STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

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| In the Matter of: | Case No. S-23-0080 |
| TRADESTATION CRYPTO, INC.<br><br>Respondent. | FINAL ORDER TO CEASE AND DESIST, FINAL ORDER ASSESSING CIVIL PENALTIES, AND CONSENT TO ENTRY OF ORDER |

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

**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

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

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

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

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

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

TCI admits to the jurisdiction of the Oregon Department of Consumer and Business Services, Division of Financial Regulation ("Division") in this matter;

TCI elects to permanently waive any right to a hearing and appeal under Oregon Revised Statutes ("ORS") 183.480, with respect to the entry of this Order; and

Solely for the purpose of terminating the NASAA Working Group's securities investigation and in settlement of the issues contained in this Order, TCI, without admitting or denying the findings of fact or conclusions of law contained herein, consents to the entry of this 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 jurisdiction, including the proceedings set forth in Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523; 1192 (1978).

NOW, THEREFORE, the Director of the Department of Consumer and Business Services ("Director"), as administrator of the Oregon Securities Law, hereby enters this Order:

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## I. FINDINGS OF FACT

1. The Division has jurisdiction over this matter pursuant to ORS 59.235.

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

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

4. TCI is a registered Money Transmitter Licensee with the Division (Nationwide Multi-State Licensing System license number 30242).

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

### ***The Offer and Sale of Securities in Oregon and Nationwide***

6. TCI began offering its digital asset trading accounts in or around November 16, 2019, to Oregon residents. From August 1, 2020, to June 30, 2022 (the "Offering Period"), TCI offered the Interest Feature to at least 161 Oregon investors. Through the Interest Feature, TCI paid interest to customers who held digital asset balances in their TCI digital asset trading accounts. To pay the interest, TCI generated revenue through lending both firm-owned and customer-owned digital assets to institutional borrowers, from commissions earned by TCI customer trading activity in their digital asset trading accounts, and from capital that was contributed to TCI in connection with the start-up of its business operations. On June 30, 2022, at the end of the Offering Period, there were 182 active Oregon digital asset trading accounts with TCI, collectively valued at over $859,642.94 USD. Nationally, at the

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end of the Offering Period, there were a total of 11,958 active digital asset trading accounts with TCI, with assets under custody totaling $98,214,155.40 USD.

***TCI's Interest Feature***

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

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

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

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

11. TCI set interest rates and credited TCI customer accounts with earned interest on a monthly basis. According to TCI, the interest "accumulates daily and is paid and compounds monthly

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directly in your TradeStation Crypto account." TCI based interest rates on a number of factors, including, but not limited to, the rates TCI earned from borrowers, economic, and competitive factors.

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

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

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

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

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

***Failure to Comply with Registration Requirements***

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

18. During the Offering Period, TCI offered and sold securities in Oregon that were unregistered or did not meet an exemption for registration as required by ORS 59.055.

## II. CONCLUSIONS OF LAW

19. The offer and/or sale of the Interest Feature within digital assets trading accounts maintained by customers as described above constitutes the offer and/or sale of a security as defined in ORS 59.015(13) and ORS 59.015(17).

20. During the Offering Period, TCI's offer and sale of securities in Oregon that were unregistered, or did not meet an exemption for registration, violated ORS 59.055.

## III. ORDER

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

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

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

23. This Order is not intended to subject any Covered Person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, Guam, or the U.S. Virgin

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Islands, or under the rules or regulations of any securities or commodities regulator or self-regulatory organization, including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Persons" means TCI, all of its parent companies, and all of its affiliates and their current or former officers, directors, employees, contractors, or other persons that could otherwise be disqualified as a result of the Order.

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

25. TCI is hereby ORDERED to pay a penalty in the amount of $29,411.76 to the General Fund of the State Treasury of Oregon, pursuant to ORS 59.995(1).

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

27. TCI shall pay the full penalty by check, certified check, bank cashier's check, or United States postal money order, made payable to "Department of Consumer and Business Services" and hand delivered or mailed to:

Department of Consumer & Business Services
Division of Financial Regulation
350 Winter Street NE
Room 410
Salem, OR 97301-3879

28. Payments must be accompanied by a cover letter identifying TCI (with relevant tax identification numbers) and the file number of these proceedings. A copy of the cover letter must be sent to: Adam Blechman at the foregoing mailing address or adam.blechman@dcbs.oregon.gov.

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.

## FINAL ORDER

30. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that provision, entry of this Order in no way limits or prevents further remedies, sanctions, or actions which may be available

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to the Director under Oregon law to enforce this Order, for violations of this Order, for conduct or actions of TCI that are not covered by this Order, or against any party not covered by this Order.

IT IS SO ORDERED.

Dated this 10th day of January, 2024.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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

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

31. Waiver of Hearing Rights. TCI acknowledges that it has been served with a copy of the Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same. TCI hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to ORS 183.480 or any other provision of law.

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

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

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

35. Jurisdiction & Findings. TCI admits to the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in the Order, and

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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.

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

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

38. No Presumption Against Drafter. Each party acknowledges that it has had the opportunity to draft, review, and edit the language of the Order. Accordingly, the parties intend no presumption for or against the drafting party will apply in construing any part of this Settlement. The parties waive the benefit of ORS 42.260, which provides that in cases of uncertainty, language of a contract should be interpreted most strongly for the party in whose favor the provision was made.

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

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

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

42. Reliance. Each of the parties represents, warrants, and agrees that in executing the Order, it has relied solely on the statements set forth herein and the advice of its own legal 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 anything whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute the Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of the Order.

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

44. Full Integration. The Order is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants

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between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their respective representatives, and any other person or entity, with respect to the subject matter covered hereby.

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

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

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

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

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

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| To TCI: | David Schubauer<br>General Counsel, TradeStation Crypto, Inc.<br>dschubauer@tradestation.com |
| | Gary DeWaal<br>Katten Muchin Rosenman LLP<br>50 Rockefeller Plaza<br>New York, NY 10020<br>(212) 940-6558<br>gary.dewaal@katten.com |
| To the Division: | Adam Blechman<br>Enforcement Officer<br>Division of Financial Regulation<br>adam.blechman@dcbs.oregon.gov |
| | Dorothy Bean<br>Chief of Enforcement<br>Division of Financial Regulation<br>dorothy.bean@dcbs.oregon.gov |

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

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

52. 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.

53. 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.

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Dated this 3rd day of January ,2024.

TradeStation Crypto, Inc.

By: /s/ David Schubauer

Title: General Counsel

SUBSCRIBED AND SWORN TO before me this 3rd day of January , 2024.

[Affix seal]

/s/ Tamara McLendon-Coleman

Notary Public in and for the State of Florida

My Commission expires: 7/26/2025

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