

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF)
)
BlockFi Inc.) ADMINISTRATIVE ORDER
BlockFi Lending, LLC) SC- 2021-0006
BlockFi Trading, LLC)
)
RESPONDENT)

**ORDER TO SHOW CAUSE WHY THE ALABAMA SECURITIES COMMISSION
SHOULD NOT ORDER RESPONDENTS TO CEASE AND DESIST FROM FURTHER
OFFERS OR SALES OF SECURITIES IN THIS STATE**

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Securities Act"), and Title 8, Chapter 7A, Code of Alabama 1975, the Alabama Monetary Transmission Act ("AMTA"), upon due consideration of the subject matter hereof, has determined as follows:

RESPONDENTS

1. **BlockFi Inc. ("BFI")** is a Delaware corporation, incorporated on August 1, 2017, with offices at 86 Chambers Street, Suite 205, New York, New York.

2. **BlockFi Lending, LLC ("BlockFi")** is a Delaware limited liability company formed on January 11, 2018, with offices at 155 2nd St. Suite 112, Jersey City, New Jersey. On August 7, 2018, **BlockFi** filed as a foreign corporation with the State of Alabama, Secretary of State.

3. **BlockFi Trading, LLC ("Trading")** is a Delaware limited liability company formed on May 28, 2019, with offices at 201 Montgomery Street, Suite 263, Jersey City, New

Jersey. On September 24, 2019, **Trading** filed as a foreign corporation with the State of Alabama, Secretary of State.

SUMMARY

BFI is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, as well as engaging in propriety trading. Since March 4, 2019, **BFI**, through its affiliates **BlockFi** and **Trading** has been, in part, funding its lending operations and proprietary trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts. **BlockFi** refers to these unregistered securities as its “Crypto Interest Account” and the “BlockFi Interest Account” (together “BIAs”).

BlockFi allows investors to purchase the BIAs by depositing certain eligible cryptocurrencies into accounts at **BlockFi**. **BlockFi** then pools these cryptocurrencies together to fund its lending operations and proprietary trading. In exchange for investing in the BIAs, investors are promised an attractive interest rate that is paid monthly in cryptocurrency. The BIAs are not protected by SIPC or insured by the FDIC. The BIAs are not registered with the Commission or any other securities regulatory authority, or subject to a perfected exemption from registration as required by the Securities Act. Despite the lack of safeguards and regulatory oversite, as of March 31, 2021, **BlockFi** had received the equivalent of \$14.7 billion from the sale of these unregistered securities in violation of the Securities Law.¹

¹ [What are the risks with depositing my crypto at BlockFi? – BlockFi](#)

STATEMENT OF FACTS

The BlockFi BIA Securities

4. **BlockFi** offers and sells BIAs as individual and corporate accounts. Investors in these accounts (“**BlockFi** Investors”) deposit certain popular cryptocurrencies with **BlockFi** to purportedly earn “up to 8.6 APY.”

5. **BlockFi** offers the BIAs to anyone (including residents of this state) over the age of eighteen, except for residents of New York and certain foreign jurisdictions.

6. When an investor signs up with **BlockFi**, they check a box in which they certify that they (i) are 18 years or older and (ii) have read and accepted the “Terms & Conditions”, “Interest Account Terms,” and “Privacy Policy,” which are available via hyperlinks. Links to these documents also appear in small font type at the bottom of each **BlockFi** Website page.

7. According to the **BlockFi** Website, BIAs can be opened by depositing eligible cryptocurrency with **BlockFi**’s affiliate, **Trading**. **Trading** then transfers the deposited cryptocurrency to **BlockFi**. Investors may also send a wire transfer to **Trading** to purchase eligible cryptocurrency, which **Trading** then immediately transfers to **BlockFi**.^{2,3}

8. **BlockFi** uses Gemini Trust Company, LLC, a New York trust company, BitGo, an institutional digital asset custodian, or Coinbase, another institutional digital asset custodian, as its primary digital asset custodians for the BIAs.⁴

9. BIA investors are offered a fixed interest rate for a certain minimum amount and then for any cryptocurrency deposited in the BIA exceeding the set minimum, interest accrues at

² BIA Terms at B. 1, 3.

³ BIA Terms at B. 1, 3.

⁴ [Bitcoin Savings Accounts: How Do BlockFi Crypto Savings Work?; How is BlockFi different from competitors? – BlockFi](#)

a variable interest rate “announced” by **BlockFi** pursuant to the BIA Interest Account Terms (“BIA Terms”).

10. Individual BIA investors earn a variable interest rate on investment and may withdraw their digital assets at any time, subject to a seven-day processing time specified by **BlockFi**.⁵

11. The variable interest rates for the individual **BlockFi** BIA investors are posted on the **BlockFi** Website.⁶ How interest is calculated and credited to BIAs is illustrated on the **BlockFi** Website and specified in the BIA Terms:⁷

12. **BlockFi** states that the interest rates payable by **BlockFi** on BIAs are subject to change in **BlockFi**’s sole discretion and may change monthly.⁸ **BlockFi**’s current policy is to notify BIA customers of interest rate changes before they are implemented. **BlockFi** notes that changes are typically effective the first business day of the month.

13. **BlockFi** advertises that interest on the BIAs is paid to investors in cryptocurrency, is calculated on the daily balance method, and is credited to the BIA customers’ accounts monthly.⁹

14. The **BlockFi** Website advertises that the BIA “provides market-leading yields to crypto investors”¹⁰ and currently advertises an annual return of up to 8.6% on certain digital assets deposited in a BIA.

15. The **BlockFi** Website advertises the BIAs as part of a long-term investment strategy for investors, claiming that the BIAs:

⁵ [Bitcoin Savings Accounts: How Do BlockFi Crypto Savings Work?](#)

⁶ [Crypto Interest Rates | BlockFi Interest Account \(BIA\) Rate](#)

⁷ BIA Terms at D paras 1,2.

⁸ BIA Terms at D, paras. 1, 2.

⁹ BIA Terms at D paras. 1, 2 and E, para, 1.

¹⁰ [What is the BlockFi Interest Account \(BIA\)? – BlockFi](#)

“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.”¹¹

The **BlockFi** Website includes a chart stating “**BlockFi**’s Interest Account works hardest for you as a long-term investment,” which claims to illustrate the projected effect of holding a BIA as a long-term investment.

BlockFi’s Use of the BIA Funds

16. The **BlockFi** BIA Terms provide that a **BlockFi** BIA investor relinquishes control over the deposited cryptocurrency to **BlockFi** and **BlockFi** is free to use those assets as it sees fit including, commingling cryptocurrency with those of other BIA investors, investing those assets in the market, and lending those assets to institutional and corporate borrowers.

17. Specifically, Section H, Paragraph 1 of the BIA Terms, “Consent to Utilize Assets” provides:

Except where prohibited or limited by applicable law, in consideration for the cryptocurrency earned on your account, you grant **BlockFi** the right, without further notice to you, to hold the cryptocurrency held in your account in **BlockFi**’s name or in another name, and to pledge, repledge, hypothecate, rehypothecate, 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.¹²

18. **BlockFi** then pools these cryptocurrencies together, where according to **BlockFi**, it (1) reserves a portion of the cryptocurrencies to meet investor withdrawal demands, (2) lends some or all of the balance to third parties, or (3) purchases equities, options, and futures for its own account.¹³ **BlockFi** uses the revenue from those activities to pay the BIA investors the agreed upon interest rate, and keeps the remainder for itself as profit.

¹¹ [What are the benefits of using BlockFi’s services? – BlockFi](#)

¹² BIA Terms at Section H, Paragraph 1

¹³ <https://blockfi.com/earn-bitcoin>

19. **BlockFi** does not disclose to investors: (a) the amount of money devoted to each of these investment activities; (b) the nature and creditworthiness of the borrowers, as well as the identity of any borrowers to whom **BlockFi** has lent material amounts of cryptocurrency; (c) the terms and duration of the loans; (d) the types of equities, options, and futures it trades; or (e) the profits or losses derived from these activities.

The BIAs Are Unregistered Securities

20. The **BlockFi** Website claims that it is a “US regulated” entity, and that “[BlockFi] play[s] by the rules, to the benefit of [BlockFi] and [its] clients.”¹⁴ While certain of **BlockFi**’s loan products appear to be licensed under various state licensing requirements for money services businesses or money transmitters, the **BlockFi** BIAs are not currently registered with any federal or state securities regulator, or exempt from registration – as required by law, even though the BIAs is a “security” and subject to such requirements.

21. **BlockFi** fails to disclose to BIA investors that its BIA product is not currently registered by federal or state authorities, even though the BIA is a “security”.

CONCLUSIONS OF LAW

22. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of security includes any “investment contract.” The investment programs, identified as the “BIAs”, constitute the solicitation of an investment of money; from which an investment return is expected; with such investment return based on the managerial efforts of **RESPONDENTS**. The solicited investments, identified as the “BIAs”, are “investment contracts” and are securities under the Securities Act.

23. Pursuant to Section 8-6-4, Code of Alabama 1975, it is unlawful for any person to offer or sell any security in this state unless said security is: (1) registered under the Securities Act; (2) the security is exempt from registration under section 8-6-10; or (3) the transaction is exempt under section 8-6-11. The securities offered by **RESPONDENTS**; to wit: the investment contracts

¹⁴ [How is BlockFi different from competitors? – BlockFi](#)

described as "BIAs", are neither registered nor subject to a perfected exemption from registration in Alabama and are being offered and/or sold in violation of the Securities Act.

24. Pursuant to Section 8-6-30, Code of Alabama 1975, the burden of proving an exemption from registration or an exception from a definition under the Act is on the person claiming the exemption or exception. **RESPONDENTS** must demonstrate compliance with the registration provisions of the Act or demonstrate why such instruments should not be required to be registered.

25. Pursuant to Section 8-6-16, Code of Alabama 1975, the Commission may issue a cease and desist order, with or without prior hearing, against any person whom the Commission has reason to believe is participating in any act or practice constituting a violation of the Act.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Act.

If the allegations set forth herein are found to be true, through either administrative adjudication or default of the **RESPONDENTS**, it is the intention of the Commission to impose sanctions upon the **RESPONDENTS**. Such sanctions may include, *inter alia*, an administrative assessment imposed on **RESPONDENTS**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENTS**, and a permanent order to bar **RESPONDENTS** from participation in any securities related industry in the state of Alabama. Failure to respond within 28 days of service of this Order shall be deemed a waiver of the right to a hearing and will result in the entry of a final order directing **RESPONDENTS** to cease and desist from violating the Alabama Securities Act and permanently barring **RESPONDENTS** from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENTS SHOW CAUSE** to the Commission within 28 days of the date of this **ORDER**, why **RESPONDENTS** should not be ordered to cease and desist from any further violations of the Alabama Securities Act.

Entered at Montgomery, AL, this 20th day of July, 2021.



ALABAMA SECURITIES COMMISSION
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(334)242-2984

BY:

Joseph P. Borg
Director

A handwritten signature in black ink, appearing to read "J. P. Borg". A curved line or flourish is drawn to the left of the signature.