

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN RE:

BLOCKFI INC., BLOCKFI LENDING LLC, AND
BLOCKFI TRADING LLC

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DOCKET NO. 21-025-S

SHOW CAUSE ORDER

The Vermont Department of Financial Regulation (the “Department”), having the authority to administer and provide for the enforcement of all provisions of 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act of 2002 (the “Securities Act”), upon due consideration of the subject matter hereof, has determined as follows:

JURISDICTION

1. The Commissioner of Financial Regulation is responsible for administering and enforcing the securities laws of the State of Vermont and is authorized to investigate companies to determine compliance with Vermont law and issue orders imposing remedial actions and civil administrative penalties, pursuant to 9 V.S.A. §§ 5601-5605.
2. Pursuant to 9 V.S.A. § 5604(a)(1), the Commissioner may issue orders or directives to any person to cease and desist from specific conduct if the Commissioner finds that the person has engaged, is engaging or is about to engage in an act, practice or course of business which constitutes a violation of the Securities Act.
3. Pursuant to 9 V.S.A. § 5604(b) and Section 13 of Department Regulation 82-1 (Revised), the Commissioner may issue such orders without prior notice or an opportunity to be heard.
4. Pursuant to 9 V.S.A. § 5604, the Commissioner may: (1) impose a civil administrative penalty for each violation of the Securities Act, an administrative rule of the Department,

or an order of the Commissioner relating to securities, of up to \$15,000 per violation; and (2) require a company to make restitution or provide disgorgement of any sums shown to have been obtained in violation of the Securities Act, plus interest at the legal rate.

RESPONDENTS

5. BlockFi Inc. (“BlockFi”) is a Delaware corporation that conducts business in the State of Vermont. BlockFi’s principal place of business is located at 201 Montgomery Street, Suite 263, Jersey City, NJ 07302.
6. BlockFi Lending LLC (“BlockFi Lending”), a wholly owned subsidiary of BlockFi, is a Delaware limited liability company that conducts business in the State of Vermont. BlockFi Lending’s principal place of business is located at 155 2nd Street, Suite 112, Jersey City, NJ 07302. BlockFi Lending is registered with the Vermont Secretary of State as a foreign limited liability company.
7. BlockFi Trading LLC (“BlockFi Trading”), a wholly owned subsidiary of BlockFi, is a Delaware limited liability company that conducts business in the State of Vermont. BlockFi Trading’s principal place of business is located at 201 Montgomery Street, Suite 263, Jersey City, NJ 07302. BlockFi Trading is registered with the Vermont Secretary of State as a foreign limited liability company.
8. BlockFi, BlockFi Lending, and BlockFi Trading are referred to herein collectively as the “Respondents.”

BACKGROUND AND FINDINGS OF FACT

The Crypto Interest Accounts

9. BlockFi is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, as well as propriety trading and other types of transactions.

10. BlockFi, through its wholly owned subsidiaries BlockFi Lending and BlockFi Trading, is, in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts to residents of Vermont and investors in other states.
11. BlockFi refers to the cryptocurrency interest-earning accounts as “BlockFi Interest Accounts” (the “BIAs”).
12. BlockFi permits Vermont residents and other investors at least eighteen years old to invest in the BIAs through its website or smartphone application.
13. Investors open their BIAs by transferring eligible cryptocurrency to a digital wallet address. The cryptocurrency is then accepted by BlockFi Trading and transferred to BlockFi Lending, which acts as the issuer of the BIA.
14. When investors contribute cryptocurrency to their BIAs, they exchange that digital asset for a contractual obligation of BlockFi Lending to return the same amount of that cryptocurrency, plus any interest earned.
15. Investors relinquish control over cryptocurrencies but retain a right to withdraw; BlockFi Lending purports to reserve a portion of the cryptocurrencies to meet investor withdrawal demands. BlockFi Lending is otherwise free to use the cryptocurrencies consistent with the terms of the BIAs, including commingling cryptocurrencies with cryptocurrencies deposited by other investors, investing those cryptocurrencies in the market, purchasing equities, and lending those cryptocurrencies to institutional and corporate borrowers.
16. In exchange for consideration (i.e. deposits) received in the present, BlockFi is promising to pay lucrative interest rates in the future. BlockFi is currently promoting the interest rates through its website, which advertises annual returns on cryptocurrencies for retail investors

well in excess of the rates currently being offered by short-term investment grade fixed income securities or on bank savings accounts.

17. The accrual of interest begins the day after investors transfer cryptocurrencies to BlockFi and interest is compounded monthly.
18. Retail investors may withdraw their cryptocurrencies at any time, subject to certain processing times.
19. As of March 31, 2021, BlockFi had over \$14.3 billion in outstanding BIA liabilities and more than 300,000 funded accounts from the sale of BIAs, including the sale of BIAs to Vermont residents.

The Lack of Registration and Public Protections

20. Respondents are not registered with the Vermont Department of Financial Regulation to offer or sell securities in Vermont.
21. The BIAs are not registered or permitted for sale in Vermont, nor do they qualify for any exemption from registration pursuant to the Securities Act.
22. Respondents are not registered with the United States Securities and Exchange Commission (the “SEC”).
23. Respondents did not file or cause to be filed a registration statement with the SEC in connection with the offer and sale of the BIAs.
24. Respondents are not disclosing material information to BIA investors that issuers of registered securities must include in a registration statement and provide to prospective investors in the form of a prospectus pursuant to the Subchapter 3 of the Securities Act and Section 6-1 of the Vermont Securities Regulation.

25. The BIAs are not protected by Securities Investor Protection Corporation, otherwise known as the SIPC, a federally mandated, non-profit, member-funded United States corporation created under the Securities Investor Protection Act of 1970 that mandates membership of most US-registered broker-dealers.
26. The BIAs are also not insured by the Federal Deposit Insurance Corporation, otherwise known as the FDIC, an agency that provides deposit insurance to depositors in the United States, or the National Credit Union Administration, otherwise known as the NCUA, an agency that regulates and insures credit unions.

The Department's Notice to BlockFi of Potential Registration Violations

27. On or about August 28, 2020, BlockFi Lending applied for a Vermont lender license.
28. As part of its review of BlockFi Lending's application for a Vermont lender license, the Department requested that Respondents provide information regarding all BIAs held by Vermont residents. Respondents complied with this request, which confirmed that many Vermont residents hold BIAs.
29. On or about January 7, 2021, the Department notified BlockFi Lending that the BIAs appear to be securities and requested that BlockFi Lending explain how Respondents' offering of BIAs complies with or is exempt from the registration and reporting requirements of the Securities Act, as well as the Securities Act of 1933, and the Securities Exchange Act of 1934. Respondents provided an unsatisfactory response to the Department's request.
30. Respondents have continued to offer the BIAs to Vermonters without complying with the registration requirements set forth in this Show Cause Order.

CONCLUSIONS OF LAW


31. Pursuant to 9 V.S.A. § 5301, “[i]t is unlawful for a person to offer or sell a security in this State unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under sections 5201 through 5203 of this chapter; or (3) the security is registered under this chapter.”
32. Pursuant to 9 V.S.A. § 5102(28), the term “security” includes notes, investment contracts, evidence of indebtedness, and related types of participation in profit-sharing agreements. Section 5102(28)(D) specifies that the Securities Act’s definition of security includes “an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a ‘common enterprise’ means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.” *Id.* (adopting the definition set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), commonly referred to as the “*Howey test*”).
33. The BIAs offered by Respondents are securities within the meaning of Section 5102(28).
34. The BIAs were neither federal covered securities nor registered with the Department nor exempted from registration when Respondents offered or sold them to Vermont investors.
35. Accordingly, Respondents are in violation of 9 V.S.A. § 5301.

ORDER

ACCORDINGLY, IT IS HEREBY ORDERED that Respondents show cause to the Commissioner, within thirty (30) days of the date of this Order, why an order should not be entered by the Commissioner directing Respondents to cease and desist offering BIAs in Vermont, and further, as a condition of such order, to pay restitution and meet such other terms and conditions

as the Commissioner deems appropriate under 9 V.S.A. § 5604, including, but not limited to a civil penalty of not more than \$15,000.00 for each violation.

Dated at Montpelier, Vermont this 22nd day of July, 2021.

By: 

Michael S. Pieciak
Commissioner of Financial Regulation
Vermont Department of Financial Regulation