

[Securities Regulation Daily Wrap Up, TOP STORY—BlockFi to pay \\$100M for failing to register crypto lending product, \(Feb. 14, 2022\)](#)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

While SEC Chair Gensler praised the first-of-its-kind action, Commissioner Peirce said the agency is taking the wrong approach to innovative products.

Crypto lending firm BlockFi agreed to pay a total of \$100 million to the SEC and state regulators for failing to register offers and sales of its retail crypto lending product. The SEC's order finds that the "BlockFi Interest Accounts" were investment contracts under *Howey* and notes under *Reves*, and the state regulators alleged that BlockFi failed to comply with state registration requirements. But Commissioner Peirce dissented from the SEC's order, questioning whether this newly stated approach to crypto lending is the best way to protect lending customers (*In the Matter of BlockFi Lending LLC*, [Release No. 33-11029](#), February 14, 2022).

The \$100 million settlement will be split, with \$50 million to be paid to the SEC and \$50 million divided equally among the 53 participating [NASAA members](#). [According to](#) the New Jersey Acting Attorney General, that state was one of the first regulators to [take action](#), alleging in July 2021 that BlockFi had raised at least \$14.7 billion through the sale of unregistered securities.

The SEC's action alleges that BlockFi operated a lending program through which investors lent crypto assets in exchange for the promise of a variable monthly interest payment. The program operated through the sale of BlockFi Interest Accounts ("BIAs"). According to the SEC, BlockFi borrowed crypto assets in exchange for a promise to repay with interest, and BIA investors had a reasonable expectation of future profit from BlockFi's efforts. The SEC also alleged that BlockFi made certain false and misleading statements about its collateral practices and acted as an unregistered investment company.

Gensler [said](#) that the settlement "makes clear that the crypto markets must comply with time-tested securities laws" and "further demonstrates the Commission's willingness to work with crypto platforms to determine how they can come into compliance with those laws." In addition to the monetary penalties, BlockFi agreed to comply within 60 days (with a possibility of a single 30-day extension) either by registering under the Investment Company Act or by showing Commission staff that registration is no longer required.

Gurbir S. Grewal, Director of the SEC's Division of Enforcement, warned that other crypto lending platforms should "take immediate notice. ... Adherence to our registration and disclosure requirements is critical to providing investors with the information and transparency they need to make well-informed investment decisions in the crypto asset space," Grewal said.

In [dissenting](#) from the SEC's order, Peirce allowed that the portions of the settlement dealing with getting information to customers (BlockFi's parent represented that it submitted a draft registration statement) make more sense for retail protection than the penalties, which she called disproportionate. Even so, she questioned whether a different framework would be better suited to giving customers transparency about crypto lending products.

Peirce noted that BlockFi will not be able to take in any additional crypto until it has undergone the long process of registering a new crypto lending product on Form S-1 and then the additional "regulatory hoop" of registering under the Investment Company Act. Not only is the 60- to 90-day timeframe "extremely ambitious," Peirce questioned the purpose of requiring registration under the Investment Company Act when the Form S-1 will already have satisfied the disclosure objective at the heart of the settlement.

Instead, Peirce suggested that the SEC should use its exemptive authority under Section 6(c) to craft compliance steps that make sense in this particular context. The Section 6(c) process also provides more public input, which she said is appropriate given that the settlement affects other crypto borrowers and lenders. Peirce added, “Inviting people to come in and talk to us only to drag them through a difficult, lengthy, unproductive, and labyrinthine regulatory process. makes us a less effective regulator... a company that tries to do the right thing should be met across the table by a regulator that tries to get to a sensible result in a reasonable timeframe.”

This is [Release No. 33-11029](#).

Companies: BlockFi Lending LLC

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