

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Securities Act of Washington by:

7 NEXO INC;
8 NEXO CAPITAL INC;
9 ANTONI TRENCHEV,

Respondents.

Order No. S-21-3225-22-SC01

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND DESIST,
TO IMPOSE A FINE, AND TO CHARGE COSTS

10 **THE STATE OF WASHINGTON TO:**

Nexo Inc.
Nexo Capital Inc.
Antoni Trenchev

11 **STATEMENT OF CHARGES**

12 Please take notice that the Securities Administrator of the state of Washington has reason to believe
13 that Respondents Nexo Inc., Nexo Capital Inc., and Antoni Trenchev violated the Securities Act of
14 Washington. The Securities Administrator believes these violations justify the entry of an order against
15 Respondents Nexo Inc., Nexo Capital Inc., and Antoni Trenchev to cease and desist from such violations,
16 to impose a fine, and to charge costs pursuant to RCW 21.20.390 and RCW 21.20.395. The Securities
17 Administrator finds as follows:

18 **TENTATIVE FINDINGS OF FACT**

19 **Respondents**

20 1. Nexo Inc. is a Cayman Islands corporation formed in 2018. Nexo Inc. wholly owns Nexo
21 Capital, Inc. Nexo Inc. is part of the Nexo Group, which includes entities organized primarily in European
22 jurisdictions. Nexo Inc. is not registered to do business in Washington and is not registered with the
23 Securities Division in any capacity.

1 7. Nexo has promoted their financial services, including the EIP, to Washington investors
2 primarily through their website at <http://www.nexo.io/> and their mobile Nexo app. On its website, Nexo
3 has provided information about its EIP and a list of supported virtual currencies and their corresponding
4 interest rates. Nexo additionally has promoted the EIP on social media through various platforms including
5 Twitter, Instagram, and YouTube. Through Nexo's website, blog, and social media accounts, Nexo has
6 represented interest rates on these EIP accounts of up to 36%, significantly higher than the rates offered for
7 short-term, investment grade, fixed-income securities or for bank savings accounts.

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

11 **Nexo Earn Interest Product**

12 9. Nexo has allowed, with certain limitations, anyone either 18 years or older, depending on the
13 jurisdiction, to open a Nexo EIP account and access Nexo wallet services. When opening a Nexo account,
14 an investor will go through several user identity-verification protocols, including, at a minimum, the
15 provision of an investor's legal name, date of birth, and address. An investor will then transfer fiat currency
16 (EUR, GBP, and USD) from a bank account to their Nexo account. Investors can also add cryptocurrency
17 to their Nexo wallet by transferring assets from another crypto exchange or wallet.

18 10. Nexo ceased offering its EIP to new investors in Washington after August 2, 2021, after the
19 Securities Division's regulatory inquiry into Nexo's business. From approximately August 2, 2021, until
20 approximately February 19, 2022, existing Washington investors could deposit additional fiat currency and
21 cryptocurrency into their existing EIP accounts and could continue to earn interest on their invested EIP
22 Eligible Earn Assets. Thereafter on February 19, 2022, Nexo disallowed any US investors who had not yet
23

1 opened a Nexo Account from opening an EIP savings wallet. Also on February 19, 2022, Nexo disallowed
2 any existing US investors from adding additional assets into their existing EIP savings wallets.

3 11. In Nexo’s EIP, an investor agrees to invest their Eligible Earn Assets with Nexo, in exchange
4 for passively earning interest that is deposited into the investor’s EIP savings wallet. EIP investors begin
5 accruing interest 24 hours after investing Eligible Earn Assets with Nexo.

6 12. Nexo has offered their EIP in the form of either a Flex EIP Savings Wallet Term (“Flex Term
7 Investment”) or a Fixed EIP Savings Wallet Term (“Fixed Term Investment”). Interest from an investor’s
8 Eligible Earn Assets is credited to an investor’s EIP savings wallets either at the expiration of the Fixed
9 Term Investment, or daily for a Flex Term Investment.

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

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

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

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

1 **Deployment and Income-Generating Activities**

2 17. In accordance with the EIP terms and conditions, the EIP savings wallet interest rate is subject
3 to revision from time to time, at Nexo’s sole and absolute discretion. Included in the EIP terms and
4 conditions, investors are required to acknowledge that they:

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

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

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

18 **Material Misrepresentations and Omissions in Offer and Sale of EIPs**

19 *EIP Interest Generation Representations*

20 19. In offering the EIP to Washington investors, Nexo has failed to disclose material information
21 related to interest generation. These omissions include, but are not limited to, the types of trading and
22 investment activities that Nexo engages in while utilizing EIP Eligible Earn Assets, the identities and
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1 creditworthiness of those who borrow EIP Eligible Earn Assets, and the amount of EIP Eligible Earn Assets
2 used in each income-generating activity.

3 20. Nexo has failed to disclose its lending agreements or the terms contained therein to EIP
4 investors, and as such, Nexo's EIP investors are not provided with information as to whom Nexo's
5 institutional lending partners are, how long the term loan is, or whether these loans are over-collateralized,
6 despite Nexo's assurances that all loans are provided in an over-collateralized fashion. Consequently, Nexo
7 EIP investors cannot adequately evaluate the risk associated with their participation in the EIP prior to
8 investing their Eligible Earn Assets with Nexo.

9 *Legal and Regulatory Compliance Representations*

10 21. In offering the EIP to Washington investors, Nexo has failed to disclose material information
11 related to Nexo's regulatory compliance as it pertains to the EIP offering.

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

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

21 24. Through these representations, Nexo gives investors the impression that their investments are
22 less risky. On or about June 30, 2021, Nexo Co-Founder Trenchev appeared on a Yahoo Finance Live
23 broadcast titled, "Crypto-focused banking: Nexo Co-Founder discusses his company's growth and business

1 model.” On this broadcast, Trenchev stated that he “would argue, from a financial perspective... that [Nexo
2 is] safer, especially for the larger clients, than your average bank.” On July 1, 2021, Nexo re-posted this
3 broadcast to its YouTube channel, and re-named it, “Nexo is Safer than your Average Bank...”

4 25. Nexo Capital is the entity that operates Nexo’s website and conducts the EIP offering. This
5 is not disclosed on the website; instead, the website often uses the name “Nexo” without further
6 clarification. Of the licenses and registrations identified on Nexo’s website, Nexo Capital only held one—
7 a money service business registration license in Canada. Notably, none of the Nexo respondents hold
8 licenses in Washington. Further, the Nexo respondents do not hold any securities licenses.

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

14 *Financial Representations*

15 27. In offering the EIP to Washington investors, Nexo has failed to disclose material information
16 related to Nexo’s financial representations as they pertain to the EIP offering.

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

1 29. Further, on or about June 10, 2021, Nexo advertised a forthcoming “real-time audit” of Nexo’s
2 custodial assets by Armanino LLP,¹ which they represented would show that the company’s assets exceed
3 liabilities. In a Dailyhodl article published on June 10, 2021, Antoni Trenchev stated, “We are happy to
4 have opened our books to allow Armanino...to verify that our company’s assets exceed liabilities at all
5 times and demonstrate how seriously we treat Nexo’s commitments to our customers.”

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

14 31. More recently, as a response to a competing cryptocurrency firm freezing customer
15 withdrawals on June 12, 2022, Nexo’s Twitter account tweeted:

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

22 _____
23 ¹ Armanino LLP is a Public Company Accounting Oversight Board (“PCOAB”) – certified auditor, accounting and consulting
firm in the US.

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

2 32. Nexo's provision of the Armanino report in conjunction with these claims of financial stability
3 gives the appearance that the Armanino report can support Nexo's claims of financial stability in a turbulent
4 market.

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

13 34. As such, this report is of limited value and cannot be used to support Nexo's claims that
14 "Nexo's assets exceed their liabilities by more than 100%".

15 **Need For Further Investigation**

16 35. The Securities Division is continuing to investigate the matter alleged herein to determine the
17 full extent of the violations of the Securities Act that have occurred in this matter. The Securities Division
18 may amend this Statement of Charges in the future to reflect any additional factual allegations and/or
19 violations as a result of the continuing investigation.

20 **Registration Status**

21 36. Nexo Inc. is not currently registered to sell its securities in the state of Washington and has
22 not previously been so registered, nor has it filed a claim of exemption from registration.

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37. Nexo Capital Inc. is not currently registered to sell its securities in the state of Washington and has not previously been so registered, nor has it filed a claim of exemption from registration.

38. Antoni Trenchev is not currently registered as a securities salesperson or broker-dealer in the state of Washington and has not previously been so registered.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer and/or sale of the Nexo Earn Interest Product described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(14) and (17).

2. Nexo Inc., Nexo Capital Inc., and Antoni Trenchev have each violated RCW 21.20.140, the securities registration section of the Securities Act of Washington, by offering and/or selling securities for which no registration is on file with the Securities Administrator.

3. Antoni Trenchev violated RCW 21.20.040, the licensee registration section of the Securities Act of Washington, by offering and/or selling said securities while not being registered as a securities salesperson or broker-dealer in the state of Washington.

4. Nexo Inc., Nexo Capital Inc., and Antoni Trenchev violated RCW 21.20.010, the anti-fraud section of the Securities Act of Washington, by 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.

1 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

2 Pursuant to RCW 21.20.390(1), and based upon the Tentative Findings of Fact and Conclusions of
3 Law, the Securities Administrator intends to order Nexo Inc. and Nexo Capital Inc., and their agents and
4 employees, to each permanently cease and desist from violating RCW 21.20.010 and RCW 21.20.140.

5 Pursuant to RCW 21.20.390(1), and based upon the Tentative Findings of Fact and Conclusions of
6 Law, the Securities Administrator intends to order Antoni Trenchev, his agents and employees, to each
7 permanently cease and desist from violating RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

8 **NOTICE OF INTENT TO IMPOSE FINES**

9 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law,
10 the Securities Administrator intends to order that Nexo Inc., Nexo Capital Inc., and Antoni Trenchev shall be
11 jointly and severally liable for and shall pay a fine of \$1,000,000.

12 **NOTICE OF INTENT TO CHARGE COSTS**

13 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law,
14 the Securities Administrator intends to order that Nexo Inc., Nexo Capital Inc., and Antoni Trenchev shall
15 be jointly and severally liable for and shall pay the costs, fees, and other expenses incurred in the
16 administrative investigation and hearing of this matter, in an amount not less than \$8,000.

17 **AUTHORITY AND PROCEDURE**

18 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject
19 to the provisions of Chapter 34.05 RCW. Nexo Inc., Nexo Capital Inc., and Antoni Trenchev may each
20 make a written request for a hearing as set forth in the Notice of Opportunity for Hearing accompanying
21 this Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator
22 intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a
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1 permanent order to cease and desist as to that respondent, to impose any fines sought against that
2 respondent, and to charge any costs sought against that respondent.

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4 SIGNED and ENTERED this 26th day of September, 2022.



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9 /s/

10 _____
William M. Beatty
Securities Administrator

11 Approved by:

Presented by:

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13 _____ /s/
14 Brian Guerard
Chief of Enforcement

_____ /s/
James Kane
Financial Legal Examiner

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18 Reviewed by:

19 /s/
20 _____
Holly Mack-Kretzler
Financial Legal Examiner Supervisor