American CryptoFed

October 28, 2024
Via Electronic Email and eFAP

Christopher Carney, Division of Enforcement, CarneyC@sec.gov
U.S. Securities and Exchange Commission,
100 F Street, N.E. Washington, D.C. 20549

CC:
Chairman Gary Gensler, 202-551-2100, Chair@sec.gov
Commissioner Hester M. Peirce, (202) 551-5080, CommissionerPeirce@sec.gov
Commissioner Caroline A. Crenshaw, 202-551-5070, CommissionerCrenshaw@sec.gov
Commissioner Mark T. Uyeda, 202-551-2700, CommissionerUyeda@sec.gov
Commissioner Jaime Lizárraga, 202-551-2800, CommissionerLizarraga@sec.gov

CC:
Inspector General, Deborah J. Jeffrey, oig@sec.gov
Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov
Justin Dobbie, Division of Corporation Finance, dobbiej@sec.gov

Re: Misapplication of 15 U.S.C. § 78z

Dear Mr. Carney:

This letter is in response to your October 21, 2024, letter in which you, on behalf of the SEC's Division of Enforcement only, cited 18 [sic] U.S.C. § 78z and stated,

> The SEC staff reminds you that CryptoFed must comply with all federal securities laws, and, if CryptoFed does not, we reserve the right to recommend that the Commission seek any and all available and necessary remedies against CryptoFed.

CryptoFed understands that 15 U.S.C. § 78z provides the Securities and Exchange Commission ("SEC" or "Commission") with statutory discretion to perform a duty in the form of *action*, *no action* or *failure to act*. However, when the Commission takes no action or fails to act,

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the Commission may violate the US Constitution, federal laws and regulations. Here, in the matter of CryptoFed, AP File No. 3-20650, since December 16, 2023, American CryptoFed DAO ("CryptoFed") has sent monthly letters to urge the Commission to make a decision on CryptoFed's motion filed on December 15, 2021 pursuant to the Rule of Practice 250(a), 17 CFR § 201.250 (a) ("Rule 250(a) Motion"). These letters are identical and are available at the SEC public docket.[1]

The Rule of Practice 250(a) requires the Commission to **"promptly grant or deny the motion", even allowing the Commission to accept all of the SEC Division of Enforcement's factual allegations as true and to draw all reasonable inferences in the SEC Division of Enforcement's favor.** The Commission's ongoing indecision and non-decision have proven that the SEC Division of Enforcement's allegations are baseless and have no merit, because the Commission is unable to enforce federal securities laws and regulations against CryptoFed, even accepting all of the SEC Division of Enforcement's baseless allegations as true and drawing all reasonable inferences in the SEC Division of Enforcement's favor.

Furthermore, the Commission's indecision and non-decision create a vague situation lacking fair notice as to what CryptoFed should do in order to comply with federal securities laws. The fair notice / void for vagueness doctrine upheld by the US Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) at 2317 states:

> A fundamental principle in our legal system is that **laws which regulate persons or entities must give fair notice of conduct that is forbidden or required**. See *Connally v. General Constr. Co.*, 269 U. S. 385, 391 (1926) ("[A] statute which either forbids or requires the doing of an act in terms **so vague that men of common intelligence** must necessarily guess at its meaning and differ as to its application, **violates the first essential of due process of law**"); *Papachristou v. Jacksonville*, 405 U. S. 156, 162 (1972) ("Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids' "

[1] Available at https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20650

> (quoting *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939); alteration in original)). **This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment**. See *United States v. Williams*, 553 U. S. 285, 304 (2008). **It requires the invalidation of laws that are impermissibly vague.** (Emphasis added).

As a result of the Commission's indecision and non-decision for nearly three (3) years, the Commission is clearly unable to apply federal securities laws to CryptoFed by following the pre-determined due process of law which is Rule 250 (a), leading to an inevitable conclusion, from a legal perspective of as-applied constitutional challenges (not facial challenges), that the federal securities laws do not apply to CryptoFed and that the SEC does not have jurisdiction over CryptoFed. In other words, the Commission not only has violated Rule 250 (a) and the Due Process Clause of the Fifth Amendment, but also has invalidated federal securities laws as applied to CryptoFed's specific conduct.

This conclusion also applies to the administrative proceedings under the Securities Act of 1933 (File No. 3-21243) on which the Commission has not been able to make a decision either,[2] although the Rule 250(a) Motion was filed in the administrative proceedings under the Securities Exchange Act of 1934 (File No. 3-20650). The US Supreme Court held in *Tcherepnin v. Knight*, 389 US 332 (1967) at 335-336, "The Securities Act of 1933 (48 Stat. 74, as amended) contains a definition of security virtually identical to that contained in the 1934 Act."

For all the reasons set forth above, CryptoFed concludes that 18 [sic] U.S.C. § 78z cited in your October 21, 2024 letter was completely misapplied.

Can the SEC's Division of Enforcement provide **at least one legally binding precedent (case law)** to substantiate its legal position that 15 U.S.C. § 78z allows the SEC's Division of

[2] The Commission issued two orders called ORDER EXTENDING TIME TO ISSUE DECISION, on June 3, 2024 and September 3, 2024 respectively, available at https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf and https://www.sec.gov/files/litigation/admin/2024/33-11300.pdf .

Enforcement to "reserve the right to recommend that the Commission seek any and all available and necessary remedies against CryptoFed," while the Commission itself has been violating the Commission's own rules and the US Constitution, and has invalidated federal securities laws as applied to CryptoFed's specific conduct?

CryptoFed looks forward to a written response from the SEC's Division of Enforcement on or before November 8, 2024.

Sincerely,

/s/ Scott Moeller

[redacted]

Name: Scott Moeller
Title: Organizer/President
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

[redacted]

Name: Xiaomeng Zhou
Title: Organizer/COO
zhouxm@americancryptofed.org

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