

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

In the Matter of

Assurance No. 22-032

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

BlockFi Lending LLC,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”), along with other State securities regulators, as members of the North American Securities Administrators Association (“NASAA”), formed a working group (the “Multistate Working Group”), and conducted an investigation into BlockFi Lending LLC (“BlockFi”), and its offer and sale of unregistered securities in the form of BlockFi Interest Accounts (“BIAs”) to retail investors.

BlockFi has reached an agreement with the Multistate Working Group to resolve the investigation with respect to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands (the “53 Jurisdictions”).

BlockFi will cease and desist offering or selling the BIAs or any security that is not registered, qualified, or exempt to new clients in the United States and cease accepting further investments or funds in the BIAs by current U.S. clients, unless and until the BIAs or other securities are registered, qualified, or otherwise exempt.

BlockFi shall pay up to a total of \$50,000,000 in settlement payments to the 53 Jurisdictions, divided equally into \$943,396.22 settlement payments to each of the 53

Jurisdictions that enters into a resolution pursuant to the terms of BlockFi's agreement with the Multistate Working Group.

BlockFi has cooperated with the OAG and the Multistate Working Group conducting the investigation by responding to inquiries, providing documentary evidence and other materials, and providing access to facts relating to the investigation.

This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation, and the relief agreed to by the OAG and Respondent BlockFi whether acting through its respective directors, officers, employees, representatives, agents, affiliates, parents or subsidiaries (together, the "Parties"). BlockFi enters into this Assurance solely for the purpose of terminating the Multistate Working Group investigation and in settlement of the issues contained in this Assurance, without admitting or denying the findings contained in paragraphs 1-32 below.

OAG's FINDINGS

1. Pursuant to Article 23-A of the New York General Business Law ("GBL"), § 359-e(3), it is unlawful for any dealer, broker or salesman, as defined by GBL § 359-e(1)(a)-(c), to offer, sell or purchase securities within or from the State of New York, unless and until such dealer, broker, or salesman files a registration statement or files an exemption request.

2. BlockFi Inc. is a Delaware corporation, incorporated on August 1, 2017, with offices at 201 Montgomery Street, Suite 263, Jersey City, New Jersey. BlockFi Inc. is a financial services company that, through its subsidiaries, generates revenue through cryptocurrency and other digital asset trading, lending, and borrowing, as well as investments and other types of transactions.

3. BlockFi Trading LLC, a Delaware limited liability company formed on May 28, 2019, with offices at 201 Montgomery Street, Suite 263, Jersey City, New Jersey, is a wholly owned subsidiary of BlockFi Inc. and acts as a money transmitter that accepts money and digital assets from investors and transfers the funds to BlockFi for investment in BIAs.

4. BlockFi, a Delaware limited liability company formed on January 11, 2018, with offices at 201 Montgomery Street, Suite 263, Jersey City, New Jersey, is a wholly owned subsidiary of BlockFi Inc. and an affiliate of BlockFi Trading LLC and is the issuer of the BIAs.

5. Starting on January 7, 2021, members of the Multistate Working Group contacted BlockFi to notify it that it may have offered and sold securities that may not comply with state securities laws.

6. Between July and September 2021, several states filed proceedings regarding BlockFi's offering and sale of unregistered securities.

7. On October 18, 2021, the OAG issued a letter to BlockFi, seeking documents and information regarding various aspects of BlockFi's operations, including but not limited to its digital asset lending products.

8. On February 14, 2022, BlockFi agreed to cease and desist offering and selling BIAs nationwide to new investors in the United States and cease and desist accepting further investments or funds in the BIAs by current U.S. investors, including in New York.

THE OFFER AND SALE OF SECURITIES NATIONWIDE

9. From at least March 4, 2019 through February 14, 2022 (the "Relevant Period"), BlockFi offered and sold securities nationwide in the form of interest-bearing digital asset accounts called BIAs, including to New York residents in the amounts described in paragraph 19.

10. On March 4, 2019, BlockFi publicly announced the launch of the BIA, through which investors could lend digital assets to BlockFi and in exchange, receive interest, “paid monthly in cryptocurrency.” Interest began accruing the day after assets were transmitted to BlockFi and compounded monthly, with interest payments made to accounts associated with each BIA investor, in digital assets, on or about the first business day of each month.

11. Investors in BIAs lent digital assets to BlockFi in exchange for BlockFi’s promise to provide a variable monthly interest payment.

12. BlockFi represented it generated the interest it paid BIA investors by deploying investors’ digital assets in various ways, including loans made to institutional investors, lending U.S. dollars to retail investors, and investing in digital assets, equities, and futures.

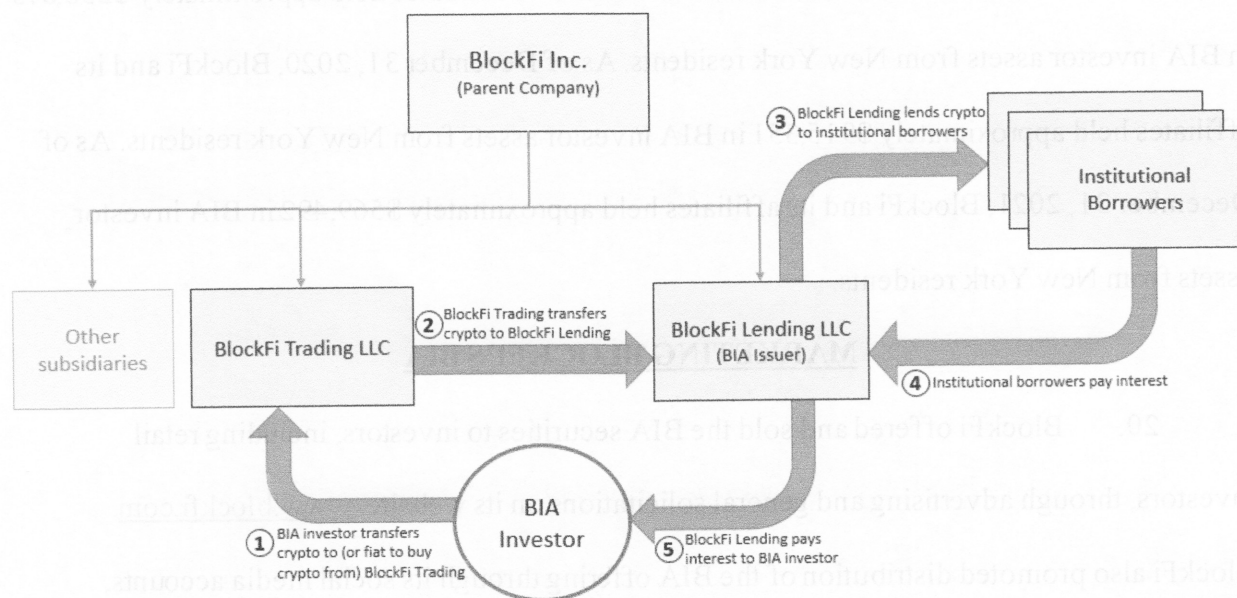
13. Under BlockFi’s terms for the BIA, investors:

grant BlockFi the right, without further notice to [the investor], to hold the cryptocurrency held in [the] 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.

14. BlockFi offered and sold BIAs to obtain digital assets for the general use of its business, namely to use the assets in its lending and investment activities, which generated income both for BlockFi and to pay interest to BIA investors. BlockFi pooled the loaned assets, and exercised full discretion over how much to hold, lend, and invest. BlockFi had complete legal ownership and control over the digital assets loaned to it by BIA investors and advertised that it managed the risks involved.

15. To begin investing in a BIA, an investor could transfer digital assets to the digital wallet address assigned by BlockFi to the investor or purchase digital assets with fiat currency

from BlockFi Trading LLC for the purpose of investing in a BIA. BlockFi Trading LLC accepted the digital asset or fiat from the investor, and then transferred the asset to BlockFi. BlockFi did not hold private keys for the investors' wallet addresses; rather, investors' digital assets were sent to BlockFi's wallet addresses at third-party custodians.



16. BIA investors were permitted to withdraw the equivalent of the digital assets they loaned to BlockFi and the accrued interest at any time, with some limitations, and could borrow money in U.S. dollars against the amount of digital assets deposited in BIAs.

17. BlockFi adjusted the interest rates payable on BIAs for particular digital assets periodically, and typically at the start of each month. BlockFi set the rates based, in part, on “the yield that [BlockFi] can generate from lending,” to institutional borrowers, and thus interest rates were correlated with the efforts that BlockFi put in to generate that yield. BlockFi periodically adjusted its interest rates payable on the BIAs in part after analysis of current yield on its investment and lending activity. BIA investors could demand that BlockFi repay the loaned digital assets at any time.

18. As of March 31, 2021, BlockFi and its affiliates held approximately \$14.7 billion in BIA investor assets. As of December 8, 2021, BlockFi and its affiliates held approximately \$10.4 billion in BIA investor assets, and had approximately 572,160 BIA investors, including 391,105 investors in the United States.

19. As of December 31, 2019, BlockFi and its affiliates held approximately \$238,873 in BIA investor assets from New York residents. As of December 31, 2020, BlockFi and its affiliates held approximately \$915,351 in BIA investor assets from New York residents. As of December 31, 2021, BlockFi and its affiliates held approximately \$569,492 in BIA investor assets from New York residents.

MARKETING BLOCKFI'S BIA

20. BlockFi offered and sold the BIA securities to investors, including retail investors, through advertising and general solicitations on its website, www.blockfi.com. BlockFi also promoted distribution of the BIA offering through its social media accounts, including YouTube, Twitter, and Facebook. In addition, through its “Partner” program, an affiliate marketing program in which participants could “earn passive income by introducing your audience to financial tools for crypto investors,” BlockFi extended its distribution of the BIA securities to retail investors through certain offers and promotions.

21. BlockFi regularly touted the profits investors may earn by investing in a BIA. When announcing the BIA, BlockFi promoted the interest earned, promising “an industry-leading 6.2% [annual percentage yield],” compounded monthly. BlockFi described it as “an easy way for crypto investors to earn bitcoin as they HODL.”

22. Within the first few weeks of launching the BIA, BlockFi again touted investors’ potential for profit. On March 20, 2019, BlockFi announced that BIAs experienced significant

growth, including from large firms who participated in BIAs “as a way to bolster their returns.” BlockFi asserted that its “mission is to provide the average crypto investor with the tools to build their wealth,” and that it “look[ed] forward to giving even more investors a chance to earn a yield on their crypto.”

23. On April 1, 2019, BlockFi began to “tier” the interest rates that investors received, initially announcing that “BIA balances of up to and including 25 [Bitcoin] or 500 [Ether] (equivalent to roughly \$100,000 and \$70,000 respectively) will earn the 6.2% APY interest rate. All balances over that limit will earn a tiered rate of 2% interest.” Even when changing the interest rates customers receive, BlockFi touted the yields to investors. On August 27, 2021, BlockFi stated that the adjustments to interest rates are done “with the goal of maintaining great rates for the maximum number of clients.”

24. On January 1, 2021, BlockFi advertised that it had “distributed more than \$50 million in monthly interest payments to [its] clients.”

25. As of November 1, 2021, the interest rates BlockFi paid investors ranged from 0.1% to 9.5%, depending on the type of digital asset and the size of the investment.

MISREPRESENTATION OF COLLATERALIZATION PRACTICES FOR INSTITUTIONAL LOANS

26. BlockFi’s offer of BIAs included a false and misleading statement on its website from March 4, 2019 to August 31, 2021, concerning its collateral practices and, therefore, the risks associated with its lending activity.

27. Beginning from the time of the BIA launch on March 4, 2019 and continuing to August 31, 2021, BlockFi made a statement in multiple website posts that its institutional loans were “typically” over-collateralized, when in fact, most institutional loans were not.

28. When BlockFi began offering the BIA investment, it intended to require over-collateralization on a majority of its loans to institutional investors, but it quickly became apparent that large institutional investors were frequently not willing to post large amounts of collateral to secure their loans.

29. Approximately 24% of institutional digital asset loans made in 2019 were over-collateralized; in 2020 approximately 16% were over-collateralized; and in 2021 (through June 30, 2021) approximately 17% were over-collateralized.

30. As a result, BlockFi's statement materially overstated the degree to which it secured protection from defaults by institutional borrowers through collateral. Due to what BlockFi has characterized as "operational oversight," BlockFi's personnel failed to take steps to update the website statement to accurately reflect the fact that most institutional loans were not over-collateralized.

31. Although BlockFi made other disclosures on its website regarding its risk management practices, because of BlockFi's misrepresentations and omissions about the level of risk in its loan portfolio, BIA investors did not have complete and accurate information with which to evaluate the risk that, in the event of defaults by its institutional borrowers, BlockFi would be unable to comply with its obligation to pay BIA investors the stated interest rates or return the loaned digital assets and accrued interest to investors upon demand.

FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS

32. OAG finds that Respondent offered and sold securities without registering as a dealer in violation of GBL § 359-e(3).

* * *

33. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Article 23-A of the GBL based on the conduct described above during the Relevant Time Period.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

34. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to offering and selling in the 53 Jurisdictions, including as an unregistered dealer in New York, the BIAs or any unregistered, unqualified, non-exempt securities unless and until it is in compliance with requirements under both federal and state law, including GBL § 359-e; and expressly agrees and acknowledges that any future such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 38, *supra*, in addition to any other appropriate investigation, action, or proceeding.

35. Programmatic Relief:

- a. BlockFi and BlockFi's parent, BlockFi Inc., further undertake and agree to cease and desist offering or selling BIAs or any security that is not registered, qualified, or exempt to new investors in the United States (including but not limited to New York) and to cease and desist accepting further investments or funds in the BIAs by current U.S. investors unless and until the BIAs or other securities have been registered or are otherwise exempt.
- b. BlockFi's parent, BlockFi Inc., on its own and on behalf of any affiliate under its control, undertakes and agrees to file with the Department of Law all applicable

materials required to register as a securities dealer or broker and/or commodities broker-dealer pursuant to Section 359-e of the New York General Business Law before offering or selling securities or commodities in New York, unless otherwise exempt.

- c. BlockFi's parent, BlockFi Inc., undertakes and agrees to cease and desist making statements that are materially false or misleading.

36. Monetary Relief

- a. *Monetary Relief Amount*: Respondent shall pay to the State of New York \$943,396.22 in penalties (the "Monetary Relief Amount"). Payment of the

Monetary Relief Amount shall be made in the following installments:

- i. \$188,679.24 within 14 days of the effective date of this Assurance;
- ii. \$188,679.24 due on August 15, 2022;
- iii. \$188,679.24 by or before February 14, 2023;
- iv. \$188,679.24 by or before August 14, 2023;
- v. \$188,679.26 by or before February 14, 2024.

- b. Failure to pay a required amount by the schedule set forth above is a default in payment under the terms of this Assurance and the OAG may file and enter judgment for the full Monetary Relief Amount, less any payments made prior to default, plus collection fees and statutory costs described below, pursuant to the process described below.

- c. Payments shall be made by wire transfer pursuant to the written payment processing instructions to be provided by the OAG.

MISCELLANEOUS

Subsequent Proceedings:

37. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 47, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

38. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

39. This Assurance and the order of any other State in any proceeding related to BlockFi's agreement to resolve the above-referenced multistate investigation (collectively, the "Orders") shall not be used as sole grounds to deny registration or qualification of securities issued by BlockFi or its parent BlockFi Inc.

40. This Assurance is not intended to subject any Covered Person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or commodities regulator or self-regulatory organization, including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Person" means BlockFi, its parent, or any of its affiliates and their current or former officers, directors, employees, or other persons that could otherwise be disqualified as a result of the Orders.

41. This Assurance does not preclude BlockFi 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.

Effects of Assurance:

42. This Assurance is not intended for use by any third party in any other proceeding.

43. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

44. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

45. Any failure by the OAG to insist upon the strict performance by BlockFi of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof,

and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

46. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-032, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to: Jonathan Mayers, General Counsel, BlockFi Lending LLC, 201 Montgomery Street, Suite 263, Jersey City, New Jersey, 07302, or in his absence, to the person holding the title of General Counsel, BlockFi Lending LLC.

If to the OAG, to: Amita Singh, Assistant Attorney General, Investor Protection Bureau, Office of the New York State Attorney General, 28 Liberty Street, New York, New York, 10005, or in her absence, to the person holding the title of Bureau Chief, Investor Protection Bureau.

Representations and Warranties:

47. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-32, above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are

later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

48. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

49. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that BlockFi, by Jonathan Mayers, General Counsel, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of BlockFi.

General Principles:

50. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

51. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondent's ability to advance defenses in litigation or regulatory proceedings with other parties regarding the same or similar conduct.

52. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

53. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

54. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

55. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

56. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

57. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

58. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

59. The effective date of this Assurance shall be June 7, 2022.



