain digital assets ("Eligible Earn Assets") to Nexo Capital. Nexo Capital's EIP customers had no part in selecting, monitoring, or reviewing the revenue-generating activities that Nexo Capital uses to earn this interest.

9. As of July 31, 2022, there were 1,546 Virginia EIP accounts earning interest with a total Virginia EIP savings wallet value of \$5,524,247.59. Nationally, there were 93,318 EIP accounts earning interest with a total EIP savings wallet value of \$800,260,000.

10. After opening an EIP account with Nexo Capital, a customer would transfer fiat currency (EUR, GBP, and USD) from a bank account to purchase Eligible Earn Assets using specialized software that stores and organizes the digital currency ("wallet"). Customers could also add cryptocurrency to their Nexo Capital wallet by transferring assets from another crypto exchange or wallet. In exchange, Nexo Capital would pay the customer a variable monthly interest rate.

11. Nexo Capital generated the interest it paid to EIP customers by deploying customers' digital assets in various ways, including staking, lending, arbitrage, and provision of liquidity on certain decentralized finance platforms, in addition to the lending of aggregated customer Eligible Earn Assets to retail and institutional borrowers. Nexo Capital pooled the loaned digital assets, and exercised full discretion over how much to hold, lend, and invest.

12. In Nexo Capital's EIP account arrangement, a customer agreed to invest their Eligible Earn Assets with Nexo Capital, in exchange for passively earning interest that was

deposited into the customer's EIP savings wallet. EIP customers began accruing interest 24 hours after investing Eligible Earn Assets with Nexo Capital.

13. Nexo Capital offered their customers EIP accounts 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 a customer's Eligible Earn Assets was credited to a customer's EIP savings wallet either at the expiration of the Fixed Term Investment or daily for a Flex Term Investment.

14. For a Flex Term Investment, there was no required "holding" time for a customer to lend their Eligible Earn Assets, and these customers could withdraw their Eligible Earn Assets at any time subject to the terms and conditions of a Nexo Capital wallet.

15. For a Fixed Term Investment, customers were unable to withdraw their Eligible Earn Assets for the duration of a defined term. When investing in a Fixed Term Investment, a customer could elect to use Nexo Capital's "automatic renewal" feature to rollover their investment at the end of the defined term.

16. Nexo Capital adjusted the interest rates payable on EIPs for particular digital assets periodically, and typically at the start of each month. Nexo Capital set the rates based, in part, on the yield that Nexo Capital could generate from lending to institutional borrowers, and thus interest rates were correlated with the efforts that Nexo Capital put in to generate that yield. Other factors influencing the interest rate included the length of the Eligible Earn Assets loan, the type of cryptocurrency loaned, and whether the customer had a Flex Term Investment or a Fixed Term Investment. Generally, the longer that a customer agreed to maintain their Eligible Earn Assets with Nexo Capital, the higher the rate of return. According to Nexo Capital's EIP

terms and conditions, interest "shall be subject to revision from time to time, at [Nexo Capital's] sole and absolute discretion."

17. Included in the EIP terms and conditions, customers were required to acknowledge that they:

...understand and agree that we [Nexo Capital] 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 Capital's] possession and/or control for delivery a like amount thereof or any other assets, at our [Nexo Capital's] sole and absolute discretion.

18. As such, any profit earned by Nexo Capital customers was earned solely through the efforts of Nexo Capital with means determined solely by Nexo Capital.

19. Nexo Capital pooled and deployed customer Eligible Earn Assets with other customers' Eligible Earn Assets and similar, Nexo Capital-owned assets—*e.g.*, Eligible Earn Assets in Bitcoin with other Nexo Capital-owned Bitcoin assets. As such, Nexo Capital had complete control over how the Eligible Earn Assets were used to generate interest.

B. The Division's Allegations Regarding Nexo Capital's Failure to Comply with Registration Requirements

20. During the Relevant Period, Nexo Capital offered and sold securities in Virginia that were not registered with the Division or exempted from registration.

21. During the Relevant Period, Nexo Capital offered and sold securities in Virginia without being registered as a broker-dealer or agent with the Division.

II. Summary of Alleged Violations

22. The EIPs are securities as defined in § 13.1-501 of the Act.

23. During the Relevant Period, Nexo Capital's offer and sale of securities in Virginia that were not registered with the Division or exempted from registration violated § 13.1-507 of the Act.

24. During the Relevant Period, Nexo Capital's offer and sale of securities in Virginia without being registered as a broker-dealer or agent with the Division violated § 13.1-504 of the Act.

25. If the provisions of the Act are violated, the Commission is further authorized by § 13.1-519 of the Act to issue temporary or permanent injunctions; by § 13.1-521 A of the Act to impose certain civil penalties; by § 13.1-521 C of the Act to order the defendant to make rescission or restitution; and by § 12.1-15 of the Code to settle matters within its jurisdiction.

III. Settlement Offer

26. Nexo Capital shall cease and desist offering or selling EIPs or any security that is not registered or exempt to new customers in Virginia. Nexo Capital shall cease and desist accepting further investments or funds in the EIPs by Virginia customers unless and until the EIPs or other securities have been properly registered or are otherwise exempt from registration under the Act.

27. Nexo Capital shall pay \$424,528.30 in monetary penalties to the Treasurer of Virginia, in four installments as set forth below.

28. Except as provided in Paragraph 30 below, this settlement resolves any action the Division could commence against Nexo Capital under § 13.1-507 of the Act concerning the offer and sale of EIPs without registration or otherwise complying with an exemption during the Relevant Period.

29. The Division reserves the right to investigate additional potential violations of Virginia securities laws and/or regulations and initiate any appropriate enforcement action.

30. This settlement is entered into solely for the purpose of resolving the referenced multistate Investigation and is not intended to be used for any other purpose. Other than the obligations and provisions set forth therein, this settlement does not limit or create liability for Nexo Capital nor limit or create defenses for Nexo Capital to any claims.

31. This settlement and the order of any other State in any proceeding related to Nexo Capital's agreement to resolve the above-referenced multistate Investigation (collectively, the "Orders") shall not be used as sole grounds to deny registration or exemption of securities issued by Nexo Capital.

32. This settlement is not intended to subject any Covered Persons³ 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, including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions.

33. This settlement does not preclude Nexo Capital from paying interest or returns to existing clients, refunding principal to customers consistent with the terms of the EIPs, or otherwise lawfully dealing with existing clientele.

34. Nexo Capital agrees not to violate the Act in the future.

³ "Covered Persons" means Nexo Capital, 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 the Orders.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Nexo Capital's settlement offer should be accepted.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Commission accepts Nexo Capital's settlement offer.
2. Nexo Capital is to immediately cease and desist from offering or selling the EIPs or any security that is not registered or exempt to new customers in Virginia and cease and desist accepting further investments or funds in the EIPs by current Virginia customers, unless and until the EIPs or other securities are registered with the Division or otherwise exempt from registration under the Act.
3. Nexo Capital shall require verification of the identity of all new account holders to ensure that it does not provide services to Virginia residents and shall implement IP-based geo-blocking restricting access to prospective new account holders from Virginia on Nexo Capital's app, websites, and services.
4. As set forth below, Nexo Capital is to pay \$424,528.30 in monetary penalties to the Treasurer of Virginia in the following installments:
 - a. \$141,509.44 immediately upon entry of this Order;
 - b. \$94,339.62 within 90 days of entry of this Order;
 - c. \$94,339.62 within 180 days of entry of this Order; and
 - d. \$94,339.62 within 270 days of entry of this Order.
5. This Order shall be binding upon Nexo Capital, its 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.

6. The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate on account of Nexo Capital's failure to comply with the terms set forth herein.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent by the Clerk of the Commission via electronic mail to: Craig Warkol, Esquire, Schulte Roth & Zabel, LLP, 919 Third Avenue, New York, New York, 10022, Craig.Warkol@srz.com; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.