UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN MANGANO and MICHAEL LEIFMAN, individually and on behalf of all others similarly situated, Plaintiffs, v. BLOCKFI, BLOCKFI, INC., BLOCKFI TRADING, LLC, BLOCKFI LENDING, LLC, Defendants.	Case No. 2:22-cv-01112-KM-CLW **FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs John Mangano and John Leifman ("Plaintiffs") bring this action on behalf of themselves and all others similarly situated against Defendants BlockFi, BlockFi, Inc. ("BFI"), BlockFi Trading, LLC ("Trading"), and BlockFi Lending, LLC ("Lending") (collectively, the "BlockFi Enities" or "Defendants"). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge. Plaintiffs believe that substantial additional evidence will be adduced through discovery in support of these claims.

NATURE OF THE ACTION AND FACTS COMMON TO ALL CLAIMS

1. This is a class action lawsuit on behalf of all people in the United States who enrolled in a BlockFi Interest Account/Crypto Interest Account, which is an unregistered security under state and federal law. Since March 4, 2019, BFI, through its affiliates Lending and Trading has been, at least in part, funding its lending operations, proprietary trading and other revenue generating activities. 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" or the "BlockFi Interest Account" (collectively, the "BIAs").

2. Defendants did not register the BIAs with the United States Securities and Exchange Commission ("SEC") or with the California Commissioner of Corporations ("Commissioner") or any other state.

3. BFI is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, as well as engaging in proprietary trading.

4. From March 4, 2019 to the present, BlockFi, a New Jersey-based financial services company and wholly owned subsidiary of BFI, has (directly or indirectly through other BFI subsidiaries) offered and sold BlockFi BIAs to investors, through which investors lend crypto assets to BlockFi in exchange for BlockFi's promise to provide a variable monthly interest payment. BlockFi generated the interest paid out to BIA investors by deploying its assets in various ways, including loans of investors' crypto assets made to institutional, corporate and other borrowers, lending U.S. dollars to retail investors, and by investing in equities and futures. 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.

5. 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 a rate of return paid monthly in cryptocurrency that is does not adequately account for the true risks being undertaken. The BIAs are not protected by Securities Investor Protection Corporation (the "SIPC") or insured by the Federal Deposit Insurance Corporation

(the "FDIC"). The BIAs are subject to additional risk, compared to assets held at SIPC member broker-dealers, or assets held at banks and savings associations, almost all of which carry FDIC insurance. Nor are they registered with the SEC, the Commissioner or any other securities regulatory authority, or exempt from registration. The BIAs are subject to other risks described herein. Despite these additional risks, and lack of disclosures and safeguards and regulatory oversight, as of March 31, 2021, BlockFi held the equivalent of $14.7 billion from the sale of these unregistered securities in violation of federal and state securities laws.

6. Based on the facts and circumstances set forth herein, the BIAs were securities because they were notes under *Reves v. Ernst & Young*, 494 U.S. 56, 64–66 (1990) and its progeny, and also because BlockFi offered and sold the BIAs as investment contracts, under *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) and its progeny, including the cases discussed by the SEC in its Report of Investigation Pursuant To Section 21(a) Of The Securities Exchange Act of 1934: The DAO.[1] BlockFi promised BIA investors a variable interest rate, determined solely by BlockFi on a periodic basis, in exchange for crypto assets loaned by the investors, who were told in public statements that they could demand their loaned assets at any time, even though the fine print in documents appear to give BlockFi the right to deny withdrawals or sales of the BIAs. BlockFi thus borrowed the crypto assets in exchange for a promise to repay with interest. Investors in the BIAs had a reasonable expectation of obtaining a future profit from BlockFi's efforts in managing the BIAs based on BlockFi's statements about how it would generate the yield to pay BIA investors interest. Investors also had a reasonable expectation that BlockFi would use the invested crypto assets in BlockFi's lending and principal investing activity, and that investors would share profits in the form of interest payments resulting from BlockFi's

[1] https://www.sec.gov/litigation/investreport/34-81207.pdf (last visited 2/24/22).

efforts. BlockFi offered and sold the BIAs to the general public to obtain crypto assets for the general use of its business, namely to run its lending and investment activities to pay interest to BIA investors, and promoted the BIAs as an investment. BlockFi offered and sold securities without a registration statement filed or in effect with the Commission or any states and without qualifying for an exemption from registration; as a result, BlockFi violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") and state regulators.

7. Because of Defendants' unregistered offers and sales of securities, the New Jersey Bureau of Securities, on or around July 20, 2021, issued a cease and desist order to BlockFi, Inc., Blockfi Lending, LLC, and BlockFi Trading, LLC requiring that said Defendants "halt[] the offer and sale of these unregistered securities."[2] The cease and desist order did not preclude said Defendants "from paying interest on the existing BIAs or refunding principal to the BIA Investors."

8. Later, on or around February 14, 2022, the SEC "charged BlockFi Lending LLC (BlockFi) with, inter alia, failing to register the offers and sales of its retail crypto lending product."[3] Further, "[t]o settle the SEC's charges, BlockFi agreed to pay a $50 million penalty, cease its unregistered offers and sales of the lending product, BlockFi Interest Accounts (BIAs), and attempt to bring its business within the provisions of the Investment Company Act within 60 days. BlockFi's parent company also announced that it intends to register under the Securities Act of 1933 the offer and sale of a new lending product. In parallel actions announced today, BlockFi agreed to pay an additional $50 million in fines to 32 states to settle similar charges." In connection with that announcement, BlockFi's CEO publicly promised that the BIAs would be registered with the SEC.

[2] https://www.nj.gov/oag/newsreleases21/BlockFi-Cease-and-Desist-Order.pdf (last visited 2/24/22).
[3] https://www.sec.gov/news/press-release/2022-26 (last visited 2/24/22).

9. In the Arizona state settlement, the Arizona Corporation Commission ordered BlockFi Lending, LLC to pay a $943,396 administrative penalty for offering and selling unregistered securities in the form of interest-bearing digital asset deposit accounts to Arizona investors.

10. The Arizona Commission found BlockFi failed to comply with Arizona's securities registration requirements and, as a result, investors were sold unregistered securities in violation of state law and deprived of critical information and disclosure necessary to understand the potential risks regarding the BIAs.[4] The Commission found that a statement on BlockFi's website also materially overstated the degree to which BlockFi's collateral practices protected its ability to pay investors.

11. According to the Iowa consent order, BlockFi employees thought that the institutional investors would be willing to provide security on the loans, meaning they would guarantee other assets to BlockFi if they couldn't pay their loans.[5] "But it quickly became apparent that large institutional investors were frequently not willing to post large amounts of collateral to secure their loans." "About 24% of loans were overcollateralized in 2019. About 16% were overcollateralized in 2020."

12. The Iowa consent order also stated "(BlockFi Interest Accounts) investors did not have complete and accurate information with which to evaluate the risk that ... BlockFi would be unable to comply with its obligation to pay."

13. Based on materials on BlockFi's website, financial statements, and publicly available materials, defendants knew, or should have known that BlockFi's guiding investment

[4] https://azcc.gov/azinvestor/news/2022/06/30/corporation-commission-joins-with-other-state-securities-regulators-and-the-s.e.c.-to-settle-with-a-digital-asset-lending-platform-for-unlawful-securities-sales (last visited 7/28/22).
[5] https://www.desmoinesregister.com/story/money/business/2022/06/14/sec-settlement-crypto-firm-blockfi-provide-iowa-943-000/7629947001/ (last visited 7/28/22).

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