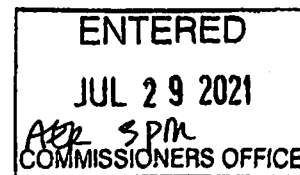


COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2021-AH-00020



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

BLOCKFI, INC.;
BLOCKFI LENDING, LLC; and
BLOCKFI TRADING, LLC

RESPONDENTS

EMERGENCY CEASE AND DESIST ORDER

Comes now the Department of Financial Institutions (DFI, or the "Department"), pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500, and 808 Kentucky Administrative Regulation (KAR) 10:225, and hereby enters this **Emergency Cease and Desist Order** against BlockFi, Inc., BlockFi Lending, LLC, and BlockFi Trading, LLC, ("Respondents"). In support thereof, DFI states as follows:

PARTIES

1. The Commissioner is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky ("the Act"), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. BlockFi, Inc., BlockFi Lending, LLC, and BlockFi Trading, LLC (collectively "BlockFi", or the "Company") are Delaware companies with principal offices located at 1209 Orange Street, Wilmington, Delaware, 19801. BlockFi's registered agent for service of process is National Registered Agents, Inc. at the same address. BlockFi Lending, LLC, and BlockFi Trading, LLC, are wholly owned subsidiaries of BlockFi, Inc.

3. BlockFi Lending, LLC is also registered as a Foreign Limited Liability Company in Kentucky, with a principal office at 155 2nd Street, Suite 112, Jersey City, New Jersey 07302. BlockFi Lending, LLC's registered agent for service of process in Kentucky is National Registered Agents, Inc., at 306 West Main Street, Suite 512, Frankfort, Kentucky 40601.

4. BlockFi Trading, LLC is also registered as a Foreign Limited Liability Company in Kentucky, with a principal office at 201 Montgomery Street, Suite 263, Jersey City, New Jersey 07302. BlockFi Trading, LLC's registered agent for service of process in Kentucky is National Registered Agents, Inc., at 306 West Main Street, Suite 512, Frankfort, Kentucky 40601.

STATEMENT OF FACTS

5. On May 27, 2021, DFI became aware that BlockFi was engaging in securities-related activities. Subsequently, the Department conducted an investigation into BlockFi which determined the facts and circumstances described herein.

6. On June 24, 2021, as a part of its investigation DFI searched BlockFi's website, <http://blockfi.com>. On this website, BlockFi offers cryptocurrency lending and borrowing services. The website states, among other things, "Earn more from your crypto. With a BlockFi Interest Account (BIA), your cryptocurrency can earn up to 8.6% APY. Interest accrues daily and is paid monthly. There are no hidden fees, no minimum balances, and no reason to wait." Furthermore, BlockFi's website states that a BIA "provides clients with the ability to earn more crypto while holding for long-term investments. Interest is paid monthly and compounds. This significantly increases the potential earnings of long-term account holders."

7. BIAs are offered on BlockFi's website to anyone over the age of eighteen (18), except for residents of New York and certain foreign jurisdictions. Registering for a BIA also requires a user to verify that they have read and accepted BlockFi's "Terms & Conditions,"

“Interest Account Terms,” and “Privacy Policy.” These documents are available on the website via hyperlink, although the user is not required to read them when accepting these terms. The website is also available through BlockFi’s own proprietary app via smartphone.

8. BlockFi offers and sells BIAs through individual and business accounts. Through these accounts, investors may deposit certain cryptocurrencies with the Company in exchange for a specified interest rate. The rates currently advertised by BlockFi are well above those offered by similar short-term investment securities or similar certificates of deposit offered by banking institutions.

9. The BIA “Terms & Conditions” (as available on BlockFi’s website) require that a BIA holder completely relinquish control over the assets deposited in their account. Further, the “Interest Account Terms” grant BlockFi the unilateral right to hold the deposited assets, “and to pledge, re-pledge, hypothecate, re-hypothecate, sell, lend, or otherwise transfer, invest or use any amount of such cryptocurrency, separately or together with other property, with all attendant rights of ownership, and for any period of time and without retaining in BlockFi’s possession and/or control a like amount of cryptocurrency, and to use or invest such cryptocurrency at its own risk.” Under these terms, all BIA holders must be passive investors.

10. Once an investor’s assets have been deposited with the Company, BlockFi pools these assets and uses them to fund the Company’s lending and trading operations. The proceeds of these operations are then used to fund interest payments back to the original investor. These interest payments appear to be the motivating factor behind a customer’s initial investment.

11. Through its investigation of the foregoing, DFI has become aware that the Company is offering securities in the form of investment contracts in exchange for the deposit of

assets with the Company. These investment contracts allow passive investors to earn interest on the assets deposited with the Company, and qualify as securities under the Act.

12. As these BIAs amount to an “an investment of money in a common enterprise with profits to come solely from the efforts of others,” they qualify as investment contracts and thus securities under the Act. *See S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

13. A review of DFI’s records revealed that neither BlockFi nor the securities offered on its website are registered with the Department as required under the Act. Additionally, neither BlockFi nor these securities appear to be entitled to any exemption from registration under the Act.

STATUTORY AUTHORITY

14. KRS 292.310(19) defines a “security,” in relevant part, as:

“any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a ‘security.’”

15. KRS 292.340 makes it “unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.”

16. Under KRS 292.470, “[w]henver it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion:

Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity.

In order to issue an order without prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public. “

FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. Based on the facts set forth above, Respondents offered unregistered securities in Kentucky through a publicly available website in violation of the Act. These securities were not registered with the Department as required, and do not qualify for an exemption from registration.

18. By reason of the foregoing, Respondents have violated the Act and, unless enjoined, will continue to violate the law.

19. The emergency nature of this Order is required as the delay in issuing a final cease and desist order in this case would cause direct harm to the public due to the Company's current and foreseeable conduct.

20. Respondents claim to currently hold approximately fifteen billion dollars' (\$15,000,000,000) worth of BIAs. Respondents' management of these assets is completely unregulated, and is not subject to any government oversight or approval. Respondents are not currently subject to any disclosure requirements regarding the risks of investing with the Company, or the potential losses than an investor can suffer after opening a BIA. Accounts opened with Respondents are not insured by the Federal Deposit Insurance Corporation, or any other government entity. This lack of oversight coupled with the extremely volatile nature of the cryptocurrencies used to fund Respondents' BIAs has resulted in an unregulated market which represents an unprecedented risk to consumers. Failure of DFI to enter a cease and desist order in this case could result in extensive financial losses to the citizens of the Commonwealth, and consumers harmed in this way may have little to no recourse whatsoever. Accordingly, the emergency nature of this order is essential to protect the interests of the citizens of the Commonwealth.

Violation of KRS 292.340

21. Per KRS 292.340, it is unlawful for any person to solicit or sell securities in Kentucky without first being registered with the Department to do so.

22. Through their publicly available website and app, Respondents have solicited securities in Kentucky.

23. The Department's records show that Respondents have never been registered with the Department, nor have they ever sought registration.

24. Neither Respondents nor the securities they offered qualify for an exemption from registration.

25. Therefore, Respondents have violated KRS 292.340 by soliciting securities in Kentucky without being appropriately registered to do so.

ORDER

In light of the foregoing, IT IS HEREBY ORDERED that:

1. Respondents BlockFi, Inc., BlockFi Lending, LLC, and BlockFi Trading, LLC, shall **CEASE AND DESIST** from soliciting or selling any security in Kentucky unless that security is registered with the Department pursuant to KRS 292.340.

IT IS SO ORDERED on this the 29th day of July, 2021.



CHARLES A. RICE, COMMISSIONER
Department of Financial Institutions
500 Mero Street, Frankfort, Kentucky 40601

NOTICE TO RESPONDENTS

You are hereby notified that you are entitled to request an emergency hearing. If requested, an administrative hearing shall be held within 10 (ten) days pursuant to the provisions of KRS Chapter 13B.125. Please submit any request for hearing, in writing, to Stuart D. Michael, Staff Attorney, Kentucky Department of Financial Institutions, 500 Mero Street 2 SW 19, Frankfort, Kentucky 40601. Alternatively, you may also have the right to the judicial review of this Order in Franklin Circuit Court pursuant to KRS 292.470(1).

Certificate of Service

I, Allison Reed, hereby certify that a copy of the foregoing Emergency Cease and Desist Order was sent on this the 29th day of July, 2021, by certified mail, return receipt requested, to the following:

BlockFi, Inc.
201 Montgomery Street
Second Floor, Suite 263
Jersey City, New Jersey 07302

National Registered Agents, Inc.
1209 Orange Street
Wilmington, Delaware 19801

National Registered Agents, Inc.,
306 West Main Street, Suite 512
Frankfort, Kentucky 40601

And by hand delivery to:

Stuart D. Michael, Staff Attorney
Department of Financial Institutions
500 Mero Street, 2 SW 19
Frankfort, KY 40601

Allison Reed
Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor