Department of Banking and Finance

# Consumer Advisory

NEBRASKA

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## NDBF Joins with State Securities Regulators and the US Securities and Exchange Commission to Settle with Digital Asset Lending Platform BlockFi for Sales of Unregistered Securities

April 7, 2022 – The Nebraska Department of Banking and Finance (NDBF) today announced that a digital-asset financial services company, BlockFi Lending LLC (BlockFi), agreed to enter into a consent order with NDBF to settle offers and sales of unregistered securities in the form of interest-bearing digital asset deposit accounts called BlockFi Interest Accounts (BIAs) to Nebraska residents. As of December 31, 2021, BlockFi had 407,030 BIA investors in the US, of which more than 1,624 were Nebraska residents.

BlockFi agreed to pay $50 million to the 53 member agencies of the North American Securities Administrators Association (NASAA) and $50 million to the Securities and Exchange Commission (SEC) to settle its offers and sales of unregistered securities. The 53 NASAA member agencies will share equally in their half of the settlement. BlockFi will pay NDBF $943,396.22 to remedy its past unregistered offer and sale of securities to Nebraska residents.

Beginning January 2021, NASAA member agencies in a multistate working group contacted BlockFi and provided notice that the company may have offered and sold securities not in compliance with state securities laws. In July and September 2021, Alabama, Kentucky, New Jersey, Texas, Vermont, and Washington filed actions against BlockFi concerning its offer and sale of unregistered securities. As alleged in the state securities actions, BlockFi promoted its BIAs with promises of high returns for investors who purchased the lending products. It took control of and pooled its investors' loaned digital assets, and exercised sole discretion over the pooled digital assets, including how to use the digital assets to generate a return and pay investors their promised interest. According to the filed state actions, BlockFi failed to comply with state 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 of these lending products.

BlockFi's agreement to enter into a settlement with NDBF comes amidst rising concerns over the proliferation of "decentralized" and digital asset-based financial products and services targeting retail investors. Many of these products and services are analogous to traditional financial services offered by banks and brokerages, but without any of the regulatory safeguards provided by registered firms and products. For example, registered firms must truthfully disclose all known material facts and explain the risks associated with their investments, while the Federal Deposit Insurance Corporation, National Credit Union Administration, and the Securities Investor Protection Corporation insure depositors and investors against certain kinds of losses. Financial service firms operating in innovative fintech markets may not be complying with important laws that protect retail clients, and investors may not have access to the information necessary to conduct due diligence and make fully informed decisions.

“State securities regulators recognize the value new technology brings to financial markets. Complying with existing laws and regulations promotes competitive capital markets and continued investor protection,” said NDBF Deputy Director Claire McHenry. “This action by NASAA member agencies and the SEC sets an example for other firms providing digital asset financial products and services of how to work toward complying with state and federal law.”

BlockFi has stopped offering its BIAs to the public. BlockFi’s parent company, BlockFi Inc., represents it intends to file with state and federal regulators to offer and sell a new product called BlockFi Yield. As part of the settlement terms, BlockFi has ceased allowing new investments in the BIAs and will not allow new investments until its securities are properly registered. BlockFi may continue to deploy digital assets for existing BIA investors and may continue to pay interest. Between February 14 and the date BlockFi Inc.’s securities are registered and qualified or permitted for sale with the states and SEC, current investors may keep their existing investments with BlockFi and will continue to earn interest under their initial agreement with the company. This measure is designed to protect the interests of existing investors while allowing BlockFi time to bring itself into compliance with state and federal law.

NDBF is continuing to consider enforcement actions against firms that fail to comply with state law. Firms that need to register and deal with past unregistered activity should contact their state and federal regulators. NDBF can be contacted at 402-471-2171.

NDBF would like to thank its fellow NASAA member agencies, especially the multistate working group, for its coordinated efforts and the SEC for their collaboration and assistance.