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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 ) SETTLEMENT AGREEMENT  
15 PROTECTION AND INNOVATION, )  
16 Complainant, )  
17 v. )  
18 NEXO CAPITAL INC., NEXO INC., & NEXO )  
19 GROUP, )  
20 Respondents. )

21  
22 This Settlement Agreement (Agreement) is entered into between the Commissioner of  
23 Financial Protection and Innovation (Commissioner and Department) and Nexo Capital Inc., Nexo  
24 Inc., and the Nexo Group, and is made with respect to the following facts:

25 **I.**  
26 **INTRODUCTION**

27 WHEREAS the Nexo Group, Nexo Inc., Nexo Capital Inc., Nexo Financial LLC, and their  
28 affiliates, successors, and assignees (collectively, Nexo) are financial services companies, and  
affiliates thereof;

1           WHEREAS, Nexo Capital Inc. has offered and sold interest-bearing digital asset accounts  
2 called Earn Interest Product (EIP) accounts, which allow clients to earn interest on digital assets;

3           WHEREAS Antoni Trenchev (Trenchev) is co-founder and Managing Partner of the Nexo  
4 Group and a director and manager of certain companies within the Nexo Group, including Nexo Inc.,  
5 Nexo Capital Inc., and Nexo Financial LLC;

6           WHEREAS state securities regulators, as part of a North American Securities Administrators  
7 Association (NASAA) Working Group that includes regulators from the states of Washington,  
8 California, Kentucky, New York, Oklahoma, Indiana, Maryland, South Carolina, Vermont, and  
9 Wisconsin (NASAA Working Group), have conducted an investigation into whether the EIP  
10 involved the offer and sale of unregistered or unqualified securities by Nexo to retail investors,  
11 among other things; and

12           WHEREAS Nexo has reached an agreement with the NASAA Working Group to resolve the  
13 investigation with respect to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin  
14 Islands (collectively, 53 Jurisdictions):

15           This matter commenced on September 26, 2022 when the Department issued a Desist and  
16 Refrain Order against Nexo Capital Inc., Nexo Inc., and the Nexo Group under California  
17 Corporations Code section 25532 (Desist and Refrain Order). The Department’s Desist and Refrain  
18 Order sets forth violations of the California Corporate Securities Law of 1968 (CSL) (Cal. Corp.  
19 Code, § 25000 et seq.) by Nexo Capital Inc., Nexo Inc., and the Nexo Group, specifically violations  
20 of the CSL’s provisions related to the offer and sale of securities, in the form of Nexo’s EIP  
21 accounts, that are not qualified or excepted or exempt from qualification;

22           Nexo has advised the NASAA Working Group of its agreement to resolve the securities  
23 investigation pursuant to the terms specified in this Settlement Agreement (Agreement) and pursuant  
24 to the multistate resolution recommended by the NASAA Working Group;

25           Nexo shall cease and desist offering or selling the EIP or any security that is not registered,  
26 qualified, or exempt to new clients in the United States and cease accepting further investments or  
27 funds in the EIP accounts by current U.S. clients, unless and until the EIP or other securities are  
28 registered, qualified, or otherwise exempt;

1 As of the date of entry of this Agreement, Nexo has amended and updated their terms of  
2 service, and any other terms or conditions of Nexo’s relationship with residents of the 53  
3 Jurisdictions, to reflect that residents of the 53 Jurisdictions are the title, beneficial, and legal owners  
4 of all fiat currency and digital assets held in their EIP accounts;

5 Nexo shall pay up to a total of Twenty-Two Million Five Hundred Thousand dollars  
6 (\$22,500,000.00) in settlement payments divided equally among the 50 states, the District of  
7 Columbia, Puerto Rico, and the U.S. Virgin Islands and paid to each of the 53 Jurisdictions that enter  
8 into a consent order or settlement agreement pursuant to the terms of Nexo’s agreement with the  
9 NASAA Working Group;

10 Nexo elects to permanently waive any rights to a hearing and appeal under the CSL, the  
11 California Administrative Procedure Act, the California Code of Civil Procedure, and any other  
12 provision of law with respect to the entry of this Agreement;

13 Nexo admits the jurisdiction of the Department, as administrator of the CSL, in this matter;  
14 and

15 Solely for the purpose of terminating the NASAA Working Group’s securities investigation  
16 and in settlement of the issues contained in this Agreement and the pending Desist and Refrain  
17 Order, Nexo, without admitting or denying the Findings of Fact or Conclusions of Law contained in  
18 this Agreement, consents to the entry of this Agreement. Notwithstanding the foregoing, Nexo will  
19 admit the Findings of Fact and Conclusions of Law for the purposes of exceptions to discharge in  
20 bankruptcy proceedings under any and all jurisdictions, including the proceedings set forth in  
21 Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523; 1192.

22 **II.**

23 **FINDINGS OF FACT**

- 24 1. The Department has jurisdiction over this matter under the CSL.
- 25 2. Nexo Inc. is a Cayman Islands corporation formed in 2018 which provides virtual  
26 currency-related financial services to retail and institutional borrowers in the United States,  
27 including trading, borrowing, and lending services. Nexo Inc. wholly owns Nexo Capital, Inc.
- 28

1 Nexo Inc. is not registered to do business in California and is not registered with the Department in  
2 any capacity.

3 3. Nexo Capital Inc. is a Cayman Islands corporation formed in 2018 with its principal  
4 place of business in Grand Cayman, Cayman Islands. Nexo Capital Inc. is not registered to do  
5 business in California and is not registered with the Department in any capacity.

6 4. Nexo Financial LLC is a Delaware limited liability company formed in 2018 with its  
7 principal place of business in London, United Kingdom.

8 5. The Nexo Group comprises business entities organized primarily in European  
9 countries and territories, including but not limited to Nexo Inc., Nexo Capital Inc., and Nexo  
10 Financial LLC. The Nexo Group is not registered to do business in California and is not registered  
11 with the Department in any capacity.

12 6. Antoni Trenchev is a co-founder and Managing Partner of the Nexo Group and a  
13 director and manager of certain companies within the Nexo Group, including Nexo Capital Inc.  
14 Antoni Trenchev is responsible for supervising day-to-day business activities of the Nexo Group  
15 companies, including ensuring their compliance with applicable legislation, rules, and regulations.  
16 Antoni Trenchev is not registered with the Department in any capacity.

17 7. On September 26, 2022, Washington filed a statement of charges alleging Nexo  
18 Capital Inc., and its parent and director, Nexo Inc. and Antoni Trenchev, were offering and selling  
19 unregistered securities in the form of the EIP, were making untrue statements of material fact or  
20 omitting to state material facts necessary to make the statements made, in light of the circumstances  
21 in which they were made, not misleading, and Antoni Trenchev offered and sold securities while not  
22 being registered as a securities salesperson or broker-dealer.

23 8. On September 26, 2022, Oklahoma filed an order to cease and desist alleging Nexo  
24 Financial LLC, and its parent and affiliate, Nexo, Inc. and Nexo Financial LLC, were offering and  
25 selling unregistered securities in the form of the EIP.

26 9. On September 26, 2022, California filed a desist and refrain order alleging Nexo  
27 Capital Inc. and its parent and collective business group, Nexo Inc. and Nexo Group, were offering  
28 and selling unqualified securities in the form of the EIP.

1           10.     On September 26, 2022, Maryland filed a summary order to cease and desist and  
2 order to show cause alleging Nexo Capital Inc., and its parent and director, Nexo Inc. and Antoni  
3 Trenchev, were offering and selling unregistered securities in the form of the EIP, were transacting  
4 business as an unregistered broker-dealer or agent and, in this business, employed an unregistered  
5 agent, making an untrue statement of a material fact or omitting to state a material fact necessary in  
6 order to make the statements made, in light of the circumstances under which they were made, not  
7 misleading, and engaging in dishonest or unethical practices in the securities or investment advisory  
8 business.

9           11.     On September 26, 2022, New York filed a civil complaint alleging Nexo Capital Inc.  
10 and its parent, Nexo Inc., were offering and selling unregistered securities and unregistered  
11 commodities in the form of the EIP and by facilitating the purchase and sale of virtual currencies on  
12 Nexo’s virtual marketplace known as the “Exchange,” and making materially false and misleading  
13 representations, statements, and omissions relating to the sale, purchase or exchange of securities or  
14 commodities.

15           12.     On September 26, 2022, Vermont filed an ex parte order to cease and desist alleging  
16 Nexo Capital Inc., and its parent and affiliate, Nexo Inc. and Nexo Financial LLC, were offering and  
17 selling unregistered securities in the form of the EIP.

18           13.     On September 26, 2022, Kentucky filed an emergency cease and desist order alleging  
19 Nexo Capital Inc. and its parent and collective business group, Nexo Inc. and Nexo Group, were  
20 offering and selling unregistered securities in the form of the EIP and were making untrue statements  
21 of material fact or omitting to state material facts necessary in order to make those statements not  
22 misleading in light of the circumstances in which they were made.

23           14.     On September 26, 2022, South Carolina filed an order to cease and desist alleging  
24 Nexo Capital Inc. and its parent, Nexo Inc., were offering and selling unregistered securities in the  
25 form of the EIP and were making untrue statements of a material fact or omitting to state material  
26 facts necessary in order to make the statements made, in light of the circumstances under which they  
27 were made, not misleading.

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1 15. On September 28, 2022, Indiana filed an order to cease and desist alleging Nexo  
2 Capital Inc. and its parent, Nexo Inc., were offering and selling unregistered securities in the form of  
3 the EIP.

4 16. On November 3, 2022, Wisconsin filed an order to cease and desist alleging Nexo  
5 Capital Inc., and its parent, Nexo Inc., were offering and selling unregistered securities in the form  
6 of the EIP.

### 7 **The Offer and Sale of Securities Nationwide**

8 17. Between about June 17, 2020, and December 6, 2022 (Offering Period), Nexo has  
9 offered and sold its EIP accounts to new and/or existing California investors. The EIP enables  
10 investors to passively earn interest by loaning certain digital assets (Eligible Earn Assets) to Nexo.  
11 Nexo's EIP investors have no part in selecting, monitoring, or reviewing the revenue-generating  
12 activities that Nexo utilizes to earn this interest.

13 18. As of July 31, 2022, there were 18,071 California EIP accounts earning interest with  
14 a total California EIP savings wallet value of approximately \$174,800,000.00. Nationally, there  
15 were 93,318 EIP accounts earning interest with a total EIP savings wallet value of approximately  
16 \$800,260,000.00.

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

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

28



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

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

9           29.       In actions from September through November 2022, the NASAA Working Group  
10 concluded that Nexo’s offer to an investor the option to automatically renew their Fixed Term  
11 Investment for another identical term, along with the investor’s decision to enroll, constitutes an  
12 offer and sale of a security.

13           30.       On December 6, 2022, Nexo ceased to offer the EIP to investors within the NASAA  
14 Working Group.

### 15    **Deployment and Income-Generating Activities**

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

19                     ...understand and agree that we [Nexo] might convert, pledge, re-pledge,  
20 hypothecate, rehypothecate, sell, lend, or otherwise transfer, dispose of or use any  
21 amount of any Digital Assets in regard to which you use the Nexo Earn Interest  
22 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  
23 thereof or any other assets, at our [Nexo’s] sole and absolute discretion.

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

25           33.       Nexo groups and deploys investor Eligible Earn Assets with other investors’ Eligible  
26 Earn Assets and similar, Nexo-owned assets (e.g., Eligible Earn Bitcoin Assets with other Nexo-  
27 owned Bitcoin assets). To earn income to pay interest to EIP investors, Nexo engages in deployment  
28 activities including the staking, lending, arbitrage, and provision of liquidity on certain decentralized



1 finance platforms, in addition to the lending of aggregated investor Eligible Earn Assets to retail and  
2 institutional borrowers.

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

4 34. In offering the EIP to California investors, Nexo has failed to disclose material  
5 information related to Nexo's EIP interest generation, Nexo's regulatory compliance, and Nexo's  
6 financial representations.

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

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

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

22 38. Through these representations, Nexo gives investors the impression that their  
23 investments are less risky. On or about June 30, 2021, Nexo Co-Founder Trenchev appeared on a  
24 Yahoo Finance Live broadcast titled, "Crypto-focused banking: Nexo Co-Founder discusses his  
25 company's growth and business model." On this broadcast, Trenchev stated that he "would argue,  
26 from a financial perspective... that [Nexo is] safer, especially for the larger clients, than your  
27 average bank." On July 1, 2021, Nexo re-posted this broadcast to its YouTube channel, and re-  
28 named it, "Nexo is Safer than your Average Bank..."

1           39. Nexo Capital Inc. is the entity that operates Nexo’s website and conducts the EIP  
2 offering. This is not disclosed on the website; instead, the website often uses the name “Nexo”  
3 without further clarification. Of the licenses and registrations identified on Nexo’s website, Nexo  
4 Capital Inc. only held two—a money service business registration license in Canada and a  
5 registration as a foreign company in Australia. Notably, none of the Nexo respondents have  
6 qualified any securities before offering and selling them in California.

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

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

17           42. Further, on or about June 10, 2021, Nexo advertised a forthcoming “real-time audit”  
18 of Nexo’s custodial assets by Armanino LLP,<sup>1</sup> which they represented would show that the  
19 company’s assets exceed liabilities. In a Daily Hodl article published on June 10, 2021, Antoni  
20 Trenchev stated, “We are happy to have opened our books to allow Armanino...to verify that our  
21 company’s assets exceed liabilities at all times and demonstrate how seriously we treat Nexo’s  
22 commitments to our customers.”

23           43. In a Nexo blog post published on September 23, 2021, Nexo presented the Armanino  
24 report, which purports to offers a “real-time audit of Nexo’s custodial assets, showing the company’s  
25 assets always exceed liabilities.” This Armanino report is updated daily and Nexo claims that it  
26 provides the following assurances: 1) “Fully Backed: Your holdings on Nexo’s platform are backed  
27

28 \_\_\_\_\_  
<sup>1</sup> Armanino LLP is a Public Company Accounting Oversight Board (PCOAB) – certified auditor, accounting and consulting firm in the US.

1 by assets by more than 100%”; 2) “Properly Managed: Third-party assurance that your funds on the  
2 Nexo platform are properly managed and accounted for”; and 3) “Always Available: 24/7 proof of  
3 Nexo’s ability to meet all liabilities owed to you at any time.” This Armanino report is publicly  
4 available online at <https://real-time-attest.trustexplorer.io/nexo>.

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

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

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

15 46. Nexo’s provision of the Armanino report in conjunction with these claims of financial  
16 stability gives the appearance that the Armanino report can support Nexo’s claims of financial  
17 stability in a turbulent market.

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

26 48. As such, this report is of limited value and cannot be used to support Nexo’s claims  
27 that “Nexo’s assets exceed their liabilities by more than 100%”.

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**Failure to Comply with Registration Requirements**

49. During the Offering Period, Nexo’s offer and sale of the EIP was not done subject to an exception or exemption from qualification under the CSL.

50. During the Offering Period, Nexo offered and sold securities in California that were not qualified or permitted for sale in California as required by California Corporations Code section 25110.

**III.**

**CONCLUSIONS OF LAW**

51. The offer and sale of Nexo’s Earn Interest Product described above constitute the offer and sale of a security, in the form of an investment contract, as defined under California Corporations Code sections 25017 and 25019.

52. During the Offering Period, Nexo’s offer and sale of securities in California that were not qualified or permitted for sale in California violated California Corporations Code section 25110.

53. The foregoing violations of California Corporations Code section 25110 constitute the basis for the assessment of an administrative penalty against Nexo under California Corporations Code section 25252.

**IV.**

**ORDER**

On the basis of the Findings of Fact, Conclusions of Law, and Nexo’s consent to the entry of this Agreement, IT IS HEREBY ORDERED:

54. This Agreement concludes the securities investigation by the Department with respect to Nexo’s Earn Interest Product and resolves any other securities action with respect to the EIP that the Department could commence against Nexo and its affiliates concerning the Findings of Fact and Conclusions of Law, including as it relates to the offer and sale of the EIP without qualification or otherwise complying with an exemption and the above-referenced statements regarding Nexo’s material misrepresentations and omissions made thereto during the Offering Period.

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1           55.     This Agreement resolves the securities matter commenced by the Department on  
2 September 26, 2022, with the entry of the Desist and Refrain Order against Nexo Capital Inc., Nexo  
3 Inc., and the Nexo Group with respect to the EIP.

4           56.     This Agreement is entered into solely for the purpose of resolving the referenced  
5 multistate securities investigation with respect to the EIP and the Desist and Refrain Order and is not  
6 intended to be used for any other purpose. Other than the obligations and provisions set forth herein,  
7 this Agreement does not limit or create liability for Nexo nor limit or create defenses for Nexo to any  
8 claims.

9           57.     This Agreement is not intended to subject any Covered Person to any  
10 disqualifications under the laws of the United States, any state, the District of Columbia, Puerto  
11 Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or commodities  
12 regulator or self-regulatory organization, including, without limitation, any disqualification from  
13 relying upon the state or federal registration exemptions or safe harbor provisions. “Covered  
14 Persons” means Nexo Capital Inc., its parent, or any of its affiliates and their current or former  
15 officers, directors, employees, or other persons that could otherwise be disqualified as a result of the  
16 Agreement.

17           58.     Nexo is hereby ORDERED to cease and desist from:  
18           a.     Offering or selling the EIP or any security that is not registered, qualified, or exempt to  
19                new investors in California.  
20           b.     Accepting further investments or funds in the EIP by current California investors, unless  
21                and until the EIP or other securities are registered, qualified, or otherwise exempt in  
22                California.  
23           c.     Intentionally providing interest or other returns on any existing California investors’ EIP  
24                accounts until such securities are registered, qualified, or otherwise exempt. This means  
25                that Nexo shall diligently endeavor to ensure that interest payments are not provided to  
26                residents of California after April 1, 2023.  
27  
28

1           59. Nexo is hereby ORDERED to pay an administrative penalty in the amount of  
2 \$424,528.30 (in United States dollars) to the Commissioner. If timely payment is not made,  
3 additional interest shall accrue at the maximum rate authorized by law.

4           60. Full payment in the amount of \$424,528.30 (in United States dollars) shall be made in  
5 the following installments:

- 6           a. \$141,509.44 immediately upon entry of this Agreement;
- 7           b. \$94,339.62 90 days upon entry of this Agreement;
- 8           c. \$94,339.62 180 days upon entry of this Agreement; and
- 9           d. \$94,339.62 270 days upon entry of this Agreement.

10 Payments shall be applied first to post-agreement interest, which accrues at the maximum rate  
11 authorized by law.

12           61. If Nexo fails to make any payment by the date agreed and/or in the amount agreed  
13 according to the schedule set forth above, all outstanding payments under this Agreement, minus any  
14 payments made, shall become due and payable immediately at the discretion of the staff of the  
15 Department without further application to the Department.

16           62. Payment must be made in one of the following ways:

- 17           a. Nexo may transmit payment electronically to the Department, which will provide detailed  
18 ACH transfer instructions upon execution of the Agreement; or
- 19           b. Nexo may pay by certified company check or bank cashier's check, made payable to the  
20 Department and hand delivered or mailed to:

21                           ATTN: Accounting-Litigation  
22                           California Department of Financial Protection and Innovation  
23                           2101 Arena Boulevard  
24                           Sacramento, California 95834

25 Payments must be accompanied by a cover letter identifying Nexo Capital Inc. with the  
26 Enforcement Case Number 22331. A copy of the cover letter must be sent to Quincy Vien,  
27 Counsel, Department of Financial Protection and Innovation via electronic mail at  
28 Quincy.Vien@dfpi.ca.gov.

1           63. Nexo is further ORDERED to require verification of the identity of all new account  
2 holders to ensure that it does not provide products or services to California residents, and to  
3 implement IP-based geo-blocking restricting access by prospective new account holders from  
4 California to Nexo’s app, websites, and services.

5           64. This Agreement shall be binding upon Nexo, its parent and affiliates, and their  
6 respective successors and assigns with respect to the provisions above and all future obligations,  
7 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

8    V.  
9       CONSENT TO ENTRY OF SETTLEMENT AGREEMENT BY NEXO CAPITAL INC. AND  
10   NEXO INC. ON BEHALF OF NEXO

11           Nexo Capital Inc. and Nexo Inc., on behalf of Nexo, hereby further understand,  
12 acknowledge, and agree to the following (the Department, Nexo Capital Inc., and Nexo Inc. are  
13 referred to below (i) individually as party and (ii) together as parties):

14           65. Waiver of Hearing Rights. Nexo acknowledges that it has been served with a copy of  
15 this Agreement, has read the foregoing Agreement, is aware of its right to a hearing and appeal in  
16 this matter, and has waived the same. Specifically, Nexo withdraws its December 15, 2022 Amended  
17 Request for a Hearing on the Desist and Refrain Order, and Nexo hereby waives the right to any  
18 hearings, and to any reconsideration, appeal, or other right to review which may be afforded  
19 pursuant to the CSL, the California Administrative Procedure Act, the California Code of Civil  
20 Procedure, or any other provision of law. By waiving their aforementioned hearing and other rights,  
21 Nexo understands, acknowledges, and consents to the finality of the Desist and Refrain Order.

22           66. Failure to Comply with Agreement. Nexo agrees that if it fails to comply with the  
23 terms of this Agreement, the Commissioner may seek any and all remedies under the law.

24           67. Information Willfully Withheld or Misrepresented. This Agreement may be revoked  
25 and the Commissioner may pursue any and all remedies available under the law against Nexo if the  
26 Commissioner discovers that Nexo knowingly or willfully withheld or misrepresented information  
27 used for and relied upon in this Agreement.  
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1           68.     Future Actions by the Commissioner. If Nexo fails to comply with the terms of the  
2 Agreement, the Commissioner may institute proceedings for any and all violations otherwise  
3 resolved under this Agreement. The Commissioner reserves the right to bring any future actions  
4 against Nexo, or any of its partners, owners, officers, shareholders, directors, employees or  
5 successors for any and all violations of any law over which the Department has jurisdiction.

6           69.     Attestation. Nexo attests that it has adequate funds and resources to (i) facilitate,  
7 honor, and fulfill withdrawals of all assets belonging to residents of the 53 jurisdictions, and (ii) pay  
8 the agreed-upon settlement payments to the 53 Jurisdictions. Nexo agrees to further attest that it can  
9 perform the foregoing actions and still be solvent and without material impact to its ongoing  
10 operation. “Solvent” means that Nexo (a) can pay its debts as they become due; (b) owns property  
11 that has a fair saleable value greater than the amounts required to pay its debt (including a reasonable  
12 estimate of the amount of all contingent liabilities); and (c) has adequate capital to carry on its  
13 business. In connection with Nexo’s products and services and related transactions, Nexo is not  
14 incurring, has not incurred, and does not plan to incur, debts beyond its ability to pay as they become  
15 absolute and matured.

16           70.     Jurisdiction & Findings. Nexo admits the jurisdiction of the California Department of  
17 Financial Protection and Innovation, neither admits nor denies the Findings of Fact and Conclusions  
18 of Law contained in this Agreement, and consents to entry of this Agreement by the Department as  
19 settlement of the issues contained in this Agreement. Notwithstanding the foregoing, Nexo will  
20 admit the Findings of Fact and Conclusions of Law for the purposes of exceptions to discharge in  
21 bankruptcy proceedings under any and all jurisdictions, including the proceedings set forth in  
22 Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523; 1192.

23           71.     Guarantee. Nexo unconditionally guarantees payment of the administrative penalty  
24 and investigative costs in the amount of \$424,528.30 as agreed in this Agreement.

25           72.     No Tax Deduction or Credit. Nexo agrees that it shall not claim, assert, or apply for a  
26 tax deduction or tax credit with regard to any state, federal, or local tax for any administrative fine or  
27 investigative costs that Nexo shall pay pursuant to this Agreement.  
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1           73.    Notifications to U.S. Customers. By no later than February 1, 2023, Nexo shall (1)  
2 send a written communication to customers in the 53 Jurisdictions that customers should withdraw  
3 all assets from their Nexo accounts prior to April 1, 2023, and (2) provide separate conspicuous  
4 notifications of this directive on their website (<https://nexo.io>), Subreddit  
5 (<http://www.reddit.com/r/nexo>), and accounts on other media platforms, including Twitter,  
6 Instagram, and Facebook.

7           74.    Legacy Accounts. Nexo acknowledges, understands, and agrees that for any EIP  
8 accounts, savings wallets, and non-collateral wallets held by residents of the 53 Jurisdictions after  
9 April 1, 2023 (collectively, Legacy Accounts), (i) Legacy Account holders are the title, beneficial,  
10 and legal owners of all fiat currency and digital assets held in their Legacy Accounts; (ii) Nexo will  
11 assist customers beyond April 1, 2023, with any withdrawals/transfers; and (iii) Nexo will  
12 implement the following:

- 13           a. US Legacy Account assets shall be segregated from other assets under the  
14 management and control of Nexo.
- 15           b. By April 1, 2023, all digital assets held in Legacy Accounts shall be free of  
16 counterparty obligations, and after that date Nexo will not convert, pledge,  
17 rehypothecate, sell, lend, stake or otherwise transfer, dispose of or use any amount of  
18 digital assets held in Legacy Accounts.
- 19           c. No interest will accrue in or otherwise be applied to Legacy Accounts.
- 20           d. Nexo will continue to allow Legacy Account holders to have access to their Legacy  
21 Accounts for the sole purpose of making withdrawals by any such Legacy Account  
22 holder or their representative. Withdrawals may be in the form of transfers of digital  
23 assets to personal wallets or by selling the digital assets and transferring the fiat  
24 proceeds, at the discretion of the Legacy Account holder.

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

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

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

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

14           79.    Binding. This Agreement is binding on all of Nexo’s heirs, assigns, and/or successors  
15 in interest.

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

25           81.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
26 this Agreement will be valid or binding unless it is in writing and signed by each of the parties. The  
27 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No  
28 waiver by either party of any breach of, or of compliance with, any condition or provision of this

1 Agreement by the other party will be considered a waiver of any other condition or provision or of  
2 the same condition or provision at another time.

3 82. Full Integration. This Agreement 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 83. Governing Law. This Agreement will be governed by and construed in accordance  
10 with the laws of the State of California. Each of the parties hereto consents to the jurisdiction of  
11 such 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 84. Counterparts. This Agreement may be executed in one or more separate counterparts,  
14 each of which when so executed, shall be deemed an original. Such counterparts shall together  
15 constitute a single document.

16 85. Effect Upon Future Proceedings. If Nexo 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 this Agreement, then the subject matter hereof shall be admitted for the  
19 purpose of such application(s) or enforcement proceeding(s).

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

26 87. Notice. Any notice required under this Agreement shall be provided to each party at  
27 the following email addresses:  
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To Nexo: Nexo, Legal  
legal@nexo.io

Craig S. Warkol  
Partner  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Craig.Warkol@srz.com

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

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

89. Public Record. Nexo hereby acknowledges that the Agreement is and will be a matter of public record.

90. Effective Date. This Agreement shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Nexo’s counsel for this matter, Craig S. Warkol, at the following email address: Craig.Warkol@srz.com.

91. Authority to Sign. Antoni Trenchev represents that he is an authorized signatory of Nexo, including Nexo Capital Inc., Nexo Inc., and the Nexo Group, and that, as such, has been authorized by Nexo to enter into this Agreement for and on behalf of Nexo.

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

Dated: January 26, 2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



By:

\_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: January 26, 2023

Nexo Capital Inc. and Nexo Inc. (On Behalf of Nexo)

By: \_\_\_\_\_  
ANTONI TRENCHEV

Title: \_\_\_\_\_

Dated: January 26, 2023

Approved as to form by Nexo's counsel, Schulte Roth & Zabel LLP:

By: \_\_\_\_\_  
CRAIG S. WARKOL, PARTNER