

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11269 / February 7, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21845

In the Matter of

TradeStation Crypto, Inc.,

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION 8A
OF THE SECURITIES ACT OF 1933, MAKING
FINDINGS, AND IMPOSING A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against TradeStation Crypto, Inc. (“TradeStation” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. Since approximately November 2019, TradeStation has offered crypto asset accounts to investors to purchase and sell crypto assets. In or around August 2020, TradeStation began to offer and sell an interest feature on the crypto asset accounts (“Interest Feature”) in the

United States. The Interest Feature allowed United States investors to tender to TradeStation certain crypto assets in exchange for TradeStation’s promise to pay a variable interest rate on the tendered assets. TradeStation then loaned investors’ crypto assets to institutional borrowers to generate revenue used to fund interest payments to Interest Feature investors. As of December 2021, the Interest Feature had approximately 11,122 active users and \$281 million in assets that were the basis of interest payments. On June 30, 2022, TradeStation voluntarily ceased offering and selling the Interest Feature to investors.

2. As described more fully below, TradeStation’s crypto asset accounts with the Interest Feature were offered and sold as securities in the form of investment contracts, and TradeStation offered and sold them without registering such offers and sales with the Commission as required by law. Specifically, Interest Feature investors tendered money, in the form of crypto assets, to TradeStation in exchange for a TradeStation promise to pay back investors with interest. TradeStation then took complete control over investors’ assets from their accounts and pooled them together, along with TradeStation assets. TradeStation then deployed those assets in revenue-generating activities, as TradeStation marketed to investors that TradeStation would do. Moreover, TradeStation promoted the Interest Feature as an investment by which investors could earn “passive income” and “put [their] crypto assets to work for [them].” Additionally, TradeStation’s revenue-generating activities were at its sole discretion, and TradeStation was responsible for managing the risks involved. Accordingly, investors had a reasonable expectation that they would share profits from TradeStation’s revenue-generating activities as a result of TradeStation’s managerial and entrepreneurial efforts.

3. TradeStation offered and sold securities without a registration statement filed or in effect with the Commission and without qualifying for an exemption from registration. As a result, TradeStation violated Sections 5(a) and 5(c) of the Securities Act.

Respondent

4. **TradeStation Crypto, Inc. (“TradeStation”)** is a Florida corporation formed in 2018 with its principal place of business in Plantation, Florida. TradeStation provides crypto asset-related financial products and services. It is a subsidiary of TradeStation Group, Inc., which is in turn a subsidiary of the Monex Group, Inc.

Facts

5. Since November 2019, TradeStation has operated a crypto asset business globally and in the United States through its public website, <https://www.tradestation.com/crypto/> and through its mobile application, both of which were accessible at all relevant times from within the United States. The business initially included crypto asset trading services and later was expanded to include the Interest Feature. As of December 2021, TradeStation globally had 11,122 active users participating in the Interest Feature and \$281 million in assets participating in the Interest Feature. Of these users and assets, \$195 million and 8,472 users were of U.S. origin.

6. In or around August 2020, TradeStation began offering and selling its Interest Feature, including to U.S.-based investors, through which investors tendered certain crypto assets to TradeStation in exchange for TradeStation’s promise to provide a variable rate of return on the crypto assets. Investors tendered the crypto assets to TradeStation by depositing the crypto assets with TradeStation or by purchasing crypto assets through a TradeStation account. The tendered crypto assets were held by a third-party wallet management service provider in omnibus wallet accounts in TradeStation’s name and that TradeStation owned. Through the TradeStation Crypto, Inc. Customer Account Agreement and its “Crypto Interest” brochure, TradeStation informed investors that it would pool their crypto assets into wallets that TradeStation controlled and then lend the crypto assets to third-party institutional borrowers, which generated revenue to pay interest to investors. TradeStation screened and selected the interest-bearing opportunities to which investors’ crypto assets were committed.

7. The “Crypto Interest” brochure published on TradeStation’s website provided the following:

“How does it work? TradeStation Crypto rehypothecates and lends your and other clients’ crypto assets to institutional borrowers. This generates revenues for TradeStation Crypto that supports the payment of interest to you on your eligible crypto account holdings.”

“How do I participate? All TradeStation Crypto customers are automatically enrolled. The TradeStation Crypto, Inc. Customer Account Agreement grants TradeStation Crypto the right to borrow, pledge, repledge, hypothecate, rehypothecate, loan or invest customers’ cryptocurrency holdings in their TradeStation Crypto account. Customers may elect to opt out of this authorization at any time by contacting Client Services.”

8. The TradeStation Crypto, Inc. Customer Account Agreement provided the following:

“Your Digital Assets will be held by a third-party wallet management service provider (‘Wallet Management Provider’) in one or more omnibus wallet accounts in [TradeStation]’s name (‘Omnibus Wallet Accounts’), and [TradeStation], not you or other [TradeStation] customers, is the owner of those Omnibus Wallet Accounts.”

“You acknowledge and agree that your access to and use of the Services is at your own risk.”

“As more fully explained in the section under the heading ‘Consent to Pledge or Use of Digital Assets,’ this Agreement grants

[TradeStation] the right to borrow, pledge, repledge, hypothecate, rehypothecate, loan or invest any of your Digital Assets. [TradeStation] may lend your Digital Assets to third parties. If any such third-party borrowers use the loaned Digital Assets to facilitate short selling, it could put downward pressure on the price of the loaned Digital Assets. [TradeStation] will receive compensation in connection with its use of your Digital Assets, including in connection with any loan by [TradeStation] of your Digital Assets. If [TradeStation] determines to share with you any of the compensation that it receives in connection with its use of your Digital Assets, the terms of any such sharing arrangement will be disclosed to you by electronic postings or delivery or other means, and/or reflected in your Account statement information. While it is expected that in most cases when [TradeStation] lends your Digital Assets to third parties, such third-party borrowers would deposit with [TradeStation] collateral to secure the repayment obligation, collateral may not be required in all circumstances and, even if required, may not cover the full value of the loan. If a loan of your Digital Assets is not repaid by the borrower or if your Digital Assets are not returned from any other use of your Digital Assets, then there is risk that such Digital Assets could be lost and may not be recoverable or replaced.”

9. The “Investment and Trading Disclosures Booklet – Cryptocurrencies” published on TradeStation’s website provided many of the same disclosures.

10. The interest rates offered to Interest Feature investors were subject to change generally on a monthly basis, but at TradeStation’s sole discretion. TradeStation set the rates based on, among other things, the specific crypto assets provided to TradeStation by the investor and the rate TradeStation could obtain from borrowers in the lending market for that asset. Interest accrued daily and was credited to investors’ accounts and compounded on a monthly basis.

11. Investors were able to withdraw, at any time, all or part of the assets lent to TradeStation, including interest earned, by providing a notice of instruction to TradeStation.

12. TradeStation retained control over the assets of investors who participated in the Interest Feature and lent those assets to third-party borrowers. This generated revenues for TradeStation Crypto that supported the payment of interest to investors who participated in the Interest Feature.

13. TradeStation marketed the Interest Feature to U.S. investors through general solicitations on TradeStation’s website, press releases, and on social media and elsewhere online. TradeStation promoted the Interest Feature as an investment and profit-making opportunity. For example, in TradeStation’s “Crypto Interest” brochure published on its website, TradeStation promoted the Interest Feature as an innovative way for customers to “make their assets work

harder for them.” TradeStation’s website also touted the Interest Feature as a way to earn “Passive Income” and to “Put your crypto assets to work for you.” The website included an “Interest Calculator” that allowed an investor to calculate their potential Interest Feature profits. TradeStation also promoted the Interest Feature as an investment opportunity on Twitter. For example, in a March 15, 2021 tweet, TradeStation encouraged investors to “Learn. Invest and Earn up to 6% with TradeStation Crypto” with a video promoting the same message. In a July 15, 2021 tweet, TradeStation advertised “Learn, Earn, and Trade Crypto!” and “Earn a sky-high 8%* per annum on USDC.”

14. At no point has TradeStation filed a registration statement with the Commission for the offer and sale of the Interest Feature. Nor did the offer and sale of the Interest Feature qualify for an exemption from registration under the Securities Act.

15. On or around June 30, 2022, TradeStation voluntarily ceased offering and selling the Interest Feature to investors, reduced the interest rate paid to existing Interest Feature investors on all assets to 0%, informed investors via email that their crypto asset accounts would no longer accrue interest starting on June 30, 2022, and stopped lending investor assets to third parties.

Legal Analysis

16. The Securities Act and the Securities Exchange Act of 1934 (“Exchange Act”) were designed to “eliminate serious abuses in a largely unregulated securities market.” *United Housing Found., Inc. v. Forman*, 421 U.S. 837, 849 (1975). They are focused, among other things, “on the capital market of the enterprise system: the sale of securities to raise capital for profit-making purposes . . . and the need for regulation to prevent fraud and to protect the interest of investors.” *Id.*

17. Under Section 2(a)(1) of the Securities Act, a security includes “an investment contract.” *See* 15 U.S.C. § 77b. Based on the facts set forth above, the Interest Feature constitutes the offer and sale of investment contracts. *See SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). Investors in the Interest Feature tendered money, in the form of crypto assets, to TradeStation to participate in the Interest Feature. TradeStation then pooled the Interest Feature investors’ crypto assets and used those assets for lending activities that would generate revenue for TradeStation that supported returns to the Interest Feature investors. The returns earned by each Interest Feature investor were a function of the pooling of the loaned crypto assets and the ways in which TradeStation deployed those loaned assets. In this way, each investor’s fortune was tied to the fortunes of the other investors. In addition, because TradeStation earned revenue for itself through its deployment of the loaned assets, the Interest Feature investors’ fortunes were also linked to those of TradeStation. Through its public statements and the economic structure of the accounts with the Interest Feature that TradeStation created, TradeStation invited Interest Feature investors to reasonably expect that they would earn profits derived from TradeStation’s efforts to manage the loaned crypto assets profitably. TradeStation retained ownership and control over the loaned crypto assets, and determined how much to hold and lend. TradeStation’s lending activities were at its own discretion, and TradeStation managed the risks involved.

18. TradeStation did not file a registration statement with the Commission for the offers and sales of the Interest Feature, nor did its offers and sales of the Interest Feature qualify for an exemption from registration under the Securities Act.

19. As a result of the conduct described above, TradeStation violated Section 5(a) of the Securities Act, which prohibits, unless a registration statement is in effect as to a security, any person, directly or indirectly, from making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

20. As a result of the conduct described above, TradeStation also violated Section 5(c) of the Securities Act, which prohibits any person, directly or indirectly, from making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security.

Respondent's Cooperation and Remedial Efforts

21. As described above, on June 30, 2022, TradeStation voluntarily ceased interest payments on existing crypto asset account balances, ceased offering the Interest Feature to new and existing U.S. investors and removed references to the Interest Feature or the ability to earn interest from its website.

22. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying TradeStation Crypto, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stacy Bogert, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary