

1 CLOTHILDE V. HEWLETT
 Commissioner
 2 MARY ANN SMITH
 Deputy Commissioner
 3 SEAN ROONEY
 Assistant Chief Counsel
 4 QUINCY VIEN (State Bar No. 334617)
 Counsel
 5
 6 Department of Financial Protection and Innovation
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 7 Los Angeles, California 90013
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 10 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
 12 OF THE STATE OF CALIFORNIA

13 In the Matter of:)	
14 THE COMMISSIONER OF FINANCIAL)) CONSENT ORDER
15 PROTECTION AND INNOVATION,)	
16 Complainant,)	
17 v.)	
18 TRADESTATION CRYPTO, INC.,)	
19 Respondent.)	
20)	
21)	

22 The Commissioner of Financial Protection and Innovation (Commissioner) and TradeStation
 23 Crypto, Inc. (TCI) hereby enter this Consent Order (Order) with respect to the following:

24 **I.**

25 **INTRODUCTION**

26 WHEREAS TCI is part of a group of companies that engage in financial services;

27 WHEREAS, TCI has offered, and continues to offer, digital asset trading accounts to clients
 28 to purchase and sell digital assets;

1 WHEREAS, from approximately August 2020 until June 30, 2022, TCI’s digital asset
2 trading accounts had a feature that accrued and paid interest to customers on certain digital asset
3 balances in their accounts (Interest Feature);

4 WHEREAS state securities regulators, as part of a North American Securities Administrators
5 Association (NASAA) Working Group that includes regulators from the states of Alabama,
6 California, Mississippi, North Carolina, Ohio, South Carolina, Washington and Wisconsin (NASAA
7 Working Group), have conducted an investigation into whether the Interest Feature involved the
8 offer and sale of unregistered securities by TCI to retail investors, among other things;

9 WHEREAS the Commissioner is authorized to administer and enforce the provisions of the
10 Corporate Securities Law of 1968 (CSL) (Cal. Corp. Code § 25000, et seq.) and the regulations
11 promulgated thereunder at Title 10 of the California Code of Regulations; and

12 WHEREAS, without admitting or denying any findings of fact or conclusions of law, TCI
13 has reached an agreement with the NASAA Working Group to resolve the investigation with respect
14 to the 47 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands
15 (collectively, 51 Jurisdictions) as follows:

16 TCI has advised the NASAA Working Group of its agreement to resolve the securities
17 investigation pursuant to the terms specified in this Order and pursuant to the multistate resolution
18 recommended by the NASAA Working Group;

19 TCI shall cease and desist offering, selling, or renewing the Interest Feature or any security
20 that is not registered, qualified, or exempt to new clients in the 51 Jurisdictions, unless and until the
21 Interest Feature or other securities are registered, qualified, or otherwise exempt;

22 As of the date of entry of this Order, TCI has amended and updated the terms of service, and
23 any other terms or conditions of TCI’s relationship with residents of the 51 Jurisdictions, to reflect
24 that such residents are the title, beneficial, and legal owners of all assets held in their digital asset
25 trading accounts with TCI;

26 TCI shall pay up to a total of one million five hundred thousand dollars (\$1,500,000) in
27 settlement payments divided equally among the 51 Jurisdictions and paid to each of the 51
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1 Jurisdictions that enter into a consent order pursuant to the terms of TCI’s agreement with the
2 NASAA Working Group;

3 TCI admits to the jurisdiction of the Commissioner in this matter;

4 TCI elects to permanently waive any right to a hearing and appeal under the CSL, the
5 California Administrative Procedure Act, the California Code of Civil Procedure, and any other
6 provision of law with respect to the entry of this Order; and

7 Solely for the purpose of terminating the NASAA Working Group’s securities investigation
8 and in settlement of the issues contained in this Order, TCI, without admitting or denying the
9 findings of fact or conclusions of law contained herein, consents to the entry of this Order.

10 Notwithstanding the foregoing, TCI will admit to the findings of fact and conclusions of law solely
11 for the purposes of exceptions to discharge in bankruptcy proceedings under any jurisdiction,
12 including the proceedings set forth in Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§
13 523; 1192 (1978).

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
15 contained herein, the Commissioner and TCI (each a party and together parties) agree as follows:

16 **II.**

17 **FINDINGS OF FACT**

- 18 1. The Commissioner has jurisdiction over this matter pursuant to the CSL.
- 19 2. TCI is a Florida corporation that was formed in June 2018 and is in the business of
20 providing online digital asset trading accounts to self-directed retail and institutional investors and
21 traders for the purpose of buying, selling, trading, and holding certain digital assets, which today
22 includes Bitcoin (BTC), Ether (ETH) and USD Coin (USDC).
- 23 3. TCI is a subsidiary of TradeStation Group, Inc., which is headquartered in Plantation,
24 Florida. Since 2011, TradeStation Group, Inc. has been a wholly-owned subsidiary of Monex
25 Group, Inc., a publicly traded Japanese corporation listed on the Tokyo Stock Exchange.
26 TradeStation Group, Inc. is also the parent company of TradeStation Securities, Inc., and
27 TradeStation Technologies, Inc. which also have their principal place of business in Plantation,
28 Florida.

1 4. These affiliates, specifically TCI, TradeStation Securities, Inc., and TradeStation
2 Technologies, Inc., all use brand messaging under the “TradeStation” trademark to advertise their
3 respective platforms and services.

4 **The Offer and Sale of Securities in California and Nationwide**

5 5. TCI began offering its digital asset trading accounts on November 16, 2019 to
6 California residents. From August 1, 2020 to June 30, 2022 (Offering Period), TCI offered the
7 Interest Feature to at least 1,947 California investors. Through the Interest Feature, TCI paid interest
8 to customers who held digital asset balances in their TCI digital asset trading accounts. To pay the
9 interest, TCI generated revenue through lending both firm-owned and customer-owned digital assets
10 to institutional borrowers, from commissions earned by TCI customer trading activity in their digital
11 asset trading accounts, and from capital that was contributed to TCI in connection with the start-up
12 of its business operations. On June 30, 2022, at the end of the Offering Period, there were 2,159
13 active California digital asset trading accounts with TCI, collectively valued at over \$16,213,820.71
14 USD. Nationally, at the end of the Offering Period, there were a total of 11,958 active digital asset
15 trading accounts with TCI, with assets under custody totaling \$98,214,155.40 USD.

16 **TCI’s Interest Feature**

17 6. During the Offering Period, TCI advertised that customers could “actively trade and
18 earn interest on eligible crypto assets simultaneously.” TCI described the Interest Feature as
19 “passive income.” TCI advertised that customers could earn up to six percent interest on eligible
20 digital assets that customers held in digital asset trading accounts with TCI. TCI paid interest on
21 several types of digital assets, including Bitcoin, Ether, Litecoin, Bitcoin Cash, and USDC.

22 7. TCI offers its digital asset trading accounts to the general public through the
23 TradeStation website (www.TradeStation.com). The website supports TradeStation Securities, Inc.,
24 TradeStation Technologies, Inc. and TCI. TCI also offers a mobile version of its web application for
25 trading digital assets.

26 8. TCI promoted the Interest Feature in internet ads that would appear in search engine
27 results based on certain terms searched by customers. TCI promoted the Interest Feature by
28 advertising, for example: “Automatically Earn Interest on Eligible Crypto Balances with No Limits

1 or Lockups,” “Easily Customize the Trading Interface, Analyze Prices & Keep Track of Interest
2 Income,” “We Put the Power in Your Hands to Buy, Sell, Invest, and Earn Cryptocurrencies,” and
3 “Join the New Digital Economy with TradeStation Crypto to Learn, Invest, and Earn Crypto.”

4 9. TCI allowed eligible customers to apply for a digital asset trading account by utilizing
5 a unified TradeStation online account opening process (AOP) that allowed prospective customers to
6 select and apply for the desired account type. As part of the AOP, prospective customers provided
7 personal information for the purpose of Know Your Customer and Anti Money Laundering checks.
8 Socure, a third-party identity verification provider, then verified customer-provided information
9 against Socure-sourced information, including public records.

10 10. TCI set interest rates and credited TCI customer accounts with earned interest on a
11 monthly basis. According to TCI, the interest “accumulates daily and is paid and compounds
12 monthly directly in your TradeStation Crypto account.” TCI based interest rates on a number of
13 factors, including, but not limited to, the rates TCI earned from borrowers, as well as economic and
14 competitive factors.

15 11. TCI commingled customers’ like-kind digital assets together and rehypothecated, or
16 used, the customers’ digital assets to lend to “trusted institutional or corporate borrowers,” such as
17 BlockFi Lending LLC and Genesis Global Capital, LLC—both of which have since filed for
18 bankruptcy protection. TCI represented that notwithstanding, no borrower failed to return all digital
19 assets lent by TCI to them, and none of TCI’s customers lost money from the Interest Feature.

20 12. TCI represented that it implemented various risk mitigation strategies towards its
21 lending activities and that all loans made by it were fully secured. TCI set the amount of crypto
22 assets that it was willing to lend to individual borrowers depending on the borrower’s credit profile.
23 TCI further represented that it utilized its “automated risk management system” to “monitor
24 positions 24/7” and maintained a reserve balance to fulfill TCI customer withdrawal demands.
25 Additionally, TCI claimed to maintain an internal risk committee to evaluate, among other things,
26 credit and market risks that may affect its business. Customer account balances with TCI were not
27 insured by the Securities Investor Protection Corporation or Federal Deposit Insurance Corporation.
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1 13. During the account opening process, TCI required customers to agree to the
2 rehypothecation of their digital assets when the customer accepted the TCI terms, including the
3 customer account agreement, during account set-up. Specifically, TCI required that customers agree
4 that TCI may hold the digital assets in TCI’s name, that their digital assets could be commingled
5 with other customers’ digital assets, and that TCI could “pledge, repledge, hypothecate,
6 rehypothecate, loan or invest” the digital assets. Further, the agreements provided that TCI was
7 under no obligation to share with its customers any of the interest revenue generated by TCI’s
8 lending arrangements.

9 14. Customer deposits into TCI’s digital asset trading accounts during the period when
10 the Interest Feature was offered were passive investments. TCI alone determined how customer
11 assets were deployed; TCI customers had no control over how their assets were invested. TCI
12 required that customers give up certain rights to their assets—specifically, that customers agreed to
13 allow TCI to “pledge, repledge, hypothecate, rehypothecate, loan or invest” digital assets.

14 15. On or about June 30, 2022, TCI discontinued the Interest Feature and ceased all
15 lending activities of customer assets.

16 **Failure to Comply with Qualification Requirements**

17 16. During the Offering Period, TCI’s offer and sale of securities in the form of the
18 Interest Feature was not offered or sold pursuant to an exemption from or exception to qualification.

19 17. During the Offering Period, TCI offered and sold securities in California that were
20 unqualified or did not meet an exemption from or exception to qualification as required by
21 California Corporations Code section 25110.

22 **III.**

23 **CONCLUSIONS OF LAW**

24 18. The offer and sale of the Interest Feature within digital asset trading accounts
25 maintained by customers as described above constitutes the offer and sale of a security, as defined
26 under California Corporations Code sections 25017 and 25019.

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1 19. During the Offering Period, TCI’s offer and sale of securities in California that were
2 unqualified or did not meet an exemption from or exception to qualification violated California
3 Corporations Code section 25110.

4 20. The foregoing violations of California Corporations Code section 25110 constitute
5 the basis for the assessment of an administrative penalty against TCI under California Corporations
6 Code section 25252.

IV.

ORDER

9 Based on the Findings of Facts, Conclusions of Law, and TCI’s consent to the entry of this
10 Order, IT IS HEREBY ORDERED:

11 21. This Order concludes the securities investigation by the Commissioner with respect to
12 TCI’s Interest Feature and resolves any other securities action the Commissioner could commence
13 against TCI and its affiliates concerning the Findings of Fact and Conclusions of Law, including as it
14 relates to the offer and sale of the Interest Feature without qualification or otherwise complying with
15 an exemption or exception.

16 22. This Order is entered into solely for the purpose of resolving the referenced multi-
17 state securities investigation with respect to the Interest Feature and is not intended to be used for
18 any other purpose. Other than the obligations and provisions set forth herein, this Order does not
19 limit or create liability for TCI nor limit or create defenses for TCI to any claims.

20 23. This Order is not intended to subject any Covered Person to any disqualifications
21 under the laws of the United States, any state, the District of Columbia, Puerto Rico, Guam, or the
22 U.S. Virgin Islands, or under the rules or regulations of any securities or commodities regulator or
23 self-regulatory organization, including, without limitation, any disqualification from relying upon
24 the state or federal registration exemptions, exceptions, or safe harbor provisions. “Covered
25 Persons” means TCI, all of its parent companies, and all of its affiliates and their current or former
26 officers, directors, employees, contractors, or other persons that could otherwise be disqualified as a
27 result of the Order.

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1 24. TCI is hereby ORDERED to cease and desist from offering, selling or renewing the
2 Interest Feature or any security that is not qualified, exempt, or excepted to investors in California.

3 25. TCI is hereby ORDERED to pay a penalty in the amount of \$29,411.76 (in USD) to
4 the Commissioner.

5 26. Full payment in the amount of \$29,411.76 shall be tendered on or before the entry of
6 this Order.

7 27. Payment must be made in one of the following ways:

- 8 a. TCI may transmit payment electronically to the Commissioner, who will provide detailed
- 9 ACH transfer instructions upon execution of the Order; or
- 10 b. TCI may pay by certified company check or bank cashier’s check, made payable to the
- 11 Commissioner and hand delivered or mailed to:

12 ATTN: Accounting-Litigation
 13 California Department of Financial Protection and Innovation
 14 2101 Arena Boulevard
 Sacramento, California 95834

15 28. Payments must be accompanied by a cover letter identifying TCI with the
16 Enforcement Case Number 7698. A copy of the cover letter must be sent to Quincy Vien, Counsel,
17 Department of Financial Protection and Innovation via electronic mail at Quincy.Vien@dfpi.ca.gov.

18 29. This Order shall be binding upon TCI, its parent and affiliates, and their respective
19 successors and assigns with respect to the provisions above and all future obligations,
20 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

21 **V.**

22 **CONSENT TO ENTRY OF ORDER BY TRADESTATION CRYPTO, INC.**

23 TCI hereby further understands, acknowledges, and agrees to the following:

24 30. Waiver of Hearing Rights. TCI acknowledges that it has been served with a copy of
25 the Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter,
26 and has waived the same. TCI hereby waives the right to any hearings, and to any reconsideration,
27 appeal, or other right to review which may be afforded pursuant to the CSL, the California
28 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.

1 By waiving their aforementioned hearing and other rights, TCI understands, acknowledges, and
2 consents to the finality of the Order.

3 31. Failure to Comply with Order. TCI agrees that if it fails to comply with the terms of
4 the Order, the Commissioner may seek any and all remedies under the law.

5 32. Information Willfully Withheld or Misrepresented. The Order may be revoked and
6 the Commissioner may pursue any and all remedies available under the law against TCI if the
7 Commissioner discovers that TCI knowingly or willfully withheld or misrepresented information
8 used for and relied upon in the Order.

9 33. Future Actions by the Commissioner. If TCI fails to comply with the terms of the
10 Order, the Commissioner may institute proceedings for any and all violations otherwise resolved
11 under the Order. The Commissioner reserves the right to bring any future actions against TCI, or
12 any of its partners, owners, officers, shareholders, directors, employees or successors for any and all
13 violations of any law over which the Commissioner has jurisdiction other than violations resolved
14 under this Order.

15 34. Jurisdiction & Findings. TCI admits to the jurisdiction of the Commissioner, neither
16 admits nor denies the Findings of Fact and Conclusions of Law contained in the Order, and consents
17 to entry of the Order by the Commissioner as settlement of the issues contained in the Order.
18 Notwithstanding the foregoing, TCI will admit to the Findings of Fact and Conclusions of Law
19 solely for the purposes of exceptions to discharge in bankruptcy proceedings under any and all
20 jurisdictions, including the proceedings set forth in Sections 523 and 1192 of the Bankruptcy Code,
21 11 U.S.C. §§ 523; 1192.

22 35. No Tax Deduction or Credit. TCI agrees that it shall not claim, assert, or apply for a
23 tax deduction or tax credit with regard to any state, federal, or local tax for any administrative
24 penalty or investigative costs that TCI shall pay pursuant to the Order.

25 36. Assisting Other Agencies. Nothing in the Order limits the Commissioner’s ability to
26 assist any other government agency (city, county, state or federal) with any prosecution,
27 administrative, civil or criminal action brought by that agency against TCI or any other person based
28 on any of the activities alleged in this matter or otherwise.

1 37. No Presumption Against Drafter. Each party acknowledges that it has had the
2 opportunity to draft, review, and edit the language of the Order. Accordingly, the parties intend no
3 presumption for or against the drafting party will apply in construing any part of this Order. The
4 parties waive the benefit of California Civil Code section 1654 as amended or corresponding
5 provisions of any successor statute, which provide that in cases of uncertainty, language of a contract
6 should be interpreted most strongly against the party who caused the uncertainty to exist.

7 38. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
8 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
9 with respect to the advisability of executing the Order.

10 39. Headings. The headings to the paragraphs of the Order are inserted for convenience
11 only and will not be deemed a part hereof or affect the construction or interpretation of the
12 provisions hereof.

13 40. Binding. The Order is binding on all of TCI's heirs, assigns, and/or successors in
14 interest.

15 41. Reliance. Each of the parties represents, warrants, and agrees that in executing the
16 Order, it has relied solely on the statements set forth herein and the advice of its own legal counsel,
17 if represented. Each of the parties further represents, warrants, and agrees that in executing the
18 Order it has placed no reliance on any statement, representation, or promise of any other party, or
19 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
20 person or entity to make any statement, representation, or disclosure of anything whatsoever. The
21 parties have included this clause: (1) to preclude any claim that any party was in any way
22 fraudulently induced to execute the Order; and (2) to preclude the introduction of parol evidence to
23 vary, interpret, supplement, or contradict the terms of the Order.

24 42. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 the Order will be valid or binding unless it is in writing and signed by each of the parties. The
26 waiver of any provision of the Order will not be deemed a waiver of any other provision. No waiver
27 by either party of any breach of, or of compliance with, any condition or provision of the Order by
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1 the other party will be considered a waiver of any other condition or provision or of the same
2 condition or provision at another time.

3 43. Full Integration. The Order is the final written expression and the complete and
4 exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

9 44. Governing Law. The Order will be governed by and construed in accordance with
10 the laws of the State of California. Each of the parties hereto consents to the jurisdiction of such
11 court and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an
12 inconvenient forum to the maintenance of such action or proceeding in such court.

13 45. Counterparts. The Order may be executed in one or more separate counterparts, each
14 of which when so executed, shall be deemed an original. Such counterparts shall together constitute
15 a single document.

16 46. Effect Upon Future Proceedings. If TCI applies for any license, permit, or
17 qualification under the Commissioner’s jurisdiction, or is the subject of any future action by the
18 Commissioner to enforce the Order, then the subject matter hereof shall be admitted for the purpose
19 of such application(s) or enforcement proceeding(s); provided, however, that, for the avoidance of
20 doubt, such admission of the subject matter hereof shall not be construed as any admission or denial
21 by TCI of any findings of fact or conclusions of law contained herein.

22 47. Voluntary Agreement. TCI hereby enters into the Order voluntarily and without
23 coercion and acknowledges that no promises, threats, or assurances have been made by the
24 Commissioner or any officer, or agent thereof, about the Order to induce TCI to consent to the
25 Order. The parties each represent and acknowledge that he, she, or it is executing the Order
26 completely voluntarily and without any duress or undue influence of any kind from any source.

27 48. Notice. Any notice required under the Order shall be provided to each party at the
28 following email addresses:

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To TCI: David Schubauer
General Counsel
TradeStation Crypto, Inc.
dschubauer@tradestation.com

Gary DeWaal
Special Counsel
Katten Muchin Rosenman LLP
50 Rockefeller Plaza
New York, NY 10020
gary.dewaal@katten.com

To the Commissioner: Quincy Vien
Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, California 90013
Quincy.Vien@dfpi.ca.gov

49. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

50. Public Record. TCI hereby acknowledges that the Order is and will be a matter of public record.

51. Effective Date. The Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to TCI’s General Counsel, David Schubauer, at the following email address: dschubauer@tradestation.com.

52. Authority to Sign. David Schubauer represents that he is General Counsel of TCI and that, as such, has been authorized by TCI to enter into the Order for and on behalf of TCI.

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SIGNED AND ENTERED INTO BY THE CALIFORNIA COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION.

Dated: December 28, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By:

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: December 21, 2023

TradeStation Crypto, Inc.

By:

DAVID SCHUBAUER, GENERAL COUNSEL

Dated: December 21, 2023

Approved as to form by TradeStation Crypto, Inc.'s
counsel, Katten Muchin Rosenman LLP:

By:

GARY DEWAAL, SPECIAL COUNSEL