

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

- against -

NEXO INC. and NEXO CAPITAL INC.,

Defendants.

Index No. 452610/2022

**STIPULATION
AND CONSENT**

WHEREAS Defendants Nexo Inc. and Nexo Capital Inc. (“Defendants,” and together, “Nexo”) are related entities that have offered, provided and sold (a) interest-bearing digital asset accounts called Earn Interest Product (“EIP”) accounts, and (b) a virtual currency marketplace known as the “Exchange”; and

WHEREAS Plaintiff the People of the State of New York, by Letitia James, Attorney General of the State of New York (the “OAG”), as part of a North American Securities Administrators Association (“NASAA”) working group that included state securities regulators from the states of Washington, California, Kentucky, Oklahoma, Indiana, Maryland, South Carolina, Vermont, and Wisconsin (the “NASAA Working Group”), conducted an investigation into whether Nexo’s marketing and provision of EIP accounts involved the unregistered offer and sale of securities by Nexo, among other things; and

WHEREAS the OAG conducted its own investigation into whether Nexo’s operation of the Exchange service constituted the unregistered offer, purchase and sale of securities and commodities, among other things; and

WHEREAS between September 26, 2022, and November 3, 2022, the members of the Multistate Working Group each filed administrative orders or actions relating to Nexo's provision of the EIP; to wit

- a) On September 26, 2022, Washington filed a statement of charges alleging that Nexo Capital Inc., its parent company, Nexo Inc., and director Antoni Trenchev were offering and selling unregistered securities in the form of the EIP; were making untrue statements of material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading; and that Antoni Trenchev offered and sold securities while not being registered as a securities salesperson or broker-dealer; and
- b) On September 26, 2022, Oklahoma filed an order to cease and desist alleging that Nexo Capital Inc., its parent company, Nexo Inc., and affiliate Nexo Financial LLC, were offering and selling unregistered securities in the form of the EIP; and
- c) On September 26, 2022, California filed a desist and refrain order alleging that Nexo Capital Inc., its parent company, Nexo Inc., and collective business group, Nexo Group, were offering and selling unqualified securities in the form of the EIP; and
- d) On September 26, 2022, Maryland filed a summary order to cease and desist and order to show cause alleging that Nexo Capital Inc., its parent company, Nexo Inc., and director Antoni Trenchev, were offering and selling unregistered securities in the form of the EIP; were transacting business as an unregistered broker-dealer or agent and, in this business, were employing an unregistered agent; were making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made,

- not misleading; and were engaging in dishonest or unethical practices in the securities or investment advisory business; and
- e) On September 26, 2022, Vermont filed an ex parte order to cease and desist alleging that Nexo Capital Inc., its parent company, Nexo Inc., and affiliate Nexo Financial LLC, were offering and selling unregistered securities in the form of the EIP; and
 - f) On September 26, 2022, Kentucky filed an emergency cease and desist order alleging that Nexo Capital Inc., its parent company, Nexo Inc., and collective business group, Nexo Group, were offering and selling unregistered securities in the form of the EIP; and were making untrue statements of material fact or omitting to state material facts necessary in order to make those statements not misleading in light of the circumstances in which they were made; and
 - g) On September 26, 2022, South Carolina filed an order to cease and desist alleging that Nexo Capital Inc. and its parent company, Nexo Inc., were offering and selling unregistered securities in the form of the EIP; and were making untrue statements of a material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
 - h) On September 28, 2022, Indiana filed an order to cease and desist alleging that Nexo Capital Inc. and its parent company, Nexo Inc., were offering and selling unregistered securities in the form of the EIP; and

i) On November 3, 2022, Wisconsin filed an order to cease and desist alleging that Nexo Capital Inc., and its parent company, Nexo Inc., were offering and selling unregistered securities in the form of the EIP; and

WHEREAS on September 26, 2022, the OAG commenced this action by Complaint, alleging that Defendants acted as unregistered securities brokers or dealers and commodities broker-dealers and made false and misleading representations in violation of New York General Business Law (“GBL”) §§ 352 *et seq.* (the “Martin Act”) and New York Executive Law § 63(12) in connection with Nexo’s Exchange and EIP; and

WHEREAS on December 6, 2022, Defendants appeared and filed an Answer and Affirmative Defenses in this action; and

WHEREAS Nexo has now reached an agreement with the NASAA Working Group to resolve securities claims or allegations against Nexo in connection with the EIP with respect to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands (collectively, the “53 Jurisdictions”); and

WHEREAS by the terms of that agreement Nexo Capital Inc. shall pay up to a total of \$22,500,000 in settlement payments to the 53 Jurisdictions, or \$424,528.30 per jurisdiction; and

WHEREAS Nexo and the OAG now desire to simultaneously resolve all other claims alleged in the Complaint, including additional securities and commodities claims relating to Nexo’s Exchange service, on terms that include the payment by Nexo Capital Inc. to New York of an additional \$1,500,000; and

WHEREAS Defendants have agreed to the relief specified herein and in the [Proposed] Consent Order and Judgment to resolve without further litigation the OAG’s claims that Defendants acted as unregistered securities brokers or dealers and commodities broker-dealers

and made false and misleading representations in violation of New York General Business Law (“GBL”) §§ 352 *et seq.* (the “Martin Act”) and New York Executive Law § 63(12) in connection with Nexo’s Exchange and EIP;

NOW, THEREFORE, IT IS HEREBY AGREED, STIPULATED, AND CONSENTED to, by and among Defendants and the OAG, that:

1. Defendants admit that they have been properly served with the Summons and Complaint, and desire to settle and resolve this action in its entirety.

2. Defendants waive any and all arguments concerning lack of personal or subject matter jurisdiction.

3. Defendants neither admit nor deny the allegations contained in the Complaint; however, notwithstanding the Answer filed by Defendants, the facts alleged in the Complaint shall be deemed admitted by Defendants solely for the purposes of any subsequent proceeding to enforce the OAG’s rights to any payment or money judgment pursuant to the [Proposed] Consent Order and Judgment, including but not limited to a proceeding pursuant to Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523, 1192, and the [Proposed] Consent Order and Judgment shall have collateral estoppel effect for such purposes.

4. Defendants acknowledge that they have received and reviewed a copy of the [Proposed] Consent Order and Judgment and agree to the terms, obligations, and duties it imposes.

5. The Parties acknowledge and agree that the monetary relief set forth in the [Proposed] Consent Order and Judgment includes New York’s \$424,528.30 share of the settlement agreed to by and among Nexo and the NASAA Working Group, and that this

Stipulation and Consent and the [Proposed] Consent Order and Judgment represent a consent order consistent with that agreement.

6. Defendants confirm and ratify their December 5, 2022 public announcement that they intend to phase out all products and services in the U.S. in a gradual and orderly fashion over the coming months.

7. Defendants attest that as of the date of execution of this Stipulation and Consent they have adequate funds and resources to (i) facilitate, honor, and fulfill withdrawals of all assets belonging to residents of the 53 Jurisdictions, and (ii) pay the agreed-upon settlement payments to the 53 Jurisdictions, including the additional payments to OAG as set forth in the [Proposed] Consent Order and Judgment.

8. Defendants further attest that they can perform the foregoing actions and remain solvent, without material impact to their ongoing operations. For the purposes of this Stipulation and Consent, “Solvent” means that Nexo (a) can pay its debts as they become due; (b) owns assets that have a fair saleable value greater than the amounts required to pay its debt (including a reasonable estimate of the amount of all contingent liabilities); and (c) has adequate capital to carry on its business. In connection with Nexo’s products and services and related transactions, Nexo is not incurring, has not incurred, and does not plan to incur, debts beyond its ability to pay as they become absolute and matured.

9. Antoni Trenchev represents and warrants that he has the authority to execute this Stipulation and Consent on behalf of Defendants Nexo Inc. and Nexo Capital Inc.

10. This Stipulation and Consent is entered into by Defendants as their own free and voluntary act with full knowledge and understanding of the nature of the actions, terms, obligations, and duties imposed upon them by the [Proposed] Consent Order and Judgment.

Defendants consent to the entry of the [Proposed] Consent Order and Judgment without further notice, and agree to waive notice of entry thereof.

11. The Parties agree that this Stipulation and Consent may be executed in multiple counterparts, and that all counterparts so executed shall be deemed an original to this Stipulation and Consent, all of which shall constitute one agreement binding upon all Parties. For purposes of this Stipulation and Consent, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Stipulation and Consent, with such scanned and electronic signatures having the same legal effect as original signatures.

12. Defendants unconditionally guarantee payment of the amount of \$1,924,528.30 according to the schedule set forth in the [Proposed] Consent Order and Judgment.

13. Defendants agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for payments that Nexo Inc. or Nexo Capital Inc. make pursuant to the [Proposed] Consent Order and Judgment.


14. Defendants agree and acknowledge that failure to comply with any provision of the [Proposed] Consent Order and Judgment, or any related agreement in this Stipulation and Consent, shall be deemed to be a violation of the [Proposed] Consent Order and Judgment. Upon any such violation, the OAG may take any and all steps available to enforce the [Proposed] Consent Order and Judgment, including civil or criminal contempt, and nothing in the [Proposed] Consent Order and Judgment shall bar or preclude the OAG from using statements, documents, or other materials produced or provided by Defendants Nexo Inc. and Nexo Capital prior to or after the date of entry of the [Proposed] Consent Order and Judgment, and any statute

of limitations or other time-related defenses are tolled from and after the date of entry of the [Proposed] Consent Order and Judgment.

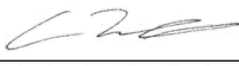
15. Plaintiff OAG may apply to the Court for such other and further relief as it appears to the OAG is proper and necessary for the enforcement of the [Proposed] Consent Order and Judgment.

Dated: January 19, 2023

LETITIA JAMES
Attorney General of the State of New York

By: 
Jesse A. Devine
Assistant Attorney General
*Attorney for Plaintiff, People of the
State of New York*

Approved as to form by:
SCHULTE ROTH & ZABEL LLP

By: 
Craig S. Warkol
*Attorney for Defendants, Nexo
Inc. and Nexo Capital Inc.*

NEXO INC.

By: 
Antoni Trenchev
[title] Managing Director

NEXO CAPITAL INC.

By: 
Antoni Trenchev
[title] Managing Director

At Part ____ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, Borough of Manhattan, City and State of New York, on the ____ day of _____, 2023

PRESENT: The Honorable

, Justice.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
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Plaintiff,

- against -

NEXO INC. and NEXO CAPITAL INC.,

Defendants.

Index No. 452610/2022

**[PROPOSED]
CONSENT ORDER
AND JUDGMENT**

Plaintiff the People of the State of New York, by Letitia James, Attorney General of the State of New York (the “OAG”) commenced this action by Summons and Complaint filed on September 26, 2022, against Defendants Nexo Inc. and Nexo Capital Inc. (“Nexo”) (collectively with the OAG, the “Parties”). The Complaint alleged that Defendants acted as unregistered securities brokers or dealers and commodities broker-dealers and made false and misleading representations in violation of New York General Business Law (“GBL”) § 352 *et seq.* (the “Martin Act”) and New York Executive Law § 63(12) in connection with Nexo’s operation of a virtual currency marketplace known as the “Exchange” and a pooled investment program called the “Earn Interest Product” (“EIP”). Defendants appeared and filed an Answer and Affirmative Defenses on December 6, 2022.

As set forth in the Stipulation and Consent executed by the Parties on January 19, 2023 (“Stipulation and Consent”), the OAG, as part of a North American Securities Administrators Association (“NASAA”) working group that included state securities regulators from the states of Washington, California, Kentucky, Oklahoma, Indiana, Maryland, South Carolina, Vermont, and Wisconsin (the “NASAA Working Group”), has reached an agreement with Nexo to resolve claims or allegation in connection with the EIP.

The OAG and Nexo have separately reached agreement to resolve the remaining claims alleged in the Complaint, including securities and commodities claims relating to Nexo’s Exchange service.

NOW, upon motion of the OAG, consented to by Defendants, upon the Stipulation and Consent, and upon all the pleadings and all prior proceedings herein, it is hereby:

1. ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc., as well as each of their agents, trustees, principals, servants, employees, successors, heirs and assigns, or any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business in New York State, including businesses in which they have any legal or beneficial interest, are bound by this Consent Order and Judgment with respect to the provisions below and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

Monetary Relief

2. It is further ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Plaintiff and against Defendants Nexo Inc. and Nexo Capital Inc., jointly and severally, in the amount of one million, nine hundred twenty-four thousand, five hundred twenty-eight dollars and thirty cents (\$1,924,528.30). This amount comprises (a) four hundred twenty-

four thousand, five hundred twenty-eight dollars and thirty cents (\$424,528.30), representing New York's share of the settlement agreed to by and among Nexo and the members of the NASAA Working Group in connection with Nexo's EIP; and (b) one million five hundred thousand dollars (\$1,500,000) in resolution of all other claims alleged in the Complaint.

3. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall satisfy the judgment by making payments to the State of New York according to instructions to be provided by the OAG, in the following amounts on or before the following dates:

- a. \$641,509.44, immediately upon entry of this Consent Order and Judgment;
- b. \$427,672.96, 90 days after entry of this Consent Order and Judgment;
- c. \$427,672.95, 180 days after entry of this Consent Order and Judgment; and
- d. \$427,672.95, 270 days after entry of this Consent Order and Judgment.

General Injunction

4. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall not engage in conduct in violation of the Martin Act or Executive Law § 63(12).

Five-Year Securities Bar

5. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc., as well as their respective subsidiaries, affiliates, successors and assigns, are enjoined from engaging in the issuance, offer, exchange, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities within or from the State of New York, in any capacity, for a period of five (5) years commencing upon entry of this Consent Order and Judgment.

Injunctive Relief Relating to New York Customers and Accounts

6. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. are enjoined from offering or selling Nexo's EIP or, except as set forth below, providing access to the Exchange service, to New York Customers or within the state of New York, unless and until Defendants have complied with all applicable licensing and registration requirements, including but not limited to GBL § 359-e and the regulations promulgated thereunder, 13 NYCRR §§ 10, 13. For the purposes of this Consent Order and Judgment, "New York Customer" means any existing or prospective Nexo customer who resides in the State of New York. Any existing or prospective customer who provides a New York address, uses a phone number with a New York area code to communicate with Nexo, or accesses Nexo's public website or mobile app from an IP address or GPS location associated with New York shall be presumed to be a resident of the State of New York. The customer's physical residence at the time of transacting business with Nexo shall ultimately control the determination of residency. Nexo shall not induce a customer to provide a non-New York address.

7. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. are enjoined from (a) accepting further investments or deposits of funds into, or (b) paying interest or other returns to, existing Nexo EIP accounts, savings wallets, and other non-collateral wallets held by New York Customers ("Legacy Accounts"), unless and until Defendants have complied with all applicable licensing and registration requirements, including but not limited to GBL § 359-e and the regulations promulgated thereunder, 13 NYCRR §§ 10, 13.

8. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall (a) send a written communication to all New York Customers no

later than February 1, 2023, advising New York Customers to withdraw all remaining assets from Legacy Accounts prior to April 1, 2023; and (b) provide separate conspicuous notifications of this directive on Defendants' website (<https://nexo.io>), Subreddit (<http://www.reddit.com/r/nexo>), and accounts on other social media platforms, including Twitter, Instagram, and Facebook.

9. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall continue to allow and assist New York Customers to access their Legacy Accounts for the purpose of making withdrawals or transferring fiat currency or digital assets to accounts or digital wallets outside of Nexo's custody and control.

10. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall immediately amend and update their terms of service, and any other terms or conditions of Defendants' relationship with New York Customers, to reflect that New York Customers are the title, beneficial, and legal owners of all fiat currency and digital assets held in their Legacy Accounts.

11. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall hold all assets in Legacy Accounts segregated from other assets under the management and control of Nexo, free of counterparty obligations, and shall not convert, pledge, rehypothecate, sell, lend, stake or otherwise transfer, dispose of or use assets held by New York Customers in their Legacy Accounts.

Customer Verification

12. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall verify the identity and residency of all prospective new customers to ensure that it does not provide services to New York Customers, and to implement geo-blocking based on IP addresses and GPS location to prevent access to Nexo's mobile app, website and services from New York.

Reporting Obligation

13. It is further ORDERED, ADJUDGED AND DECREED that Defendants Nexo Inc. and Nexo Capital Inc. shall provide an initial written report to OAG by July 17, 2023, and further written reports as OAG may require, upon no less than forty-five (45) days written notice, up to January 31, 2028, setting forth in detail the manner and form of Defendants' compliance with the preceding decretal paragraph.

Miscellaneous

14. It is further ORDERED, ADJUDGED AND DECREED that failure to comply with any provision of this Consent Order and Judgment, or any related agreement in the Stipulation and Consent by and among the Parties, shall be deemed to be a violation of this Consent Order and Judgment. Upon any such violation, the OAG may take any and all steps available to enforce this Consent Order and Judgment, including civil or criminal contempt, and nothing in this Consent Order and Judgment shall bar or preclude the OAG from using statements, documents, or other materials produced or provided by Defendants Nexo Inc. and Nexo Capital Inc. prior to or after the date of entry of this Consent Order and Judgment, and any statute of limitations or other time-related defenses are tolled from and after the date of entry of this Consent Order and Judgment.

15. It is further ORDERED, ADJUDGED AND DECREED that, notwithstanding the Answer filed in this action by Defendants Nexo Inc. and Nexo Capital Inc., the facts alleged in the Complaint shall be deemed admitted by Defendants solely for the purposes of any subsequent proceeding to enforce the OAG's rights to any payment or money judgment pursuant to this Consent Order and Judgment, including but not limited to a proceeding pursuant to Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523, 1192, and this Consent Order and Judgment shall have collateral estoppel effect for such purposes.

16. It is further ORDERED, ADJUDGED AND DECREED that this Consent Order and Judgment is entered into solely for the purpose of resolving this action, and other than the obligations and provisions set forth herein, this Consent Order and Judgment does not limit or create liability for Nexo nor limit or create defenses for Nexo to any claims.

17. It is further ORDERED, ADJUDGED AND DECREED that this Consent Order and Judgment is not intended to subject any Covered Person (defined as Defendants Nexo Inc. and Nexo Capital Inc., their respective parents, subsidiaries and affiliates, and their current or former officers, directors, employees, or other persons that could otherwise be disqualified as a result of this Consent Order and Judgment) 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.

18. It is further ORDERED, ADJUDGED AND DECREED that nothing contained herein shall be construed so as to deprive any person or entity of any private right under the law.

19. It is further ORDERED, ADJUDGED AND DECREED that if any clause, provision or section of this Consent Order and Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision or section of this Consent Order and Judgment, which shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

20. It is further ORDERED, ADJUDGED AND DECREED that failure of the OAG to exercise any right under this Consent Order and Judgment shall not constitute a waiver of any rights of the OAG hereunder.

21. It is further ORDERED, ADJUDGED AND DECREED that all correspondence required herein shall be delivered or mailed to the following addresses, unless a different address is specified in writing by the Party changing such address:

If to the OAG: Office of the Attorney General of the State of New York
Attn: Jesse Devine, Assistant Attorney General
Investor Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10005

If to Defendants: Craig Warkol
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

22. It is further ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction to enforce this Consent Order and Judgment, and any related agreements in the Stipulation and Consent by and among the Parties, and to decide all disputes arising thereunder.

23. It is further ORDERED, ADJUDGED AND DECREED that OAG is permitted to make further applications for such other and further relief as it appears to the OAG is proper and necessary for the enforcement of this Consent Order and Judgment.

ENTER

Justice of the Supreme Court