Evidentiary Brief: “Illegality of APR Coupled with Liquidation”

September 2025

Preface

Nexo’s abusive use of “*APR*” marketing and the mischaracterization of high-risk margin products as safe, income-oriented “*credit lines*” did not occur in a vacuum. This conduct was permitted, even indirectly encouraged, by a regulatory environment in Switzerland that prioritized the appearance of fostering “innovation” over protecting consumers.

By declining to intervene while Nexo actively promoted the Earn Interest Product (EIP) from Swiss soil, FINMA created conditions in which investors like Mr. White were misled into believing they were engaging with a regulated Swiss financial institution. FINMA’s silence allowed Nexo to trade on Swiss credibility while sidestepping licensing obligations and suitability standards that would have prevented retirement-age investors from being exposed to such risks.

The abusive APR marketing, in particular, was a foreseeable consequence of regulatory leniency. By signaling tolerance in the name of “innovation,” FINMA enabled Nexo to craft deceptive narratives that directly harmed foreign retail clients.

While FINMA’s statutory mandate includes fostering innovation, that goal cannot override its core duty to protect investors when documented harm arises.

Why APR Consumer Loans and Collateral Liquidation Are Incompatible

1. Nature of an APR consumer loan

- In every jurisdiction where “*APR*” is a defined disclosure metric (U.S., EU, Switzerland):
    - APR represents the annualized cost of credit.
    - It is tied to a repayment schedule: monthly installments, fixed interest, predictable amortization.
    - Borrowers retain their collateral (if any) so long as they make required payments.
- By law, a lender offering an APR loan cannot unilaterally seize or liquidate collateral unless:
    - The borrower defaults on scheduled repayments, and
    - The lender pursues lawful repossession/foreclosure procedures (with due process and notice).

2. APR assumes repayment, not forfeiture

- The entire premise of APR is that the borrower will repay the debt in money over time.
- Collateral in an APR loan is secondary protection, not the repayment mechanism.
- Example:
  - A car loan at 7% APR means you'll pay monthly installments with interest.
  - If you stop paying, the lender repossesses the car, after default, not during normal performance.

3. Collateral liquidation voids the APR framework

- If collateral can be liquidated midstream, before repayment is due:
  - There is no certainty that the loan will ever amortize.
  - The borrower cannot rely on the disclosed "*APR*" because the real cost could be infinite (losing 100% of savings).
  - This converts the product into a margin loan, not a consumer loan.
- Put differently:
  - APR loans are credit-risk products (lender risks borrower default).
  - Margin loans are market-risk products (borrower risks collateral collapse).
  - Nexo collapsed these categories to trick investors.

4. Regulatory incompatibility

- Under TILA/Reg Z (U.S.): APR disclosures are only valid if tied to repayment terms. Liquidation instead of repayment renders the APR disclosure per se false.
- Under the EU Consumer Credit Directive: APR must reflect the true total cost of credit. If liquidation prevents repayment, APR becomes meaningless and misleading.
- Under Swiss UCA and Banking Act: using APR creates the impression of a licensed banking product. Liquidation-based loans are not bank products and cannot lawfully be advertised as such.

5. Why this mattered for victims

- Retirement-age investors like Mr. White relied on "*APR*" as shorthand for a safe, regulated, repayable credit line.
- They were not warned that "*APR*" was a mirage masking a margin liquidation engine.

- This deception destroyed investor trust and caused catastrophic losses that no true APR loan could ever impose.

6. Legal Precedent – APR and Liquidation as Mutually Exclusive

6.1 United States

Truth in Lending Act (TILA) & Regulation Z (12 CFR Part 1026)

- APR is a standardized measure of the cost of repayment-based consumer credit.
- Courts have consistently held that TILA requires predictable repayment terms, and that APR cannot be disclosed in contexts where repayment is not the operative framework.
- Precedents:
  - Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973): SCOTUS confirmed TILA applies whenever a consumer has a repayment obligation, not when obligations can be extinguished through forfeiture.
  - Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980): APR disclosures must be meaningful and not misleading; false or partial APR representations are unlawful.
- Repossession principles:
  - UCC Article 9 permits collateral seizure only after default, subject to notice and "*commercial reasonableness.*"
  - Thus, presenting a product as an APR loan while reserving rights to liquidate midstream violates TILA and the UCC simultaneously.

6.2 European Union

Consumer Credit Directive 2008/48/EC

- Art. 3, 19: APR is the standardized cost of credit, intended to allow comparability.
- Art. 10: Requires repayment schedules, default provisions, and consumer protections.
- Precedent: Case C-449/13 CA Consumer Finance SA v. Bakkaus (ECJ, 2014): The ECJ struck down an APR disclosure where underlying terms distorted repayment costs.
- Conclusion: APR disclosure is incompatible with unilateral liquidation rights, which eliminate the predictability that APR is designed to measure.

6.3 Switzerland

Swiss Consumer Credit Act (CCA; SR 221.214.1)

- Art. 9: Credit agreements must disclose APR and repayment terms.

- Art. 14: Collateral may only be enforced after borrower default, via Swiss debt enforcement law.
- Precedent: Bundesgericht 4A_90/2018 – Swiss Federal Supreme Court invalidated misleading credit terms where costs were disguised; underscored that transparency of repayment is mandatory.
- Conclusion: A loan product advertised with APR that allows liquidation midstream would be per se misleading and unenforceable under Swiss law.

6.4 United Kingdom

Consumer Credit Act 1974 / FCA Handbook

- APR disclosure is mandatory in all consumer credit advertising.
- Collateral repossession requires formal default notice and (often) court approval under the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983.
- Principle: APR-based loans cannot lawfully reserve unilateral liquidation rights.
- Case law: UK courts applying CCA have voided agreements where APR disclosures were misleading or repayment rights undermined (Wilson v First County Trust Ltd [2003] UKHL 40).

6.5 Cayman Islands

Monetary Authority Act (2020 Rev.) & AML Regulations

- Prohibits misrepresentation of regulatory oversight.
- An APR label implies consumer-credit oversight that does not exist under Cayman law.
- Liquidation clauses convert the product into a margin loan, making the APR disclosure misleading ab initio.

6.6 Consolidated Principle

Across U.S., EU, Swiss, UK, and Cayman frameworks, courts and regulators recognize:

APR and midstream liquidation are mutually exclusive.

- APR assumes fixed repayment obligations.
- Liquidation clauses assume collateral forfeiture.
- Combining them in a single product is structurally deceptive, because consumers reasonably believe APR signifies repayment-based consumer credit subject to regulatory safeguards.

Therefore:

- Nexo’s use of “*APR*” for a margin loan subject to liquidation was inherently unlawful in every jurisdiction with consumer-credit protections.
- The 37 preserved screenshots are irrefutable evidence of a product that no legal system would recognize as compliant.

7. Terms of Service (ToS) & UI Changes – APR Removal Timeline

Evidence of Change

- May 14, 2021 – Screenshots show explicit use of “APR” in the Nexo app marketing (“Crypto Credit Line from 5.9% APR”).
- October 21, 2021 – Screenshots show the same app/dashboard interface, but without APR terminology.
- This proves that at some point between May and October 2021, Nexo deliberately removed APR references from its user interface.

Regulatory Context

1. SEC–FINMA Memorandum of Understanding (October 2021):
    - Signed in October 2021, the SEC–FINMA MOU formalized cross-border supervisory coordination.
    - The removal of “*APR*” in the same timeframe may not be coincidental. It suggests Nexo became aware that using “APR” exposed them to regulatory challenge under U.S. and EU law.
2. U.S. Consumer Protection Laws:
    - APR cannot be used casually in marketing. Its use requires Truth in Lending Act (TILA) disclosures.
    - By removing APR, Nexo may have attempted to limit liability and preempt enforcement.
    - This constitutes consciousness of guilt, evidence that Nexo recognized APR use was unlawful.
3. FINMA Supervisory Failure:
    - If Nexo voluntarily removed APR references in late 2021, FINMA’s inaction is even more striking.
    - FINMA had notice of Nexo’s Swiss presence, saw its marketing to U.S. consumers, and allowed APR references to persist long enough to lure

retirement-age investors like Mr. White.

- ○ FINMA's silence enabled Nexo to continue deceptive practices until Nexo itself chose to self-correct.

Legal Implications

- Courts treat removal or alteration of representations as circumstantial evidence of knowledge of illegality ("consciousness of wrongdoing").
- In U.S. securities and consumer cases, sudden ToS/UI changes without disclosure can be admitted as evidence that the company knew its prior practices were improper.
- In Swiss administrative law, continued operation during the "APR period" (pre-October 2021) strengthens claims of FINMA supervisory failure, since the deceptive interface originated in Switzerland.

If a product is advertised with an "*APR*," the law treats it as a consumer-credit offering, not a casual marketing descriptor.

By statute in the U.S. (Truth in Lending Act, Reg Z §1026.24), Switzerland (Unfair Competition Act, Art. 3), and the EU (Consumer Credit Directive, Art. 4, 10), disclosure of an "*APR*" obliges the provider to meet the full suite of repayment, disclosure, and consumer-protection requirements.
If collateral can be seized or liquidated midstream, the borrower never has the chance to repay under fixed terms, making the APR disclosure meaningless and inherently misleading.

This transforms the product into a deceptive hybrid: advertised as regulated consumer credit, but functioning as an unregulated margin-loan subject to liquidation. Such conduct simultaneously violates consumer-credit law, securities law (misrepresentation of risk), and unfair-marketing statutes.

The moment Nexo uses "*APR*," Nexo is bound by law to the legal meaning of APR.

Evidentiary Brief Part 1: Legal Violations of APR Use by Nexo

Section 1. Introduction & Evidentiary Overview

Evidence Summary:

From at least February 3, 2021 through May 14, 2021, Nexo's mobile app displayed "*APR*" in connection with its "Crypto Credit Line." (See Appendix Screenshots A–B, original PNGs attached.)

By October 21, 2021, the same user interface no longer displayed "*APR*." (Screenshot C.)

Accordingly, the removal occurred sometime between May 14 and October 21, 2021. We do not assert the exact date absent Nexo's app-version logs and release notes.

Why this matters:

- APR is not a casual marketing term. It is a defined legal disclosure metric in the U.S., (Truth in Lending Act, 15 U.S.C. § 1601 et seq.; Regulation Z, 12 C.F.R. Part 1026), the EU (Consumer Credit Directive 2008/48/EC, Art. 3 & 19), and Switzerland (Consumer Credit Act, SR 221.214.1, Arts. 9–10; Unfair Competition Act, SR 241, Art. 3).
- United States:

  Truth in Lending Act (TILA), 15 U.S.C. §§ 1601–1667f, and Regulation Z, 12 C.F.R. Part 1026 — both mandate standardized disclosure of Annual Percentage Rate (APR) when any credit terms are advertised or offered.
- European Union:

  Consumer Credit Directive (2008/48/EC), Art. 3 & Art. 19 — requires APR (called the annual percentage rate of charge) as the uniform measure of borrowing cost; marketing without full disclosure is unlawful.
- Switzerland:

  Consumer Credit Act (Konsumkreditgesetz, KKG; SR 221.214.1), Art. 9 & 10 — requires clear disclosure of effektiver Jahreszins (APR equivalent) in consumer credit contracts and advertising; misleading omission or misuse violates both KKG and the Unfair Competition Act (UCA; SR 241).
- By adopting this regulatory shorthand while operating unlicensed, Nexo willfully misrepresented its high-risk margin loan product as a conventional, regulated consumer credit product.
- Use of APR creates the reasonable impression of consumer-credit regulation and regulatory oversight.
- Nexo, as an unlicensed offshore entity, had no authority to use APR in marketing to U.S. or EU consumers without the required disclosures and compliance framework.
- By adopting this regulatory shorthand, Nexo engaged in willful deception: misrepresenting a risky margin-loan product as a conventional, regulated consumer-credit product.

Section 2. Jurisdictional Legal Violations

2.1 United States

Truth in Lending Act (TILA) & Regulation Z (12 CFR Part 1026)

- TILA requires clear, standardized disclosure of APR whenever credit terms are presented.
- Nexo used the term "*APR*" but did not:
    - Provide federally mandated disclosures (finance charges, total of payments, repayment schedule, etc.).
    - Comply as a creditor under U.S. consumer-credit laws.
- Legal characterization: Using *'APR'* while omitting disclosures required under 12 C.F.R. §§ 1026.5, 1026.24 (finance charges, repayment schedule, total of payments) is inconsistent with TILA's framework and deemed deceptive under 15 U.S.C. § 1638(a)(4).

Deceptive Advertising — FTC Act §5

- Representations likely to mislead a reasonable consumer are unlawful.
- Presenting "APR" alongside "Crypto Credit Line" would lead reasonable U.S. consumers (especially retirees) to conclude the product was safe, regulated, and akin to a bank credit product.
- That deception is actionable regardless of Nexo's offshore domicile because the marketing targeted U.S. residents.
- See FTC Policy Statement on Deception, 103 F.T.C. 110, 174–84 (1984): a representation is deceptive if it is likely to mislead reasonable consumers acting reasonably under the circumstances, even absent intent.

Securities Law Overlay — Securities Act of 1933 / Exchange Act of 1934

- The SEC's Jan. 2023 Order found Nexo's EIP an unregistered security.
- The "Crypto Credit Line" functioned as securities-based margin lending tied to volatile collateral; marketing it with "*APR*" suggested bank-style protections that did not exist, compounding the overall deception.

2.2 Switzerland

Swiss Banking Act (BA; SR 952.0)

- No institution may present itself as a "bank" or offer lending implying banking regulation without a FINMA license.
- By using APR (a regulated banking term), Nexo implied parity with licensed Swiss institutions.

- Misrepresentation under Swiss law can trigger administrative enforcement by FINMA.
- Swiss Banking Act, SR 952.0, Art. 1 & 3 prohibit unlicensed institutions from presenting themselves as banks or offering products implying regulatory equivalence.

Swiss Unfair Competition Act (UCA; SR 241)

- Art. 3 prohibits misleading advertising about essential product characteristics.
- Displaying "*APR*" for an unregulated crypto margin-loan product is misleading by definition.
- UCA Art. 3 para. 1 lit. b: prohibits misleading advertising concerning essential product characteristics.

Financial Market Supervision Act (FINMASA)

- FINMA must act against "substantial disadvantages to clients."
- Permitting APR misrepresentations without enforcement is a supervisory failure, especially where elderly investors are harmed.
- FINMASA Art. 31: FINMA may take measures where client disadvantages arise; Art. 29 requires proportionality in supervisory measures.

2.3 European Union

Consumer Credit Directive (2008/48/EC)

- APR is the mandatory standardized borrowing-cost measure.
- Using APR without disclosing all costs (fees, repayment schedules, total cost) violates the Directive.
- Consumer Credit Directive 2008/48/EC, Art. 10 requires credit agreements to specify repayment amounts and schedules. The absence of such disclosure renders APR statements misleading.

Unfair Commercial Practices Directive (2005/29/EC)

- Misleading consumers by suggesting regulatory protections or suitability where none exist is prohibited.
- Nexo's APR use falsely signaled regulatory harmonization with EU consumer-credit laws.

2.4 Cayman Islands

Monetary Authority Act (2020 Revision), §6(1)(a):

- Prohibits misrepresentation that an entity is licensed or supervised.
- By presenting APR, Nexo implied consumer-credit regulation that did not exist under Cayman law.

POCA / AML Regulations (contextual)

- Deceptive cross-border inducements to move assets can overlap with fraud predicates. [Keep as context; don't overstate.]

Evidentiary Brief Conclusion of Legal Section (Part 1):

Across U.S., Swiss, EU, and Cayman frameworks, Nexo's repeated use of APR was unlawful or misleading. Each sovereign system treats APR as a regulated disclosure, not a casual marketing term. The 37 preserved screenshots are strong evidence of a deliberate, multi-jurisdictional deception campaign.

Evidentiary Brief Part 2: Investor Harm + Forensic Authentication

Section 3. Investor Harm and Vulnerability

3.1 Retirement-Age Investor Status

- Mr. White was over 60 when he opened his Nexo account in January 2021.
- Retirement-age investors receive heightened protection:
    - SEC Regulation Best Interest, 17 C.F.R. § 240.15l-1, requires broker-dealers to exercise reasonable diligence, care, and skill based on the customer's investment profile, which explicitly includes age. In practice, this imposes heightened suitability obligations for senior investors (Reg BI, 17 C.F.R. § 240.15l-1(a)(2)(ii)). Senior status increases the suitability threshold.
    - FINRA Rule 2165 (senior/vulnerable adult exploitation) FINRA Rule 4512 also requires firms to make reasonable efforts to obtain the name of a trusted contact person for senior investors.
    - EU MiFID II suitability/appropriateness duties for retail clients with limited risk capacity.

3.2 Misaligned Product Risk

- Nexo induced account opening by advertising “*credit lines*” at APRs, mimicking conventional consumer loans.

- In reality, the “*Crypto Credit Line*” was a high-risk leveraged margin account with liquidation triggers unsuitable for retirees.

- No suitability screening or risk disclosure was conducted.

3.3 Catastrophic Financial Impact

- Account liquidated in March 2023, wiping out ~$3 million in lifetime savings.

- The account had doubled in value pre-liquidation, evidencing lack of awareness of liquidation risk (a reasonable person who understood margin exposure likely would have de-risked).

- Loss destroyed:

    - Retirement security.

    - Intergenerational wealth transfer (intended inheritance).

3.4 Collateral Consequences

- Ongoing financial strain and risk of bankruptcy.

- Ongoing support of elderly parents and payment of daughter’s education expenses.

- Impact radiates beyond Mr. White to dependents.

3.5 Documented Medical Harm

- July 2025: medically documented atrial fibrillation event.

- Treating physicians identified stress from unresolved losses and prolonged process as a material contributing factor.

- Triggers “*imminent harm*” lens (SEC Enforcement Manual §3.2).

Section 4. Forensic Authentication of Evidence

4.1 Contemporaneous Capture

- 37 screenshots captured across the account lifecycle.

- Metadata (EXIF/PNG headers) shows creation dates consistent with events.

4.2 Chain of Custody

- Files preserved in original format on the originating device, with backups.
- No third-party edits.

4.3 Forensic Verification Methods

- Cellebrite UFED / Oxygen Forensics can:
  - Extract raw file-system data;
  - Confirm original creation dates;
  - Generate SHA-256 hashes;
  - Capture app metadata (bundle ID, version) proving the APR interface was deployed at the time.

4.4 Litigation-Grade Admissibility

- U.S. FRE 901 authentication; similar standards under Swiss/EU civil procedure via expert certification.

4.5 Pattern Evidence

- Repetition across 37 captures shows systematized misrepresentation, not an isolated UI label.

Evidentiary Brief Interim Conclusion (Parts 1–2)

- Illegality/Misleading conduct: established across jurisdictions.
- Harm: catastrophic to a retirement-age investor.
- Evidence: litigation-grade, authenticable, and pattern-based.

Evidentiary Brief Part 3: Regulatory Ask + Conclusion

Section 5. Regulatory and Supervisory Obligations

5.1 SEC Enforcement Mandate

- Jan. 2023 SEC Order (EIP) confirms unlawful conduct.

- Gaps remain:
    - The “*Credit Line*” misrepresentation was not addressed;
    - No Fair Fund;
    - No tailored relief for retirement-age victims.

5.2 SEC–FINMA MOU (Oct. 2021)

- Provides a framework for cross-border supervisory cooperation.
- This case falls squarely within its scope:
    - Misconduct by a Swiss-based entity with U.S. victims.
    - Supervisory failure by FINMA to address transparency (refusal to provide account records).
- The SEC has explicit authority under the MOU to escalate coordination and request FINMA’s intervention.
    - Article III ¶38 (Emergency Cooperation) expressly provides that, in an “*Emergency Situation*,” the SEC and FINMA shall “*endeavor to notify each other as soon as practicable*” and “*cooperate as appropriate in the particular circumstances.*” This language squarely applies where imminent investor harm is documented, as here.
    - Art. IV ¶44: “*Where a Covered Firm refuses to supply records directly to the SEC, FINMA agrees to liaise with the Covered Firm to help resolve the issue and to assist promptly.*”

5.3 Imminent Harm

- SEC Enforcement Manual §3.2 allows prioritization where conduct threatens imminent harm.
- Retirement age + health event + imminent financial collapse fit that lens.

Section 6. Requested Actions

1) SEC Enforcement

- Expand investigation to cover the “*Credit Line*” as an unregistered/misrepresented security.
- Require Nexo AG to provide balances/equity history sufficient for settlement.

- Compel restitution (Fair Fund or direct settlement).

2) SEC OIA

- Use the 2021 MOU to formally engage FINMA/CIMA (Cayman) and elevate to priority status.

3) FINMA

- Recognize supervisory failure in refusing to provide Mr. White with his own account records.
- Direct Nexo AG to cooperate in producing settlement-facilitating data. Under Article IV ¶44, where a "*Covered Firm refuses to supply records directly to the SEC*," FINMA agrees "*to liaise with the Covered Firm in order to help solve issues resulting from such refusal*" and to "*assist promptly.*" This obligation directly applies to Nexo AG's ongoing refusal to provide basic account records.
- Encourage Nexo to finalize a make-whole payment (loss of $3M plus lost opportunity of $3M).

4) Congressional / Media Oversight

- Encourage oversight to ensure timely action for retirement-age investors in cross-border crypto cases.

Section 7. Conclusion

This case is systemic, not isolated:

- Nexo marketed a margin product disguised as a loan to retirement-age investors.
- FINMA/Nexo obstructed transparency (no records).
- The SEC acted once but did not secure restitution.

Urgency:

- Age 65; risk of bankruptcy; dependent family; documented cardiac event.
- Evidence includes 37 authenticated screenshots showing APR misrepresentations.

Choice:

- Intervene decisively and secure restitution; or allow a preventable harm to stand as a public example of regulatory failure.

Evidentiary Brief Conclusion

To summarize the evidentiary record:

- The 2021 SEC–FINMA MOU contemplates coordinated supervision and investor protection in cross-border cases.
- The SEC's Jan. 2023 order confirmed EIP was an unregistered security, placing FINMA on notice.
- Mr. White's losses occurred under that framework, marketed from Switzerland during a period of FINMA inaction, with coercive, misleading claims to U.S. investors.
- FINMA's refusal to require transparency (basic account records) amplified harm.
- Because Nexo leveraged Swiss credibility without Swiss licensing, FINMA's supervisory responsibility is heightened.
- FINMA has the tools to compel resolution via supervisory directive.

Therefore:

- FINMA's complacency constitutes complicity in Nexo's abuses.
- FINMA is responsible for facilitating make-whole settlements for harmed legacy EIP users, beginning with Mr. White.
- A written supervisory directive to Nexo AG requiring settlement is proportionate and necessary.

Absent action, FINMA's silence will be read as willful regulatory failure, undermining the SEC–FINMA MOU and Switzerland's reputation. The MOU was created precisely for moments like this; disregarding it would signal that foundational agreements can be set aside when inconvenient.