LEGAL UPDATES

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BlockFi Hit with $100 Million in Penalties, Must Register Interest-Bearing Crypto Accounts with SEC

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Legal and business professionals in the cryptocurrency industry have long asked when the Securities and Exchange Commission would provide guidance on the interest-bearing crypto accounts offered by BlockFi, Gemini, Celsius, and others. Over the weekend, Bloomberg reported that BlockFi, one of the largest offerors of such accounts, was settling with the Commission for $100 million for (1) selling unregistered securities, (2) operating as an unregistered investment company, and (3) making "material false and misleading statements" concerning its collateral practices. Surprisingly, the report also stated that current users would be allowed to continue earning interest on their existing deposits. That news, however, created more questions than answers regarding the legal path forward for interest-bearing accounts.

Those questions were partially answered on Monday morning. The Commission published a Cease-and-Desist Order outlining that the interest-bearing crypto accounts were found by the Commission to be a security, both under the notes test set forth in *Reves v. Ernst & Young*, 494 U.S. 56, 64—66 (1990), and under the definition of an investment contract set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

At about the same time, BlockFi announced, as part of the settlement, that it would immediately cease offering its existing product to investors, but would be filing a Form S-1 registration statement with the Commission to allow the entity to continue offering interest-bearing accounts to customers long term under a registered structure. Commission Chair Gary Gensler also weighed in on the encouraging news for the industry, saying that the settlement "demonstrates the Commission's willingness to work with crypto platforms to determine how they can come into compliance with [securities] laws." Finally,

Commissioner Hester M. Peirce added in the Commission's Statement on Settlement with BlockFi Lending LLC that "these products matter to people. A program that allows people—and not just affluent people—to keep their crypto assets, while still earning a return is valuable to many Americans, as evidenced by the programs' popularity in the United States to date. The investor protection objective of today's settlement will be poorly served if retail investors are ultimately shut out from participation in these products."

What this means to you

Offerors of interest-bearing accounts for cryptocurrency need to reevaluate their operations in light of the SEC's first-of-its-kind enforcement action. The Commission has firmly and unequivocally determined that its regulatory remit includes these accounts. This settlement will likely not be the last, but also provides a path forward for the industry vis-à-vis compliance efforts.

Contact us

This is a developing story, and we are carefully monitoring updates. If you are a company in this space or have questions about the legal path forward for your interest-bearing crypto accounts, contact Rebecca Taylor, Miguel Suazo, Casey Kidwell, Gabriel Riekhof or your Husch Blackwell attorney.