

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

ORDER NO. 23-120-S

IN THE MATTER OF DETERMINING:)
Whether there has been a violation of the)
Securities Act of Alaska by:)

CONSENT ORDER

TRADESTATION CRYPTO, INC.,)

Respondent)

INTRODUCTION

WHEREAS TradeStation Crypto, Inc. (hereinafter “TCI”) is part of a group of companies that engage in financial services;

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

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

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

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

5 TCI has advised the NASAA Working Group of its agreement to resolve the securities
6 investigation pursuant to the terms specified in this Consent Order (the “Order”) and pursuant
7 to the multistate resolution recommended by the NASAA Working Group;

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

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

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

19 TCI admits to the jurisdiction of the Division of Banking & Securities, (the “Division”)
20 in this matter;

21 TCI elects to permanently waive any right to a hearing and appeal under Alaska Statute
22 (“AS”) 45.56.690, with respect to the entry of this Order; and

23 Solely for the purpose of terminating the NASAA Working Group’s securities
24 investigation and in settlement of the issues contained in this Order, TCI, without admitting or

1 denying the findings of fact or conclusions of law contained herein, consents to the entry of
2 this Order. Notwithstanding the foregoing, TCI will admit to the findings of fact and
3 conclusions of law solely for the purposes of exceptions to discharge in bankruptcy
4 proceedings under any jurisdiction, including the proceedings set forth in Sections 523 and
5 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523; 1192 (1978).

6 NOW, THEREFORE, the Director, as administrator of the Alaska Securities Act,
7 AS 45.56 *et seq.*, hereby enters this Order:

8 I. FINDINGS OF FACT

9 1. The Division has jurisdiction over this matter pursuant to the Alaska Securities
10 Act, AS 45.56. *et seq.*

11 2. TCI is a Florida corporation that was formed in June 2018 and is in the business
12 of providing online digital asset trading accounts to self-directed retail and institutional investors
13 and traders for the purpose of buying, selling, trading, and holding certain digital assets, which
14 today includes Bitcoin (BTC), Ether (ETH) and USD Coin (USDC).

15 3. TCI is a subsidiary of TradeStation Group, Inc., which is headquartered in
16 Plantation, Florida. Since 2011, TradeStation Group, Inc. has been a wholly-owned subsidiary
17 of Monex Group, Inc. (“Monex”), a publicly traded Japanese corporation listed on the Tokyo
18 Stock Exchange. TradeStation Group, Inc. is also the parent company of TradeStation Securities,
19 Inc., and TradeStation Technologies, Inc. which also have their principal place of business in
20 Plantation, Florida.

21 4. TCI is a registered Money Transmitter Licensee with the State of Alaska.

22 5. These affiliates, specifically TCI, TradeStation Securities, Inc., and TradeStation
23 Technologies, Inc., all use brand messaging under the “TradeStation” trademark to advertise their
24 respective platforms and services.

1 9. TCI promoted the Interest Feature in internet ads that would appear in search
2 engine results based on certain terms searched by customers. TCI promoted the Interest
3 Feature by advertising, for example: “Automatically Earn Interest on Eligible Crypto
4 Balances with No Limits or Lockups,” “Easily Customize the Trading Interface, Analyze
5 Prices & Keep Track of Interest Income,” “We Put the Power in Your Hands to Buy, Sell,
6 Invest, and Earn Cryptocurrencies,” and “Join the New Digital Economy with TradeStation
7 Crypto to Learn, Invest, and Earn Crypto.”

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

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

20 12. TCI commingled customers’ like-kind digital assets together and
21 rehypothecated, or used, the customers’ digital assets to lend to “trusted institutional or
22 corporate borrowers,” such as BlockFi Lending LLC and Genesis Global Capital, LLC—both
23 of which have since filed for bankruptcy protection. TCI represented that notwithstanding, no
24 borrower failed to return all digital assets lent by TCI to them, and none of TCI’s customers

1 lost money from the Interest Feature.

2 13. TCI represented that it implemented various risk mitigation strategies towards
3 its lending activities and that all loans made by it were fully secured. TCI set the amount of
4 crypto assets that it was willing to lend to individual borrowers depending on the borrower’s
5 credit profile. TCI further represented that it utilized its “automated risk management
6 system” to “monitor positions 24/7” and maintained a reserve balance to fulfill TCI customer
7 withdrawal demands. Further, TCI claimed to maintain an internal risk committee to
8 evaluate, among other things, credit and market risks that may affect its business. Customer
9 account balances with TCI were not SIPC or FDIC insured.

10 14. During the account opening process, TCI required customers to agree to the
11 rehypothecation of their digital assets when the customer accepted the TCI Terms, including
12 the Customer Account Agreement, during account set-up. Specifically, TCI required that
13 customers agree that TCI may hold the digital assets in TCI’s name, that their digital assets
14 could be commingled with other customers’ digital assets, and that TCI could “pledge,
15 repledge, hypothecate, rehypothecate, loan or invest” the digital assets. Further, the
16 agreements provided that TCI was under no obligation to share with its customers any of the
17 interest revenue generated by TCI’s lending arrangements.

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

24 16. On or about June 30, 2022, TCI discontinued the Interest Feature and ceased

1 all lending activities of customer assets.

2 **Failure to Comply with Registration Requirements**

3 17. During the Offering Period, TCI's offer and sale of securities in the form of the
4 Interest Feature was not offered or sold pursuant to an exemption or exception from
5 registration.

6 18. During the Offering Period, TCI offered and sold securities in Alaska that were
7 unregistered or did not meet an exemption for registration as required by AS 45.56.100.

8 **II. CONCLUSIONS OF LAW**

9 19. The offer and/or sale of the Interest Feature within digital assets trading accounts
10 maintained by customers as described above constitutes the offer and/or sale of a security as
11 defined in AS 45.56.900(32).

12 20. During the Offering Period, TCI's offer and sale of securities in Alaska that were
13 unregistered, or did not meet an exemption for registration, violated AS 45.56.100.

14 **III. ORDER**

15 Based on the Findings of Facts, Conclusions of Law, and TCI's consent to the entry of
16 this Order, IT IS HEREBY ORDERED:

17 21. This Order concludes the securities investigation by the Division with respect to
18 TCI's Interest Feature and resolves any other securities action the Division could commence
19 against TCI and its affiliates concerning the Findings of Fact and Conclusions of Law, including
20 as it relates to the offer and sale of the Interest Feature without registration, qualification, or
21 otherwise complying with an exemption.

22 22. This Order is entered into solely for the purpose of resolving the referenced multi-
23 state securities investigation with respect to the Interest Feature and is not intended to be used
24 for any other purpose. Other than the obligations and provisions set forth herein, this Order does

1 not limit or create liability for TCI nor limit or create defenses for TCI to any claims.

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

10 24. TCI is hereby ORDERED to cease and desist from offering, selling or renewing
11 the Interest Feature or any security that is not registered, qualified, or exempt to investors in
12 Alaska.

13 25. TCI is hereby ORDERED to pay a penalty in the amount of \$29,411.76 to the
14 State of Alaska, pursuant to AS 45.56.690.

15 26. Full payment in the amount of \$29,411.76 (in United States dollars) shall be
16 tendered on or before entry of this Order.

17 27. TCI shall pay the full penalty using whatever method agreed upon with Alaska,
18 which may include:

- 19 a. TCI may pay by certified check, bank cashier’s check, or United States postal
20 money order, made payable to the State of Alaska and mailed using Certified
21 or Registered mail to: State of Alaska, Division of Banking & Securities, P.O.
22 Box 110807, Juneau, AK 99811-0807

23 28. Payments must be accompanied by a cover letter identifying TCI (with relevant
24 tax identification numbers) and the file number of these proceedings.

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

ENTERED, this the 4th day of January, 2024.

IT IS SO ORDERED.

Julie Sande, Commissioner
Department of Commerce, Community and
Economic Development

DATED: January 4, 2024

/s/ Robert H. Schmidt
Robert H. Schmidt, Director
Division of Banking and Securities

1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY TRADESTATION**
2 **CRYPTO, INC.**

3 TradeStation Crypto, Inc. (TCI), hereby further understands, acknowledges, and agrees
4 to the following the Division and TCI are referred to below (i) individually as “party” and (ii)
5 together as “parties”):

6 30. Waiver of Hearing Rights. TCI acknowledges that it has been served with a copy
7 of the Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this
8 matter, and has waived the same. TCI hereby waives the right to any hearings, and to any
9 reconsideration, appeal, or other right to review which may be afforded pursuant to AS
10 45.56.690, or any other provision of law.

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

13 32. Information Willfully Withheld or Misrepresented. The Order may be revoked
14 and the Division may pursue any and all remedies available under the law against TCI if the
15 Division discovers that TCI knowingly or willfully withheld or misrepresented information used
16 for and relied upon in the Order.

17 33. Future Actions by the Division. If TCI fails to comply with the terms of the Order,
18 the Division may institute proceedings for any and all violations otherwise resolved under the
19 Order. The Division reserves the right to bring any future actions against TCI, or any of its
20 partners, owners, officers, shareholders, directors, employees or successors for any and all
21 violations of any law over which the Division has jurisdiction other than violations resolved
22 under this Order.

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

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

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

8 37. No Presumption Against Drafter. Each party acknowledges that it has had the
9 opportunity to draft, review, and edit the language of the Order. Accordingly, the parties intend
10 no presumption for or against the drafting party will apply in construing any part of this
11 Settlement. The parties waive the benefit of *Gibson v. Nye Frontier Ford, Inc.*, 205 P.3d 1091,
12 1097 (Alaska 2009), which provide that in cases of uncertainty, language of a contract should
13 be interpreted most strongly against the party who caused the uncertainty to exist.

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

17 39. Headings. The headings to the paragraphs of the Order are inserted for
18 Convenience only and will not be deemed a part hereof or affect the construction or interpretation
19 of the provisions hereof.

20 40. Binding. The Order is binding on all of TCI’s heirs, assigns, and/or successors in
21 interest.

22 41. Reliance. Each of the parties represents, warrants, and agrees that in executing
23 the Order, it has relied solely on the statements set forth herein and the advice of its own legal
24 counsel, if represented. Each of the parties further represents, warrants, and agrees that in
executing the Order it has placed no reliance on any statement, representation, or promise of any
other party, or any other person or entity not expressly set forth herein, or upon the failure of any
party or any other person or entity to make any statement, representation, or disclosure of

1 anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
2 party was in any way fraudulently induced to execute the Order; and (2) to preclude the
3 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of the Order.

4 42. Waiver, Amendments, and Modifications. No waiver, amendment, or
5 modification of the Order will be valid or binding unless it is in writing and signed by each of
6 the parties. The waiver of any provision of the Order will not be deemed a waiver of any other
7 provision. No waiver by either party of any breach of, or of compliance with, any condition or
8 provision of the Order by the other party will be considered a waiver of any other condition or
9 provision or of the same condition or provision at another time.

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

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

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

23 46. Effect Upon Future Proceedings. If TCI applies for any license, permit, or
24 qualification under the Division's jurisdiction, or is the subject of any future action by the
25 Division to enforce the Order, then the subject matter hereof shall be admitted for the purpose of
26 such application(s) or enforcement proceeding(s); provided, however, that, for the avoidance of
27 doubt, such admission of the subject matter hereof shall not be construed as any admission or
28 denial by TCI of any findings of fact or conclusions of law contained herein.

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

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

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

11 Gary DeWaal
12 Katten Muchin Rosenman LLP
13 50 Rockefeller Plaza
14 New York, NY 10020
15 (212) 940-6558
16 gary.dewaal@katten.com

17 To the Division: George Humm
18 Financial Examiner 3
19 george.humm@alaska.gov

20 Ann Sivulich
21 Financial Examiner 3
22 ann.sivulich@alaska.gov

23 49. Signatures. A fax or electronic mail signature shall be deemed the same as an
24 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 Division's agent via e-mail to TCI's counsel for this matter, Gary
DeWaal, at the following email address: gary.dewaal@katten.com.

 52. Authority to Sign. _____ represents that s/he is _____ of TCI and
that, as such, has been authorized by TCI to enter into the Order for and on behalf of TCI.

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907)269-8140

1 Dated this 4th day of January, 2024.

TradeStation Crypto, Inc.

By: /s/ David Schubauer

Title: General Counsel

Approved as to form by:

/s/ Gary DeWaal
Katten Muchin Rosenman LLP

8 SUBSCRIBED AND SWORN TO before me this 4th day of January, 2024.

9 [Affix seal]

13 /s/ Tamara McLendon-Coleman

14 Notary Public in and for the State of Florida

15 My Commission expires: 07/26/2025