UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

In re: Mountain Ridge Condominium Council of Co-Owners, Inc., Debtor.	Case Number: 4-26-bk-10474 Chapter 11, Subchapter V
In re: The Mountain Meadows Association, Inc., Debtor.	Case Number: 4-26-bk-10476 Chapter 11, Subchapter V
In re: Cliffside Lodge II Council of Co-Owners, Inc., Debtor.	Case Number: 4-26-bk-10478 Chapter 11, Subchapter V
In re: Hamilton Cove Townhouses Property Owners Association, Inc., Debtor.	Case Number: 4-26-bk-10479 Chapter 11, Subchapter V
In re: The Fairways Townhouse Association, Inc., Debtor.	Case Number: 4-26-bk-10480 Chapter 11, Subchapter V

OBJECTION TO DEBTORS' MOTIONS TO (I) AUTHORIZE DEBTORS TO (A) CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM, (B) MAINTAIN BANK ACCOUNTS AND CONTINUE USE OF EXISTING BUSINESS FORMS AND CHECKS, AND (C) HONOR CERTAIN RELATED PREPETITION AND POSTPETITION OBLIGATIONS; (II) DETERMINING COMPLIANCE WITH, OR GRANTING A WAIVER OF, THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE; AND (III) GRANTING RELATED RELIEF

Jerry L. Jensen, Acting United States Trustee for Region 13, through undersigned counsel ("UST"), objects to the Debtors' Motions to Authorize continued use of cash management systems and for a waiver of compliance with 11 U.S.C. § 345(b) (*see, e.g.*, Doc. #9 in case no. 26-10476)

("the § 345 Motions") because the proposed investments do not comply with § 345(b) and Debtors have not shown cause to waive the requirements of § 345, thereby requiring denial of the § 345 Motions.

Factual Background

1. On February 11, 2026, Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and each elected to proceed under Subchapter V.
2. Debtors' § 345 Motions identify each Debtors' property including buildings and numbers of separate Units; each operated as a timeshare with fully furnished units.
3. The § 345 Motions further state that Vacation Resort Management, Inc. f/k/a Wyndham Vacation Management, Inc. provides management services for Debtors' properties, pursuant to Management Agreements.
4. The § 345 Motions also state that as of January 4, 2026, Debtors suspended occupancy at each of the Properties and is no longer accepting guests and reservations.
5. The § 345 Motions identify, for each Debtor:
    a. a Checking Account with Comerica Bank; N.A.;
    b. a "Sweep" account with Comerica Bank, N.A;
    c. a "Reserve" account with Ameriprise Financial, LLC; and,
    d. an "Investment Account" with Ameriprise Financial, LLC.

    See, e.g., case no. 26-10476, Doc. #9, p. 9-10, 38-40.
6. Debtors identify the following Comerica Bank "Sweep" account high balances as of January 31, 2026, which total over $1.4 million:
    a. Mountain Ridge Condominium Council of Co-Owners, Inc.: $630,116.88[1]

[1] For example, the § 345 Motion filed for Debtor Mountain Ridge states that the "Sweep" account had a balance of approximately $630,116.88 on January 31, 2026. See case no. 26-10476, Doc. #9, p. 11.

b. The Mountain Meadows Association, Inc.: $00.00[2]
c. The Cliffside Lodge II Council of Co-Owners, Inc.: $132,964.00
d. Hamilton Cove Townhouses Property Owners Association, Inc.: $246,067.14
e. The Fairways Townhouse Association, Inc.: $391,836.44

7. Debtors identify the following non-FDIC insured "Reserve" account high balances as of January 31, 2026, which total over $12 million:

a. Mountain Ridge: $1,790,298.40[3]
b. Mountain Meadows: $1,892,043.03
c. Cliffside Lodge: $1,275,149.85
d. Hamilton Cove: $2,782,158.07
e. The Fairways: $4,684,102.66

8. Debtors identify the following non-FDIC insured "Investment" account balances as of January 31, 2026, which total over $1.5 million:

a. Mountain Ridge: $360,681.09[4]
b. Mountain Meadows: $139,977.00
c. Cliffside Lodge: $255,249.36
d. Hamilton Cove: $269,361.55
e. The Fairways: $505,876.20

9. USTP review of Ameriprise Financial investment and account statements show that Debtors' "Reserve accounts" and "Investment accounts" are not only holding direct U.S. Treasuries but also holding funds in a "***Dreyfus Govt Cash Mgmt Wealth***" money market fund:

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[2] Debtor The Mountain Meadows' § 345 Motion states that its checking account balance on January 31, 2026, was $78,815 and that funds in this account do not sweep to a "Sweep" account.

[3] For example, the §345 Motion for Debtor Mountain Ridge states that its "Reserve" account had a balance of approximately $1,790,298.40 on January 31, 2026. Doc. #9, p. 12.

[4] For example, the § 345 Motion for Debtor Mountain Ridge states that its "Investment" account had a balance of approximately $360,681.09 on January 31, 2026. (Doc. #9, p. 12). Although Debtor Mountain Ridge did not specifically identify this account's investments, it explained that they may include: money market funds, FDIC-insured certificates of deposit in amounts not to exceed the FDIC insurance limit and U.S. Treasury securities. (Doc. #9, p. 13).

Your holdings

Description	Ending value this period[7]	E
Cash and equivalents		
DREYFUS GOVT CASH MGMT WEALTH SHS 6349	$1,275,149.85	
Total Cash and equivalents[5]	**$1,275,149.85**	$

10. The percentages for each of the balances listed in paragraphs 7 and 8 held in a Dreyfus money market fund are:

    a. Mountain Ridge Reserve account 100%

    b. Mountain Ridge Investment account 100%

    c. Mountain Meadows Reserve account 30.5%

    d. Mountain Meadows Investment account 100%

    e. Cliffside Lodge Reserve account 100%

    f. Cliffside Lodge Investment account 100%

    g. Hamilton Cove Reserve account 100%

    h. Hamilton Cove Investment account 100%

    i. The Fairways Reserve account 39.5%

    j. The Fairways Investment account 100%

11. The Dreyfus Govt Cash Management Wealth money market mutual fund does not invest 100% of net assts in government securities and/or repurchase agreements that are collateralized by government securities.[5]

[5] See: https://www.marketwatch.com/investing/fund/dgvxx?gaa_at=eafs&gaa_n=AWEtsqcRE6aoK8a-_tph50SC1E7gQIWu4h_GzpHp1qe55f9WeEz1d3I2zAHQjldQsv0%3D&gaa_ts=69962421&gaa_sig=slTY8hvANXiOu5eYNcpEXpYnSf9jrQTu6eodqP7JMOnf2v8MbgAqJRMFJbMWBHA78rXPyJ92HtGoytvIm7kDnQ%3D%3D

12. The Dreyfus Govt Cash Management Wealth money market mutual fund is often used as a sweep vehicle for brokerage accounts, including those at Ameriprise Financial.[6]

13. As of February 13, 2026, the Dreyfus Wealth Shares fund's 7-day yield was approximately 3.31%.[7]

14. The Prospectus for the Dreyfus Wealth Shares fund states that the fund has annual operating expenses of $.43 (after fee waiver) thereby identifying a net expense ratio of 0.43%.[8]

15. The Dreyfus Wealth Shares money market Mutual fund is not FDIC-insured.[9]

16. Ameriprise offers other cash management options, including FDIC-insured bank deposit sweeps.[10]

17. Comerica, Inc. has merged with Fifth Third Bancorp.[11]

18. In the § 345 Motions, Debtors seek to:

    a. maintain "Reserve Accounts" and "Investment Accounts" with Ameriprise Financial, including:
        i. money market funds;
        ii. FDIC-insured certificates of deposit (or related instruments) in amounts not to exceed the FDIC insurance limit; and,
        iii. U.S. Treasury securities.

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[6] See: https://www.ameriprise.com/products/investments/brokerage-sweep-options

[7] See: https://www.ameriprise.com/products/investments/brokerage-sweep-options

[8] See https://www.ameriprise.com/binaries/content/assets/ampcom/dreyfus-government-cash-management-fund-wealth-class-prospectus.pdf

[9] See: https://www.ameriprise.com/products/investments/brokerage-sweep-options, which states:

An investment in a Money Market Mutual Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The mutual fund's sponsor has no legal obligation to provide financial support to the mutual fund, and you should not expect that the sponsor will provide financial support to the mutual fund at any time.

[10] See: https://www.ameriprise.com/products/investments/brokerage-sweep-options

[11] See: https://www.53.com/content/fifth-third/en/media-center/press-releases/2026/press-release-2026-02-02-1.html

b. make future investments during the pendency of their bankruptcy cases, including:
   i. U.S. Government Agency securities,
   ii. insured/AAA rated tax-free municipal securities (with an underlying issuer rating of at least A), and
   iii. U.S. Treasury Securities and/or Government Agency securities.
c. obtain a waiver of the requirements of § 345(b), including:
   i. close all pre-petition bank accounts; and
   ii. open a Debtor in Possession ("DIP") at an Authorized Depository
d. obtain a waiver of the United States Trustee Program Chapter 11 Guidelines for Debtors in Possession; and
e. granting any additional relief required in order to effectuate the foregoing.

19. The USTP is continuing to communicate with Comerica Bank/Fifth Third to determine whether the bank(s) would agree to become an Authorized Depository for Region 13, which would resolve §345(b) issues with Debtors' Checking and Sweep accounts.

20. As of February 17, 2026, according to the U.S. Department of the Treasury, the secondary market short-term Treasury Bills[12] have the following approximate rates:

    a. 4 weeks: ~ 3.63%
    b. 6 weeks: ~ 3.64%
    c. 8 weeks: ~ 3.63%
    d. 13 weeks: ~ 3.61%
    e. 26 weeks: ~ 3.51%

21. The Treasury auction results of 119-Day Bills on February 18, 2026, with an issue date of February 24, 2026, had an investment rate of 3.689%.[13]

Governing Law

22. Section 345 protects bankruptcy estate funds by requiring that they be insured, collateralized, or bonded:

> (b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States

[12] See: https://home.treasury.gov/resource-center/data-chart-center/interest-rates/TextView?type=daily_treasury_bill_rates&field_tdr_date_value=2025

[13] See: https://www.treasurydirect.gov/instit/annceresult/press/preanre/2026/R_20260218_1.pdf

> or backed by the full faith and credit of the United States, the trustee ***shall require*** from an entity with which such money is deposited or invested—
>
> (1) a bond—
> (A) in favor of the United States;
> (B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and
>
> (C) conditioned on—
> (i) a proper accounting for all money so deposited or invested and for any return on such money;
>
> (ii) prompt repayment of such money and return; and
> (iii) faithful performance of duties as a depository; or
> (2) the deposit of securities of the kind specified in section 9303 of title 31;
> unless the court for cause orders otherwise.

23. Generally, unless the funds are insured, guaranteed, or backed by the full faith and credit of the United States Government or its agencies, the institution holding the estate funds must post a bond in favor of the United States or, in the alternative, deposit securities pursuant to 31 U.S.C. § 9303.

24. "The legislative purpose behind the enactment of section 345(b) was to ensure 'that the funds of a bankrupt that are obligated to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankrupt estate,' while also giving bankruptcy courts the flexibility to modify such requirement for 'just cause' where strict compliance might 'work to needlessly handcuff larger, more sophisticated debtors.'" *In re Ditech Holding Corp.*, 605 B.R. 10, 22 (Bankr. S.D.N.Y. 2019) (denying the debtors' motion to waive compliance with § 345 because their bank was an authorized depository and could easily collateralize estate funds at relatively little cost to the debtors) (citing H.R. Rep. 103-835, 103rd Cong., 2d Sess. 210 (Oct. 4, 1994)); *see also* 3 Collier on Bankruptcy ¶ 345.03 (16th ed. 2022) ("Section 345(a) provides for the deposit or investment of the money of the

bankruptcy estate in a manner that will yield the greatest reasonable return while considering the safety of such deposit or investment").

25. The most common way that debtors comply with § 345(b) is to have deposit accounts at banks that (a) are insured by the Federal Deposit Insurance Corporation (FDIC), which protects funds up to $250,000, and (b) have signed a Uniform Depository Agreement ("UDA") with the United States Trustee Program ("USTP"). The UDA requires that the signatory bank maintain collateral of 115 percent of the aggregate bankruptcy funds on deposit that exceed the FDIC's $250,000 insurance limit.

26. With the enactment of the Bankruptcy Code in 1978 and the creation of the USTP, the duty to oversee the proper banking of estate funds devolved to the United States Trustee. *See In re Columbia Gas Systems Inc.*, 33 F.3d 294, 297-98 (3d Cir. 1994). Accordingly, to ensure that trustees and debtors in possession meet their responsibilities to safeguard funds in accordance with § 345, the USTP monitors estate fiduciaries and their depositories and requires that chapter 11 estate assets be held in accounts at "authorized depositories," i.e., those that have entered a UDA with the USTP. *See* United States Trustee Program Policy and Practices Manual, Volume 7, "Banking and Bonding," ("Manual"), § 7-1.1, pp. 1-2, at: https://www.justice.gov/ust/file/volume_7_banking_and_bonding.pdf/download.

27. Pursuant to the UDA, each authorized depository is required to provide quarterly reports to the USTP for all bankruptcy estate accounts on deposit at all branches of the depository within the district. *See* Manual, §§ 7-1.2.1, p. 2, and 7-1.3.2, p. 5.

28. Although the Court has discretion to waive the requirements of § 345(b), the debtor in possession must prove "cause" for the waiver. *See, e.g., In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (finding "cause" exists for waiver of investment, deposit, and

reporting requirement where debtor is large, sophisticated entity with complex cash management system); *see also Ditech Holding*, 605 B.R. at 17-18.

29. In determining whether cause exists under § 345(b), courts have examined the totality of the circumstances. *See Serv. Merch. Co.*, 240 B.R. at 896 (Bankr. M.D. Tenn. 1999); *Ditech Holding*, 605 B.R. at 17. As part of this analysis, courts have considered the following factors:

    a. the sophistication of the debtor's business;

    b. the size of the debtor's business operations;

    c. the amount of investments involved;

    d. the bank ratings (Moody's and Standard and Poor) of the financial institutions where debtor-in-possession funds are held;

    e. the complexity of the case;

    f. the safeguards in place within the debtor's own business of insuring the safety of the funds;

    g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;

    h. the benefit to the debtor;

    i. the harm, if any, to the estate; and

    j. the reasonableness of the debtor's request for relief from § 345(b) requirements in light of the overall circumstances of the case.

See Serv. Merch. Co., 240 B.R. at 896.

Argument

Debtor's pre-petition accounts do not comply with § 345(b) because the accounts are not FDIC-insured, guaranteed by the United States Government, backed by the full faith and credit of the United States, or secured by a bond in favor of the United States or by securities under 31 U.S.C. § 9303. Notably, in seeking a waiver of § 345(b), Debtor has acknowledged this non-compliance. Debtors' contentions that opening of Debtor in Possession ("DIP") accounts with an

Authorized Depository will be "disruptive" and inconvenient is insufficient to establish cause to waive the requirements of §345(b). Further, Debtors' argument that Debtors "Sweep" and "Investment" accounts will earn some unspecified interest income is also insufficient to establish cause to waive the requirements of §345(b). Accordingly, Debtors have not shown cause to waive the requirements of § 345(b).

In *Lodging Enterprises*, the bankruptcy court denied debtors' request for waiver of the requirements of § 345(b), finding that "pursuing waiver to avoid the cost and inconvenience of compliance with § 345(b)….cannot be the basis for excusing compliance." *In re Lodging Enterprises, LLC*, 2024 WL 4252773 *3, No. 24-40423 (Bankr. D. Kan. Sep. 18, 2024). The court explained that in enacting § 345(b), even though Congress understood that bank failure risk was small, Congress still required estate funds to be insured or collateralized: "Congress certainly was aware that bank failures are very rare and compliance could be costly, yet it still required that deposits in excess of the FDIC insured amount be collateralized or bonded *without regard to the financial strength of the depository institution*." *Id.* (emphasis added). Accordingly, the simple plea of inconvenience of complying with the Bankruptcy Code cannot constitute cause for waiver of adherence to the Code.

Even if the risk of any one particular financial institution failing may not be immediately evident, cautionary tales of surprising and cataclysmic banking failures and money market losses have occurred over the last twenty years. For example, in March 2023, several authorized depositories - Silicon Valley Bank ("SVB") and Signature Bank - failed. The USTP was quickly able to confirm that every trustee and DIP deposit account held by these failed banks was fully compliant with § 345, *i.e.*, fully insured or collateralized, and was, therefore, safe and protected from loss.

In addition, the case of *In re BlockFi, Inc.,* case no. 22-19361 (Bankr. D.N.J.) is illustrative of the danger of allowing non-compliance with § 345. Chapter 11 debtor BlockFi held $227 million in an SVB money market account, not a debtor-in-possession deposit account collateralized as required by § 345. *Id.* at ECF No. 599 (Mar. 10, 2023), attached as **Exhibit 1**. Although the bankruptcy court granted BlockFi a temporary waiver of the § 345 requirements, the waiver expired on February 17, 2023, without BlockFi coming into compliance (despite the USTP's repeated requests that it do so). *Id*. BlockFi delayed because it, like the Debtors in this jointly administered case, wanted to earn interest by depositing funds in an uncollateralized money market, not a collateralized deposit, account. *Id.* Following USTP's March 6, 2023, final, informal entreaty for BlockFi to comply with § 345, on March 7, 2023, BlockFi responded that §345 compliance was unnecessary because there was FDIC insurance on the first $250,000 in the account and because:

> [t]hese holdings are AAA rated and invested in US government securities. These holdings generate meaningful value for the estate (~10M USD /year) and would be harmful to the estate if funds could only be held in checking account (sic) at 0% interest.

Id. Three days later, on March 10, 2023, SVB failed.

The *BlockFi* bankruptcy estate faced the loss of $227 million in estate funds because of the DIP's decision to prioritize incremental interest earnings and to ignore both the court-imposed deadline for § 345 compliance and the USTP's multiple inquiries seeking compliance. SVB's failure would have been catastrophic for *BlockFi* had the U.S. Government not quickly backstopped the banking losses exceeding FDIC insurance limits.

The fact that Debtors' account balances, in total, exceed approximately $15 million (*see supra*, paragraphs 6-8) weigh against allowing waiver of § 345 compliance. In *Ditech Holding* the court found that the substantial value of the Citibank accounts—$95 million—for which waiver

was sought weighed against granting the motion for waiver: "Debtors maintain their Cash Management System at one bank where their daily deposits aggregate $95 million…." 605 B.R. at 21.

Debtors request Court permission to risk Estate funds for the opportunity to earn an unspecified amount between now and liquidation. Although the risk of Comerica Bank N.A. and/or Ameriprise Financial, LLC's failure is not currently indicated, the risk is not zero. In particular, the proposed future investment of funds with Ameriprise Financial, LLC is a risk as the funds in Ameriprise affiliated Dreyfus funds are not FDIC-insured.

Moreover, Debtors have not established cause to waive the requirements of § 345 based on alleged inconvenience in opening new accounts and transferring funds to accounts that comply with § 345. With Debtors' having suspended occupancy in all units on January 4, 2026, Debtors' business operations are now minimized. As a result, credits from inflows resulting from operations are logically minimized and Debtors' historical payments that were required to maintain operations are likewise now limited. Debtors are not seeking to reorganize, but instead to liquidate assets. As such, Debtors have not established cause to waive the requirements of § 345 in this respect.

Furthermore, Debtors' Motions avoid addressing the alternatives to waiver, such as investing directly in U.S. Treasury securities, purchasing a bond securing the funds invested in Ameriprise Financial /Dreyfus funds, or shifting funds to an Ameriprise Financial fund that is FDIC-insured. Debtors have failed to justify a cost benefit analysis that outweighs the Congressionally mandated requirements for safeguarding estate funds. Because of the authorized depositories' collateralization and reporting requirements for deposit accounts, compliance with § 345's requirements will best safeguard Estate funds consistent with congressional intent. These requirements are not needlessly overly burdensome for Debtors and will protect estate funds as

Congress envisioned. *Cf. Ditech Holding*, 605 B.R. at 22 (requiring debtors to bring accounts into compliance with § 345(b)).

In sum, because the Debtors' proposed investments do not comply with § 345 and Debtors have not shown cause to waive the requirements of § 345, the USTP objects to the § 345 Motions.

WHEREFORE, the United States Trustee respectfully requests the Court deny the Debtors' Motions, sustain this Objection, and grant such other relief as is just and proper.

Dated: February 19, 2026

Respectfully Submitted,

JERRY L. JENSEN
ACTING UNITED STATES TRUSTEE

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2026, I electronically filed the foregoing with the Clerk of the Bankruptcy Court using the CM/ECF system, which will send notice to Debtors' counsel at the email address registered with the Court and parties entitled to receive electronic notice *via* e-mail by the Court's CM/ECF System.

/s/ Amy B. Blackburn
Trial Attorney
Office of the United States Trustee

U.S. TRUSTEE EXHIBIT 1

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
	:	Case No. 21-19361 (MBK)
BlockFi Inc., *et al.*,	:	Chief Judge: Honorable Michael B. Kaplan
Debtors.[1]	:	Hearing Date:

NOTICE OF MOTION OF THE UNITED STATES TRUSTEE TO COMPEL THE DEBTORS TO COMPLY WITH: (i) SECTION 345(b) OF THE BANKRUPTCY CODE; AND (ii) THE FINAL CASH MANAGEMENT ORDER

TO: ALL PERSONS ON ATTACHED CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that the United States Trustee, by and through his counsel, shall move before the Honorable Michael B. Kaplan, Chief Judge, on such date as set forth by the Court in the Order Shortening Time, at the United States Bankruptcy Court, District of New Jersey, 402 East State Street, Trenton, New Jersey, for an Order to Compel the Debtors to

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BlockFi Inc. (0015); BlockFi Trading LLC (2487); BlockFi Lending LLC (5017); BlockFi Wallet LLC (3231); BlockFi Ventures LLC (9937); BlockFi International Ltd. (N/A); BlockFi Investment Products LLC (2422); BlockFi Services, Inc. (5965) and BlockFi Lending II LLC (0154).

Comply with (i) Section 345(b) of the Bankruptcy Code; and (ii) the Final Cash Management Order.

PLEASE TAKE FURTHER NOTICE that the United States Trustee shall rely upon the Memorandum of Law and Certification submitted herewith.

PLEASE TAKE FURTHER NOTICE that any papers in opposition to the Motion must be filed with the Court and served upon the United States Trustee as set forth in the Order.

PLEASE TAKE FURTHER NOTICE that pursuant to District of New Jersey Local Bankruptcy Rule 9013-3(d) oral argument is requested.

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

/s/ Jeffrey M. Sponder
Jeffrey M. Sponder
Trial Attorney

DATED: March 10, 2023

UNITED STATES DEPARTMENT OF JUSTICE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re BlockFi Inc., *et al*.[1] Debtor.	Chapter 11 Case No. 22-19361 (MBK) Jointly Administered Hearing Date: PURSUANT TO ORDER SHORTENING TIME Honorable Michael B. Kaplan, Chief Judge

MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES TRUSTEE'S MOTION TO COMPEL THE DEBTORS TO COMPLY WITH: (i) SECTION 345(b) OF THE BANKRUPCY CODE; AND (ii) THE FINAL CASH MANAGEMENT ORDER

Andrew R. Vara, the United States Trustee for Regions 3 and 9 (the "U.S. Trustee"), through his counsel, moves before the Court pursuant to 28 U.S.C. § 586 and 11 U.S.C. §§ 105(a), and 345, for an Order compelling the Debtors to comply with 11 U.S.C. § 345(b) and the *Final Order (I) Authorizing the Debtors to (A) Continue Use of Existing Business Forms, and Records,*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BlockFi Inc. (0015); BlockFi Trading LLC (2487); BlockFi Lending LLC (5017); BlockFi Wallet LLC (3231); BlockFi Ventures LLC (9937); BlockFi International Ltd. (N/A); BlockFi Investment Products LLC (2422); BlockFi Services, Inc. (5965) and BlockFi Lending II LLC (0154).

(B) Maintain Existing Corporate Bank Accounts and Cash Management System, (C) Pay Prepetition Bank Fees Associated with the Cash Management System, and (D) Continue Performance of Intercompany Transactions, (II) Granting Administrative Expense Status to Postpetition Intercompany Balances, and (III) Waiving Certain U.S. Trustee Requirements (Dkt. 306) ("Final Cash Management Order") and respectfully represents as follows:

PRELIMINARY STATEMENT

The U.S. Trustee requests the Court compel the Debtors to comply with the requirements of section 345 and the terms of the Final Cash Management Order, in particular with regard to the bank account it maintains at Silicon Valley Bank ("SVB") ending in x7263, which, upon information and belief, currently leaves approximately $227 million in funds unprotected.

JURISDICTION

1. The Court has jurisdiction to hear this Motion.

2. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is generally charged with overseeing the administration of chapter 11 cases filed in this District. 28 U.S.C. § 586. Under section 586 and section 307 of the Bankruptcy Code, Congress charged the U.S. Trustee with broad responsibilities in chapter 11 cases and the standing to rise and be heard on any issue in any case or proceeding. 11 U.S.C. § 307; *see also United States Trustee v. Columbia Gas Sys., Inc.* (*In re Columbia Gas Sys., Inc.*), 33 F.3d 294, 295-96 (3d Cir. 1994) (the U.S. Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc.* (*In re Revco D.S., Inc.*), 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

STATEMENT OF RELEVANT FACTS AND BACKGROUND

General Case Background

3. On November 28, 2022 ("Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). *See* Case Nos. 22-19361, 22-19363, 22-19365, 22-19366, 22-19367, 22-19368, 22-19370, 22-19371 and 22-19374 at Dkt. 1.

4. On November 29, 2022, the Court entered an Order directing that these cases be jointly administered. *See* Dkt. 42.

5. The Debtors continue to operate their business(es) as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

6. No trustee or examiner has been appointed in these chapter 11 cases.

7. On December 21, 2022, the U.S. Trustee appointed an Official Committee of Unsecured Creditors. *See* Dkts. 130 and 131.

8. BlockFi "provide[s] credit services to markets with limited access to simple financial products." *See* Dkt. 17 at ¶ 22. "BlockFi acquires clients by offering custom products and services that enable its clients to meet their financial goals, and continuously expands its product suite to deepen its relationship with its clients over time." *See id*. at ¶ 29. "BlockFi serves retail clients through web and mobile applications, and its products enable individuals and small businesses to store and/or earn interest on, buy and sell, borrow U.S. Dollars secured by, and earn (via credit card rewards program) digital assets." *See id*. at ¶ 30. On the institutional side, "BlockFi provides hedge funds, market makers, proprietary trading firms, trading desks,

cryptocurrency miners, exchanges, and corporations with bespoke financing, trading, and treasury solutions relating to digital assets." *See id*.

Cash Management Motion and Order

9. On November 28, 2022, the Debtors filed a *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Use of Existing Business Forms and Records, (B) Maintain Existing Corporate Bank Accounts and Cash Management System, (C) Pay Prepetition Bank Fees Associated With the Cash Management System, and (D) Continue Performance of Intercompany Transactions, (II) Granting Superpriority Administrative Expense Status to Postpetition Intercompany Balances, and (III) Waiving Certain U.S. Trustee Requirements* ("Cash Management Motion"). *See* Dkt. 7.

10. On January 17, 2023, the Court entered the Final Cash Management Order. *See* Dkt. 306.

11. The Final Cash Management Order includes the following paragraph as requested by the U.S. Trustee:

> With respect to all Bank Accounts, the Debtors shall have 30 days from entry of this Final Order or such longer time as agreed with the U.S. Trustee to either comply with section 345(b) of the Bankruptcy Code, make such other arrangements as agreed with the U.S. Trustee or obtain the Court's approval for any deviation from section 345(b), without prejudice to the Debtors' right to seek an extension of the time to comply; provided the Debtors' and the U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned Cash Management Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully preserved.

See Dkt. 306, ¶ 18.

Debtors' Accounts with Silicon Valley Bank

12. SVB executed a Depository Agreement for the District of New Jersey. *See* Certification of Daniel C. Kropiewnicki ("Kropiewnicki Cert.") at ¶ 2.

13. The Debtors maintain multiple bank accounts at SVB. *See* Kropiewnicki Cert. at ¶ 3.

14. The SVB account ending in x7263 is a money market mutual fund. *See id*. at ¶ 4. Because it is a money market mutual fund, it is not FDIC insured and does not comply with section 345(b) or the terms of the Depository Agreement. *See id.*

15. On February 17, 2023 – at the end of the 30 days allowed under the Final Cash Management Order for compliance with section 345 – the U.S. Trustee emailed Debtors' counsel requesting documentation to support that the funds in account x7263 were held in a DIP account and were collateralized/insured. *See id*. at ¶ 5.

16. No proof was provided. *See id*. at ¶ 6.

17. As of February 28, 2023, the Debtors maintained approximately $227,000,000.00 in account x7263. *See id*. at ¶ 7.

18. On March 6, 2023, the U.S. Trustee emailed Debtors counsel stating that with regard to account x7263, "[t]he Debtor needs to immediately take steps to safeguard these funds in compliance with Section 345(b)." *See* Kropiewnicki Cert. at ¶ 8 (emphasis in the original).

19. The following day, the Debtors, through counsel, requested agreement from the U.S. Trustee to allow the funds to remain in the money market mutual fund, representing there is FDIC insurance on the first $250,000 and "[t]hese holdings are AAA rated and invested in US

government securities. These holdings generate meaningful value for the estate (~10M USD / year) and would be harmful to the estate if funds could only be held in checking account (sic) at 0% interest." *See id*. at ¶ 9.

20. A Balance Summary statement provided by SVB with regard to account x7263 states: "MONEY MARKET MUTUAL FUND INVESTMENTS ARE: NOT A DEPOSIT – NOT FDIC INSURED – NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY – NOT GUARANTEED BY THE BANK – MAY LOSE VALUE." *See id*. at ¶ 10 (emphasis in the original).

21. The U.S. Trustee responded on March 7, 2023, attaching the account statement referenced in the preceding paragraph. *See id*. at ¶ 11. The email further advised the Debtors that:

> The United States Trustee must seek to ensure that a debtor in possession invests funds of the estate only in accordance with 11 U.S.C. Section 345. The Debtor may purchase U.S. Treasury bills, bonds or notes provided the treasuries are titled as debtor in possession. Unless the court orders otherwise, investments in repurchase agreements and secondary financial markets are not authorized.

See id.

22. The Debtors agreed to provide a response by March 10, 2023. *See id*. at ¶ 12.

23. As of the filing of this Motion, the Debtors have not provided any proof that the funds in account x7263 are being held in accordance with section 345(b). *See id*. at ¶ 13.

ARGUMENT AND BASIS FOR RELIEF

24. The Debtors are not in compliance with section 345(b)[2] and the temporary waiver provided by the Final Cash Management Order has expired. Requiring the Debtors' compliance with section 345(b) and the Final Cash Management Order is necessary to protect this substantial amount of estate property.

25. Although SVB executed a Depository Agreement, account x7263 is a money market mutual fund and does not comply with section 345(b) or the terms of the Depository Agreement. Compliance with section 345 will ensure that all estate cash is properly

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[2] Bankruptcy Code § 345(b) provides that:

> (b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—
>
> (1) a bond—
>
> (A) in favor of the United States;
>
> (B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and
>
> (C) conditioned on—
>
> (i) a proper accounting for all money so deposited or invested and for any return on such money;
>
> (ii) prompt repayment of such money and return; and
>
> (iii) faithful performance of duties as a depository; or
>
> (2) the deposit of securities of the kind specified in section 9303 of title 31; unless the court for cause orders otherwise.

See 11 U.S.C. § 345(b).

collateralized pursuant to section 345(b).

A. Statutory Standard

26. Section 345(b) imposes certain requirements as to where estate funds can be held in order to protect the funds for the benefit of all creditors. Unless a deposit or investment is insured or guaranteed by the United States (or a federal department, agency, or instrumentality) or backed by the full faith and credit of the United States, the trustee or debtor in possession must require from an entity with whom estate funds are deposited to post a bond in favor of the United States or, in the alternative, deposit securities of the type specified in section 9303 of title 31 of the United States Code as security for the investment or deposit. *See* 11 U.S.C. § 345(b). Section 345(a) of the Bankruptcy Code requires the trustee or a debtor in possession to deposit or invest money of the estate so that it will result in the "maximum reasonable net return . . . [while] taking in to account the safety of such deposit or investment." *See* 11 U.S.C. § 345(a). Section 345(b) requires that estate funds be deposited or invested so as to ensure that the funds are protected for the benefit of creditors. *See* 11 U.S.C. § 345(b). A court may waive the requirements of section 345 upon the showing of "cause." *Id*.

27. Generally, unless the funds are insured, guaranteed, or backed by the full faith and credit of the United States Government or its agencies, the institution holding the estate funds must post a bond in favor of the United States or, in the alternative, deposit securities pursuant to 31 U.S.C. § 9303 as security. To ensure that trustees and debtors in possession meet their responsibilities to safeguard funds in accordance with section 345, the United States Trustee monitors fiduciaries and depositories, and requires that chapter 11 estate assets be held in debtor-

in-possession accounts at "authorized depositories," *i.e.*, those that have entered into a Uniform Depository Agreement with the United States Trustee. *See* United States Trustee Program Policy and Practices Manual, Volume 7, "Banking and Bonding," ("Manual"), §§ 7-1.1 – 7-1.2.[3]

28. Pursuant to the U.S. Trustee's responsibilities under 11 U.S.C. § 345 and 28 U.S.C. § 586, the U.S. Trustee has entered into Uniform Depository Agreements ("UDAs") with multiple financial institutions, including SVB. The UDA between the depository and the United States Trustee requires the depository to maintain collateral, unless an order of the bankruptcy court provides otherwise, in an amount of no less than 115 percent of the aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the insurance limit of the Federal Deposit Insurance Corporation ("FDIC"). *See* Manual, § 7-1.2.1. Pursuant to the UDA, each authorized depository is required to provide quarterly reports for all bankruptcy estate accounts on deposit at all branches of the depository within the district. *See* Manual, § 7-1.3.2.

29. The UDA also aims to safeguard estate monies on deposit at UDA banks if those banks encounter difficulties during a case. Specifically, the UDA makes all estate monies on deposit immediately due and payable if the depository bank fails, suspends active operations or becomes insolvent, or if a receiver, conservator or liquidator is appointed for the bank. In such events, the UDA gives the U.S. Trustee the immediate right to seek recourse against any surety bond the bank obtained, or unilaterally demand turnover or take actual or constructive possession of all securities the bank has pledged as collateral with the Federal Reserve, without notice to the

[3] The manual is available at: https://www.justice.gov/ust/united-states-trustee-program-policy-and-practices-manual.

bank. The U.S. Trustee would then pay such surety bonds or pledge securities to the debtor or hold them in trust for the debtor. Without the depository bank's compliance with a UDA, the U.S. Trustee would be unable to proceed as expeditiously to protect estate assets.

B. The Debtors are Not in Compliance with Section 345

30. As of the filing of this Motion, the Debtors are not in compliance with section 345 because account x7263 is a money market mutual fund account, which is not FDIC insured. Accordingly, account x7263 does not comply with the Depository Agreement executed by SVB and upon information and belief, the Debtors have not taken any steps to safeguard those funds as required by section 345.

31. The Debtors are also not in compliance with the Final Cash Management Order because it is now more than 30 days after entry of the order, there is no further extension agreed to by the U.S. Trustee, and the Debtors have not complied with or obtained the Court's approval of a waiver of section 345(b) requirements.

32. Even if the Debtors did request a waiver, the Debtors would have to establish "cause" under section 345(b). The U.S. Trustee disputes there is any cause to waive the requirements because there is no showing that the funds in SVB account x7263 will be sufficiently protected in the absence of compliance.

33. As a waiver has not been requested, the U.S. Trustee reserves all rights to object to any such request.

WHEREFORE the U.S. Trustee requests that this Court issue an order directing the Debtors to comply with section 345.

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: */s/ Jeffrey M. Sponder*
Jeffrey M. Sponder
Trial Attorney

By: */s/ Lauren Bielskie*
Lauren Bielskie
Trial Attorney

Dated: March 10, 2023

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
	:	Case No. 22-19361 (MBK)
BlockFi Inc., *et al.*,[1]	:	
	:	Hearing Date: PURSUANT TO ORDER SHORTENING TIME
Debtor.	:	
	:	Honorable Michael B. Kaplan, Chief Judge

CERTIFICATION OF DANIEL C. KROPIEWNICKI IN SUPPORT OF THE UNITED STATES TRUSTEE'S MOTION TO COMPEL THE DEBTORS TO COMPLY WITH: (i) SECTION 345(b) OF THE BANKRUPTCY CODE; AND (ii) THE FINAL CASH MANAGEMENT ORDER

I, Daniel C. Kropiewnicki, of full age, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am employed as a bankruptcy analyst by the Office of the United States Trustee ("OUST") in Newark, New Jersey, and I base this Certification on my personal knowledge and review of correspondence and documents as set forth below.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BlockFi Inc. (0015); BlockFi Trading LLC (2487); BlockFi Lending LLC (5017); BlockFi Wallet LLC (3231); BlockFi Ventures LLC (9937); BlockFi International Ltd. (N/A); BlockFi Investment Products LLC (2422); BlockFi Services, Inc. (5965) and BlockFi Lending II LLC (0154).

2. Silicon Valley Bank ("SVB") executed a Depository Agreement for the District of New Jersey on or about January 26, 2023.

3. The Debtors maintain multiple bank accounts at SVB.

4. The SVB account ending in x7263 is a money market mutual fund. Because it is a money market mutual fund, it is not FDIC insured and does not comply with Section 345(b) or the terms of the Depository Agreement.

5. On February 17, 2023 – at the end of the 30 days allowed under the Final Cash Management Order for compliance with section 345 – the U.S. Trustee emailed Debtors' counsel requesting documentation to support that the funds in account x7263 were held in a DIP account and were collateralized/insured.

6. No proof was provided.

7. As of February 28, 2023, the Debtors maintained approximately $227,000,000.00 in account x7263.

8. On March 6, 2023, I emailed Debtors counsel stating that with regard to account x7263, "[t]he Debtor needs to immediately take steps to safeguard these funds in compliance with Section 345(b)." (Emphasis in the original).

9. The following day, the Debtors, through counsel, requested agreement from the U.S. Trustee to allow the funds to remain in the money market mutual fund, representing there is FDIC insurance on the first $250,000 and "[t]hese holdings are AAA rated and invested in US government securities. These holdings generate meaningful value for the estate (~10M USD / year) and would be harmful to the estate if funds could only be held in checking account (sic) at 0% interest."

10. A Balance Summary statement provided by SVB with regard to account x7263

states: "MONEY MARKET MUTUAL FUND INVESTMENTS ARE: NOT A DEPOSIT – NOT FDIC INSURED – NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY – NOT GUARANTEED BY THE BANK – MAY LOSE VALUE." (Emphasis in the original).

11. I responded on March 7, 2023, citing to and attaching the account statement referenced in the preceding paragraph. I further advised the Debtors that:

> The United States Trustee must seek to ensure that a debtor in possession invests funds of the estate only in accordance with 11 U.S.C. Section 345. The Debtor may purchase U.S. Treasury bills, bonds or notes provided the treasuries are titled as debtor in possession. Unless the court orders otherwise, investments in repurchase agreements and secondary financial markets are not authorized.

12. The Debtors agreed to provide a response by March 10, 2023.

13. As of the filing of this Motion, the Debtors have not provided any proof that the funds in account x7263 are being held in accordance with Section 345(b).

I certify under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 & 9

By: */s/ Daniel C. Kropiewnicki*
Daniel C. Kropiewnicki
Bankruptcy Analyst

Dated: March 10, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-2(c)
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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In Re: BlockFi. Inc., et als., Debtors.[1]	Case No.: 22-19361 (MBK) Chapter 11 Chief Judge: Michael B. Kaplan Hearing Date:

ORDER COMPELLING THE DEBTORS TO COMPLY WITH: (i) SECTION 345(b) OF THE BANKRUPTCY CODE; AND (ii) THE FINAL CASH MANAGEMENT ORDER

The relief set forth on the following page(s), numbered two (2) and three (3) is hereby

ORDERED.

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: BlockFi Inc. (0015); BlockFi Trading LLC (2487); BlockFi Lending LLC (5017); BlockFi Wallet LLC (3231); BlockFi Ventures LLC (9937); BlockFi International Ltd. (N/A); BlockFi Investment Products LLC (2422); BlockFi Services, Inc. (5965) and BlockFi Lending II LLC (0154).

(Page 2)

BlockFi. Inc., et als.

Case No. 22-19361/MBK

Order Compelling the Debtors to Comply With: (i) Section 345(b) of the Bankruptcy Code; and (ii) the Final Cash Management Order

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Upon consideration of the Motion of the United States Trustee by and through counsel, for an Order to Compel the Debtors to Comply With: (i) Section 345(b) of the Bankruptcy Code; and (ii) the Final Cash Management Order, and notice of the Motion having been given to the Debtors, Debtors' counsel and certain parties-in-interest, and the Court having found that the Debtors' account at Silicon Valley Bank, account number x7263, is a money market mutual fund that is not FDIC insured and as such, does not comply with Section 345(b) of the Bankruptcy Code, and the Court having found cause for the entry of the within order, and good cause shown, and for the reasons set forth on the record, it is hereby:

ORDERED that the Debtors shall immediately comply with Section 345(b) of the Bankruptcy Code and ensure that all of its deposits and investments held in account number x7263 located at Silicon Valley Bank are insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, and it is further

ORDERED that to the extent the Debtors are unable to ensure that all of its deposits and investments held in account number x7263 located at Silicon Valley Bank are insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the Debtors shall immediately transfer said funds to a depository approved by the United States Trustee for Region 3 that will

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insure or guarantee the deposits and investments previously held in account number x7263 and previously located at Silicon Valley Bank, and it is further

ORDERED that the Debtors shall comply with Section 345(b) in all other respects.