

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN ROONEY
Assistant Chief Counsel
4 DANIELLE A. STOUMBOS (State Bar No. 264784)
Senior Counsel
5 Department of Financial Protection and Innovation
6 320 West 4th Street, Suite 750
7 Los Angeles, California 90013
8 Telephone: (213) 503-2046
Email: Danielle.Stoumbos@dfpi.ca.gov

9 Attorneys for Complainant

10
11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

13	In the Matter of:	)	CFL LICENSE NO.: 60DBO-81955
)	
14	THE COMMISSIONER OF FINANCIAL PROTECTION)	
15	AND INNOVATION,	)	STIPULATION TO:
)	
16	Complainant,	)	(1) INTERIM SUSPENSION OF
		)	CALIFORNIA FINANCING
17	v.	)	LAW LICENSE;
		)	(2) ORDER TO DISCONTINUE
18	BLOCKFI LENDING LLC,	)	UNSAFE OR INJURIOUS
19		)	PRACTICES; AND
20	Respondent.	)	(3) DESIST AND REFRAIN
		)	ORDER
21)	

STIPULATION TO INTERIM SUSPENSION, FINAL ORDER TO DISCONTINUE UNSAFE OR INJURIOUS PRACTICES, AND FINAL DESIST AND REFRAIN ORDER

1 The Commissioner of Financial Protection and Innovation (Commissioner) and BlockFi
2 Lending LLC (collectively the Parties) enter into this Stipulated Interim Suspension of California
3 Financing Law License, Final Order to Discontinue Unsafe or Injurious Practices, and Final Desist and
4 Refrain Order (Agreement).

5 **I.**

6 **RECITALS**

7 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
8 entities engaged in the business of finance lending or brokering under the California Financing Law
9 (CFL) (Cal. Fin. Code §§ 22000-22780.1).

10 B. BlockFi Lending LLC (BlockFi) received a CFL lender and broker license from the
11 Commissioner on August 16, 2018, CFL license number 60DBO-81955.

12 C. BlockFi conducts business from 155 2nd Street, Suite 112, Jersey City, New Jersey
13 07302 and 201 Montgomery Street, Suite 263, Jersey City, New Jersey 07302.

14 D. BlockFi is a wholly owned subsidiary of BlockFi Inc. and has at least seven affiliated
15 entities including BlockFi Trading LLC (collectively, each of these entities are hereinafter referred to
16 as the BlockFi entities).

17 E. At all relevant times, BlockFi offered consumer and commercial loans to the public,
18 secured by digital asset collateral (the BlockFi Loans). Persons who received a BlockFi Loan are
19 referred to herein as borrowers.

20 F. In addition to BlockFi’s consumer and commercial lending activities under its CFL
21 license, the BlockFi entities acted as a financial service company that generated revenue through
22 digital asset trading, exchanging, and lending. The BlockFi entities derived capital for these activities,
23 at least in part, by using digital asset collateral posted by BlockFi borrowers.

24 **The BlockFi entities experienced financial distress in November of 2022 and subsequently**
25 **filed petitions for bankruptcy**

26 G. On November 8, 2022, FTX Trading Ltd. paused withdrawals from its platform.

27 H. On November 10, 2022, BlockFi publicly announced on its Twitter account, @BlockFi,
28 that it was “limiting platform activity, including pausing client withdrawals.”

I. On or around November 11, 2022, FTX Trading Ltd. and related companies filed

1 petitions for bankruptcy in the United States Bankruptcy Court for the District of Delaware.

2 J. On November 14, 2022, BlockFi represented on its website at
3 <https://blockfi.com/november-14-2022-blockfi-update> that withdrawals would continue to be paused
4 because BlockFi had “significant exposure to FTX and associated corporate entities that encompasses
5 obligations owed to us by Alameda, assets held at FTX.com, and undrawn amounts from our credit
6 line with FTX.US.”

7 K. On November 28, 2022, the BlockFi entities (except for BlockFi Holding UK Limited)
8 filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of New
9 Jersey (Trenton) (the Bankruptcy Action). This Agreement is, pursuant to the police and regulatory
10 power exception, excepted from the automatic stay in the bankruptcy case. (11 U.S.C. § 362(b)(4).)

11 **The Commissioner’s ongoing examination and investigation**

12 L. On or around October 17, 2022, the Commissioner, through her CFL Examinations
13 Unit, commenced a regulatory examination of BlockFi.

14 M. On November 18, 2022, after providing notice and an opportunity for a hearing, the
15 Commissioner issued and served an Order suspending BlockFi’s CFL license for 30 days pending an
16 investigation under Financial Code section 22710.

17 N. On December 15, 2022, the Commissioner issued and served a Notice of Intention and
18 Accusation to revoke BlockFi’s CFL license (Revocation Action).

19 O. On December 28, 2022, BlockFi timely filed a Notice of Defense with the
20 Commissioner.

21 **Borrowers were not notified until 12 days after the platform pause that they could**
22 **stop repaying their BlockFi Loans.**

23 P. BlockFi contracts with a third-party loan servicing company to service the BlockFi
24 Loans (the Servicer).

25 Q. The Servicer disabled autopay for all active BlockFi Loans on or around the platform
26 pause, on November 11, 2022. Some borrowers use autopay to repay their BlockFi Loans. Other
27 borrowers use Automated Clearing House (ACH) or wire payments while others mail checks to the
28 Servicer.

R. On November 11, 2022, BlockFi emailed its clients, advising that it was “not able to

1 operate business as usual,” and that it was “limiting platform activity, including pausing client
2 withdrawals.” BlockFi requested that clients not “deposit to BlockFi Wallet or Interest Accounts at
3 this time.” This correspondence did not address the BlockFi Loans.

4 S. On November 14, 2022, BlockFi again emailed clients advising that withdrawals
5 remained paused. BlockFi again asked clients “not to submit any deposits to BlockFi Wallet or
6 Interest Accounts.” Like the November 11th email, the November 14th email did not address the
7 BlockFi Loans.

8 T. After the platform pause, on November 22, 2022, BlockFi borrowers received an email
9 from the Servicer, stating that their application for an administrative forbearance had been approved.
10 Borrowers were told that autopay had been turned off, and that “[f]orbearance permits a temporary
11 pause in payments or temporarily reduces your payments. Forbearance will generally increase the
12 overall cost of your loan. You can make extra payments at any time by logging into your online
13 account.”

14 U. Approximately one hour later BlockFi borrowers received another email from the
15 Servicer, advising that:

- 16 1. You do not need to make payments towards your BlockFi
- 17 loan.
- 18 2. No further interest will be accrued.
- 19 3. Any late fees assessed on or after November 11 will be
- 20 waived and no further late fees will be assessed.
- 21 4. There will be no negative impact on your credit score for any
- 22 missed payments after November 11.
- 23 5. If your loan reaches maturity, while your full balance will
- 24 technically become due, you will not owe any payments or
- 25 accrue interest until further notice.

26 V. On November 23 and 28, 2022, Blockfi publicly announced on its website located at
27 <https://blockfi.com/responses-to-frequently-asked-questions> and [https://blockfi.com/November28-](https://blockfi.com/November28-ClientFAQ)
28 *ClientFAQ* that interest rates on BlockFi Loans would be set to 0%; margin call requirements and auto
liquidations would be paused; borrowers would not be expected to make any payments while the loans
were on hold; loans would not be reported as delinquent to any credit bureaus; there would be no late
fees associated with any payments; and autopay had been turned off if it was enabled.

W. After BlockFi paused withdrawals from its platform on November 10, 2022, BlockFi’s

1 Servicer received 111 payments from California borrowers, totaling \$103,471. Most of these
2 payments were received between November 11 and November 22, 2022. BlockFi has requested
3 permission from the bankruptcy court to return these payments in a motion filed with the court on
4 February 24, 2023.

5 X. The Commissioner finds that BlockFi did not timely notify BlockFi borrowers of the
6 status of their BlockFi Loans, including the terms of repayment, resulting in at least 111 borrowers
7 remitting at least \$103,471 in loan repayments to BlockFi’s Servicer when borrowers were unable to
8 withdraw funds and collateral from BlockFi’s platform.

9 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
10 herein, the Parties agree as follows:

11 **II.**

12 **TERMS AND CONDITIONS**

13 1. Purpose. The purpose of this Agreement is to memorialize the understanding of the
14 Parties that BlockFi will not originate new loans or collect or charge interest or late fees on
15 outstanding loans while the Revocation Action or Bankruptcy Action are pending unless otherwise
16 agreed to by the Parties or ordered by the bankruptcy court. This Agreement also seeks to resolve the
17 practices before the Commissioner, set forth in Paragraph X above, in a manner that avoids the
18 expense of a hearing and other possible court proceedings, protects consumers, is in the public interest,
19 and is consistent with the purposes, policies, and provisions of the CFL.

20 2. Final Desist and Refrain Order. Pursuant to Financial Code § 22712(a), BlockFi
21 Lending LLC is hereby ordered to desist and refrain from the practices set forth in Paragraph X above
22 in violation of Financial Code § 22161(a)(5).

23 3. Final Order to Discontinue Unsafe or Injurious Practices. BlockFi Lending LLC hereby
24 agrees and the Commissioner orders that in accordance with Financial Code § 22712(b), BlockFi
25 Lending LLC will immediately discontinue the practices set forth in Paragraph X above.

26 4. Refunds. BlockFi has requested permission from the bankruptcy court to refund
27 consumers in a motion filed with the court on February 24, 2023. If this motion is granted BlockFi
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1 agrees to direct the Servicer to timely return borrowers' payments, including interest and late fees and
2 all funds paid following the November 10th platform pause.

3 5. Interim CFL License Suspension. BlockFi agrees, unless otherwise ordered by the court
4 in the Bankruptcy Action, to the following:

- 5 a) BlockFi will continue to and will direct its agents to pause collection of
6 repayments on loans belonging to California residents while BlockFi's
7 CFL License is suspended or as further agreed to between the Parties.
- 8 b) BlockFi agrees to and will direct its agents to continue to set interest
9 rates to 0% while BlockFi's CFL License is suspended or as further
10 agreed to between the Parties;
- 11 c) BlockFi agrees to and will direct its agents to continue to pause
12 collection of interest payments on loans belonging to California
13 residents while BlockFi's CFL License is suspended or as further
14 agreed to between the Parties.
- 15 d) BlockFi agrees to and will direct its agents to continue to not charge,
16 levy, or assess any late fees associated with any payments, including at
17 maturity, while BlockFi's CFL License is suspended or as further
18 agreed to between the Parties;
- 19 e) BlockFi agrees to and will direct its agents to otherwise continue to
20 pause collection on loans belonging to California residents while
21 BlockFi's CFL License is suspended or as further agreed to between the
22 Parties.
- 23 f) In the event any payments, interest, or late fees are charged or collected
24 that were not otherwise ordered refunded in the Bankruptcy Action
25 under Paragraph 4 above, BlockFi agrees to seek authority from the
26 bankruptcy court to return any payments, interest, or late fees earned,
27 accrued, or otherwise charged or collected to borrowers that are
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- California residents while BlockFi's CFL License is suspended or as further agreed to between the Parties.
- g) BlockFi agrees to and will direct its agents to continue to not report to credit agencies and organizations that any loans belonging to California residents have become delinquent or defaulted on or after November 11, 2022, and BlockFi will not otherwise take any action that may harm California residents' credit scores on such loans.
 - h) During the Department's suspension, the BlockFi entities will not convert, pledge, repledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer, dispose of, or use any amount of crypto assets belonging to California residents unless ordered by the bankruptcy court. If BlockFi later seeks to transfer crypto assets belonging to California residents back to these residents solely for these residents' benefit, BlockFi will first notify the Department.
 - i) BlockFi agrees that it will continue to and will direct its agents to continue to turn off autopay, if enabled, and will not charge customer accounts belonging to California residents via ACH or other similar payment processes.
 - j) BlockFi agrees that it will not directly advertise or otherwise market financial products and services to California residents either through its website or direct-to-consumer advertising or marketing campaigns while its CFL License is suspended. Notwithstanding the foregoing, BlockFi may continue to maintain and operate its website.
 - k) BlockFi will publish, within one day of the Date of Execution of this Agreement, and then maintain language on BlockFi's website at <https://blockfi.com/> about the Department's suspension of BlockFi's CFL license , the motion to return payments received after the platform

1 pause, and the moratorium on BlockFi’s activities under its suspended
2 CFL license.

3 l) BlockFi will use its best efforts to work with its Servicer to not show
4 loans as delinquent in its system.

5 m) BlockFi will use its best efforts to work with its Servicer to disable an
6 automatically generated email sent to borrowers at the time of loan
7 maturity, notifying of delinquency on its Servicer’s system.

8 Upon the execution of this agreement BlockFi agrees to be immediately subject to a CFL
9 License suspension under California Financial Code § 22714.

10 6. Report. Until there are three consecutive months when no payments are made from
11 California borrowers, BlockFi agrees to submit a monthly report to the Commissioner, disclosing the
12 payments, interest, or late fees collected from California borrowers for each calendar month including
13 each borrower’s name and contact information (Report). BlockFi shall email the Report to Danielle
14 A. Stoumbos, Senior Counsel, Enforcement Division, at Danielle.Stoumbos@dfpi.ca.gov, by the tenth
15 day of the following month.

16 For any California borrowers that have made three or more payments after the platform pause,
17 BlockFi will use its best efforts to work with its Servicer to notify these borrowers, via e-mail and
18 telephone call, of the information contained in Paragraphs U and V, within 10 days of the Effective
19 Date of this Agreement (Notice) as defined in Paragraph 23. BlockFi shall submit proof of each
20 Notice to Danielle A. Stoumbos, Senior Counsel, Enforcement Division, at
21 Danielle.Stoumbos@dfpi.ca.gov, at least 10 days after providing each Notice.

22 7. Waiver of Hearing Rights. BlockFi acknowledges the Commissioner is ready, willing,
23 and able to proceed with the filing of an administrative action on the charges contained in this
24 Agreement. BlockFi hereby waives the right to any hearings, and to any reconsideration, appeal, or
25 other right to review which may be afforded pursuant to the CFL, the California Administrative
26 Procedure Act, the California Code of Civil Procedure, or any other provision of law. BlockFi further
27 expressly waives any requirement for the filing of an Accusation pursuant to California Government
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1 Code section 11415.60(b). By waiving such rights, BlockFi effectively consents to this Agreement
2 becoming final.

3 8. Failure to Comply with Agreement. BlockFi agrees that if it fails to comply with the
4 terms of this Agreement, the Commissioner may, in addition to all other available remedies it may
5 invoke under the CFL, summarily revoke the CFL licenses of BlockFi until BlockFi is in compliance.
6 BlockFi waives any notice and hearing rights to contest such summary revocations which may be
7 afforded under the CFL, the California Administrative Procedure Act, the California Code of Civil
8 Procedure, or any other provision of law in connection therewith.

9 9. Information Willfully Withheld or Misrepresented. This Agreement may be revoked
10 and the Commissioner may pursue any and all remedies available under law against BlockFi if the
11 Commissioner discovers that BlockFi knowingly or willfully withheld or misrepresented information
12 used for and relied upon in this Agreement.

13 10. Future Actions by Commissioner. If BlockFi fails to comply with any terms of the
14 Agreement, the Commissioner may institute proceedings for any and all matters otherwise resolved
15 under this Agreement. The Commissioner reserves the right to bring any future actions against
16 BlockFi, or any of its partners, owners, officers, shareholders, directors, employees or successors for
17 any and all violations of the CFL or any other provision of law.

18 11. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner's
19 ability to assist any other government agency (city, county, state or federal) with any prosecution,
20 administrative, civil or criminal action brought by that agency against BlockFi or any other person
21 based on any of the activities alleged in this matter or otherwise.

22 12. Headings. The headings for the paragraphs of this Agreement are inserted for
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
24 the provisions hereof.

25 13. Binding. This Agreement is binding on all heirs, assigns, and/or successors in interest.

26 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
27 Agreement, it has relied solely on the statements set forth herein and the advice of its own legal
28 counsel, if represented. Each of the Parties further represents, warrants, and agrees that in executing

1 this Agreement it has placed no reliance on any statement, representation, or promise of any other
2 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
3 any other person or entity to make any statement, representation, or disclosure of anything whatsoever.
4 The Parties have included this clause: (1) to preclude any claim that any party was in any way
5 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol evidence
6 to vary, interpret, supplement, or contradict the terms of this Agreement.

7 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
8 this Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The
9 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
10 waiver by either party of any breach of, or of compliance with, any condition or provision of this
11 Agreement by the other party will be considered a waiver of any other condition or provision or of the
12 same condition or provision at another time.

13 16. Full Integration. This Agreement is the final written expression and the complete and
14 exclusive statement of all the agreements, conditions, promises, representations, and covenant between
15 the Parties with respect to Paragraph X, and supersedes all prior or contemporaneous agreements,
16 negotiations, representations, understandings, and discussions between and among the Parties, their
17 respective representatives, and any other person or entity, with respect to the subject matter covered in
18 Paragraph X.

19 17. Governing Law. This Agreement will be governed by and construed in accordance
20 with California law. Each of the Parties hereto consents to the jurisdiction of such court and thereby
21 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
22 maintenance of such action or proceeding in such court.

23 18. Effect Upon Future Proceedings. If BlockFi applies for any license, permit or
24 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
25 action by the Commissioner to enforce this Agreement, then the subject matter hereof shall be
26 admitted for the purpose of such application(s) or enforcement proceedings(s).

27 19. Voluntary Agreement. BlockFi hereby enters into this Agreement voluntarily and
28 without coercion and acknowledges that no promises, threats, or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Agreement. The Parties each represent and
2 acknowledge that he, she or it is executing this Agreement completely voluntarily and without any
3 duress or undue influence of any kind from any source.

4 20. Counterparts. This Agreement may be executed in one or more separate counterparts,
5 each of which when so executed, shall be deemed an original. Such counterparts shall together
6 constitute a single document.

7 21. Signatures. A fax or electronic mail signature shall be deemed the same as an original
8 signature.

9 22. Public Record. BlockFi hereby acknowledges that this Agreement is and will be a
10 matter of public record.

11 23. Effective Date. This Agreement shall become final and effective when signed by all
12 Parties and delivered by the Commissioner’s agent via e-mail to BlockFi’s counsel, Michael Nonaka,
13 Covington & Burling LLP, at the following email address: mnonaka@cov.com.

14 24. Authority to Sign. Each signatory hereto covenants that he/she possesses
15 all necessary capacity and authority to sign and enter into this Agreement and undertake
16 the obligations set forth herein.

17
18 Dated: March 27, 2023
19 Los Angeles, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation



20 By _____
21 MARY ANN SMITH
22 Deputy Commissioner
23 Enforcement Division

24
25 Dated: March 23, 2023

BLOCKFI LENDING LLC

26
27 By _____
28 MARK RENZI
Chief Restructuring Officer