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Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

SOAH DOCKET NO. 312-21-2938

TEXAS STATE SECURITIES BOARD,
Petitioner

v.

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

§ BEFORE THE STATE OFFICE

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§ ADMINISTRATIVE HEARINGS

BLOCKFI, INC.

Service by (1) certified mail, return receipt requested, addressed to 155 2nd Street, Suite 112, Jersey City, New Jersey 07302; (2) certified mail, return receipt requested, addressed to 86 Chambers Street, New York, New York 10007; (3) certified mail, return receipt requested, addressed to its counsel Kit Addleman, Partner, Haynes and Boone LP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219; and (4) electronic mail to its counsel, Kit Addleman, at kit.addleman@haynesboone.com.

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NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will commence at **9:00 AM on OCTOBER 13, 2021**, before an Administrative Law Judge. The hearing is being held via videoconference for the purpose of determining whether to issue a proposal for decision for the entry of a CEASE AND DESIST ORDER against BlockFi, Inc. ("Respondent BlockFi"), BlockFi Lending, LLC ("Respondent BlockFi Lending"), and BlockFi Trading, LLC ("Respondent BlockFi Trading").

This hearing will be held pursuant to the Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1-581-45 (the "Securities Act"), the Rules and Regulations of the State Securities Board, 7 Tex. Admin. Code §§101.1-139.27 (2019) (Tex. State Sec. Bd.) (the "Board Rules"), the Administrative Procedure Act, Tex. Gov't Code Ann. §§2001.001-2001.902 (the "Administrative Procedure Act"), and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (2019) (State Ofc. of Admin. Hearings) (the "SOAH Rules").

BLOCKFI AND THE CRYPTO INTEREST ACCOUNTS

1. Respondent BlockFi is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, as well as engaging in propriety trading and other types of transactions.
2. Respondent BlockFi, through its wholly owned subsidiaries Respondent BlockFi Lending and Respondent BlockFi Trading, is, in part, illegally funding its lending operations and proprietary trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts.
3. Respondent BlockFi refers to the cryptocurrency interest-earning accounts as "BlockFi Interest Accounts" (the "BIAs").
4. Respondent BlockFi permits Texans and other investors at least eighteen years old to apply to purchase the BIAs through its website or smartphone application. Signing up for a BIA takes less than 2 minutes.
5. Investors open accounts by transferring eligible cryptocurrency to a wallet address. The cryptocurrency is then accepted by Respondent BlockFi Trading and transferred to Respondent BlockFi Lending, and Respondent BlockFi Lending acts as the holder of the BIA.
6. Investors relinquish control over their cryptocurrencies and Respondent BlockFi Lending reserves a portion of the cryptocurrencies to meet investor withdrawal demands. It 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.

7. In exchange for consideration received in the present, Respondent BlockFi is promising to pay lucrative interest rates in the future. Respondent BlockFi is currently promoting the interest rates through its website, which recently advertised an annual return of up to 8.6 percent on certain cryptocurrencies for retail investors - well in excess of the rates currently being offered for short-term, investment grade, fixed income securities or for bank savings accounts.
8. The accrual of interest begins the day after investors transfer cryptocurrencies to Respondent BlockFi Trading, and interest is compounded monthly.
9. Retail investors may withdraw their cryptocurrencies at any time, subject to certain processing times.
10. As of March 31, 2021, Respondent BlockFi has more than \$15,000,000,000.00 in assets under management and more than 350,000 funded accounts from the sale of BIAs.
11. As of June 9, 2021, Respondent BlockFi has more than \$691,000,000.00 in assets under management from more than 25,000 Texas residents.

THE LACK OF REGISTRATION AND PUBLIC PROTECTIONS

12. Respondent BlockFi Trading is licensed only as a Money Service Business in Texas. The license is limited to and extends only to conducting currency exchange or money transmission activities defined by Chapter 151 of the Texas Finance Code.
13. Respondents are not licensed with the United States Securities and Exchange Commission. Additionally, they are not registered with the Texas State Securities Board to offer or sell securities in Texas, as required by Section 12 of the Securities Act, and the BIAs are not registered or permitted for sale in Texas, as required by Section 7 of the Securities Act. Accordingly, Respondents are violating laws designed to protect Texans.
14. The BIAs are also 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.
15. 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 UNDISCLOSED RISKS

16. Respondent BlockFi is not disclosing material information necessary for investors to make an informed decision, including critical material information about the risks associated with purchasing its unregistered securities.

17. This material information includes, without limitation, the amount of money devoted to permissive uses, the identity, nature, and creditworthiness of borrowers, the type and nature of transactions involving equities, options and futures, the risks associated with individual equities, options and futures, the profits and/or losses derived from transactions, and financial information reflecting the assets and liabilities and cashflow.

THE VIOLATIONS OF THE SECURITIES ACT

18. The Securities Act regulates the offer and sale of securities in Texas.
19. Section 4.A of the Securities Act defines the term securities to include traditional products such as stocks and bonds. The statute also broadly defines the term securities to include investment contracts, notes, and evidences of indebtedness – broad categories of products that capture the endless number of unique and innovative investment schemes continuously introduced into the market.
20. The mere fact an investment is tied to a cryptocurrency, blockchain technology, or some type of digital asset does not remove it from securities regulation if it constitutes an investment contract, note, evidence of indebtedness, or other type of security.
21. Based on the information and allegations set forth herein, the BIAs constitute investment contracts, notes, or evidences of indebtedness regulated as securities as that term is defined by Section 4.A of the Securities Act.
22. Based on the information and allegations set forth herein, Respondents are violating Section 7 of the Securities Act by offering and selling securities in Texas that are not registered or permitted for sale in Texas.
23. Based on the information and allegations set forth herein, Respondents are also violating Section 12 of the Securities Act by offering and selling securities in Texas without first being registered as dealers or agents.

THE NOTIFICATION AND REQUEST FOR COMPLIANCE

24. On or about April 20, 2021, the Enforcement Division of the State Securities Board (the “Enforcement Division”) notified Respondent BlockFi that Respondents may have offered securities in Texas that may not comply with the Securities Act.
25. The Enforcement Division also explained the regulation of the securities market in Texas, including the identification of laws that require the registration of securities, the registration of dealers and agents, and the truthful disclosure of all known material facts.
26. Nevertheless, Respondents have continued to offer the BIAs to Texans in violation of Sections 7 and 12 of the Securities Act.

REMEDIES

27. The Enforcement Division is praying for a proposal for decision for the entry of an order that Respondents immediately cease and desist from violating Sections 7 and 12 of the Securities Act.
28. Although this Notice of Hearing is praying for a proposal for decision for an order to cease and desist from violating Sections 7 and 12 of the Securities Act, nothing set forth herein shall preclude the Enforcement Division, consistent with applicable law and rule, from pursuing other enforcement remedies, such as filing an amended Notice of Hearing praying for a proposal for decision that orders the assessment of an administrative fine or the payment of a refund/restitution to Texans.

EXISTING CLIENT ACCOUNTS

29. This Notice of Hearing, and the prayers contained herein, do not preclude Respondents from paying interest or returns to existing clients, refunding principal to investors consistent with the terms of the BIAs, or otherwise lawfully dealing with existing clientele.

THE HEARING

30. The hearing will be held before the State Office of Administrative Hearings. It will commence at **9:00 AM on OCTOBER 13, 2021**.
31. The State Office of Administrative Hearings may conduct the hearing via Zoom. Zoom is a video conferencing platform for meetings held through the internet. The State Office of Administrative Hearings will provide instructions for accessing the hearing via Zoom.
32. At the hearing, the Enforcement Division will present testimony and other admissible evidence in support of its prayer for a proposal for decision for the entry of a CEASE AND DESIST ORDER against Respondents. Respondents will be afforded the right to present such testimony and other evidence related thereto.

LEGAL NOTIFICATIONS

33. Legal authority and jurisdiction for this matter exist under Section 23 of the Securities Act, Section 2003.021(b) of the Texas Government Code and Rule 155.51 of the SOAH Rules.
34. **IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE. THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE SECURITIES COMMISSIONER AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, AND ALSO SERVED ON THE STAFF OF THE STATE SECURITIES BOARD. IF YOU FAIL TO**

ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED AND SERVED, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE.

35. **PARTIES THAT ARE NOT REPRESENTED BY AN ATTORNEY MAY OBTAIN INFORMATION REGARDING CONTESTED CASE HEARINGS ON THE PUBLIC WEBSITE OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AT WWW.SOAH.TEXAS.GOV, OR IN PRINTED FORMAT UPON REQUEST TO THE STATE OF ADMINISTRATIVE HEARINGS.**
36. Respondents may access the Securities Act and the Board Rules through the website of the State Securities Board at www.ssb.texas.gov. Respondents may also access the SOAH Rules through the website of the State Office of Administrative Hearings at www.soah.texas.gov and the Administrative Procedure Act through Texas Legislature Online at statutes.capitol.texas.gov.
37. The Securities Act authorizes the Texas State Securities Board to pursue administrative, civil, or criminal enforcement cases. The Securities Act and Board Rules also authorize the Texas State Securities Board to share information with and refer cases to other governmental agencies with administrative, civil, or criminal jurisdiction. These other governmental agencies include, without limitation, state and federal regulatory agencies, law enforcement agencies and prosecutors' offices. Therefore, any information provided, filed, or otherwise supplied by Respondents may be shared with these other government agencies and/or used in other cases. Whether the Texas State Securities Board makes its files available to other governmental agencies or refers cases to other government agencies is typically confidential pursuant to Section 28 of the Texas Securities Act.
38. Pursuant to Board Rule 105.13, the Enforcement Division is now respectfully requesting and will continue to respectfully request the State Office of Administrative Hearings order all costs charged to the Texas Securities Board by any court reporting service be assessed against Respondents.
39. Persons with disabilities who need special accommodations at the hearing, whether held at the State Office of Administrative Hearings or through an audio or video conferencing platform, should contact the Docketing Department of the State Office of Administrative Hearings at 512-475-4993 at least one week prior to the hearing.

CONTACT AND FILING INFORMATION

40. The Enforcement Division is represented by Rachel Anderson Rynders, Attorney, Enforcement Division. Ms. Anderson Rynders' State Bar Card Number is 24103132, her work address 208 E. 10th Street, 5th Floor, Austin, Texas 78701, her telephone number is 512-305-8392, her facsimile number is 512-355-0404, and her email address is rrynders@ssb.texas.gov.

41. The Docketing Office of the State Office of Administrative Hearings is located at 300 W. 15th Street, Austin, Texas 78701, and it may be contacted by telephone at 512-745-3445 and by facsimile at 512-475-4994.
42. The State Office of Administrative Hearings may conduct the hearing via audio or video conferencing. The audio and video conferencing platforms are secure, free meetings held telephonically or through the internet. The State Office of Administrative Hearings will provide instructions for all hearings held telephonically or through a video conferencing platform.
43. Persons with disabilities who need special accommodations at the hearing, whether held at the State Office of Administrative Hearings or through an audio or video conferencing platform, should contact the Docketing Department of the State Office of Administrative Hearings at 512-475-4993 at least one week prior to the hearing.
44. Pursuant to Board Rule 105.8, all documents filed by any party, other than business records and transcripts, must be contemporaneously served upon Marlene Sparkman, General Counsel and Securities Commissioner's Representative. Ms. Sparkman's address is 208 E. 10th Street, 5th Floor, Austin, Texas 78701, her telephone number is 512-305-8300, her facsimile number is 512-305-8336, and her email address is msparkman@ssb.texas.gov.

Signed on this, the 22nd day of July 2021

By: 
Joe Rotunda
State Bar No. 24029808
Division Director, Enforcement Division
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701
T: 512-305-8392
F: 512-355-0404
E: jrotunda@ssb.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this, the 22nd day of July 2021, true and correct copies of this Notice of Hearing are being served on the following parties through the means set forth below:

MARLENE SPARKMAN, General Counsel for the State Securities Board and the Securities Commissioner's Representative, is being served by electronic mail addressed to msparkman@ssb.texas.gov.

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By: 

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