

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-21243

In the Matter of

The Registration Statement of

American CryptoFed DAO LLC,

Respondent.

**DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S
MOTION FOR MORE DEFINITE STATEMENT**

The Division of Enforcement ("Division"), by counsel, respectfully submits this opposition to Respondent American CryptoFed DAO LLC's ("Respondent" or "American CryptoFed") Motion for More Definite Statement ("Motion").

Preliminary Statement

Along with its Answer to the Order Fixing Time and Place of Public Hearings and Instituting Administrative Proceedings Pursuant to Section 8(d) of the Securities Act of 1933 ("OIP"), American CryptoFed filed a Motion for More Definite Statement. But that Motion does not actually seek a more definite statement about anything. For the reasons set forth below the Motion, which is designed only to cause confusion and delay in these proceedings, should be denied in its entirety.

BACKGROUND

On November 18, 2022, the Commission issued the OIP which contained thirty-two numbered paragraphs setting forth the detailed allegations of the Division regarding both the deficiencies in American CryptoFed's Form S-1 and American CryptoFed's failure to cooperate with the Division's examination of that registration statement.¹ The allegations refer to specific statutory provisions, contain references to specific documents, and allege in detail the bases on which the Division is requesting a stop order to be issued.

ARGUMENT

D) American CryptoFed Has Not Met Its Burden to Show Any Basis for a More Definite Statement.

The Commission and its Administrative Law Judges have addressed motions for a more definite statement in multiple prior proceedings. The Commission grants these motions when an OIP fails to provide sufficient information to a respondent such that they can prepare their defense. Here, American CryptoFed cannot meet that standard. Indeed, many of the matters about which American CryptoFed complains in the Motion are simply not appropriately resolved by a motion for a more definite statement. Moreover, American CryptoFed is well-aware that their attempted use of a motion for a more definite statement to obtain advance rulings on precise legal theories is improper, having been specifically told that by the Commission in the related Section 12(j) proceeding. *See In the Matter of American CryptoFed DAO LLC*, Exchange Act Release No. 93971, 2022 SEC LEXIS 80 at *4

¹ To the extent that this Opposition does not respond to each and every extraneous factual allegation in the Motion, it should not be misconstrued as admitting any of those statements.

(January 12, 2022) (denying American CryptoFed’s seven duplicative motions for more definite statements and admonishing that “a motion for a more definite statement may not be used to obtain an advance ruling about what the evidence shows or what legal theory will prevail.”)

A) The Law Regarding Motions for a More Definite Statement.

1) American CryptoFed Has the Burden to Show That the OIP Did Not Provide It with Fair Notice or Sufficient Information.

As the Commission has noted, “motions for more definite statement are governed by Rule of Practice 220(d), which requires a movant to state the respects in which, and the reasons why, each matter of fact or law to be considered or determined should be required to be made more definite.” *David F. Bandimere, et al.*, AP Rulings Release No. 6500, 2019 SEC LEXIS 491 at *2 (Mar. 15, 2019) (quoting Rule 220(d)) (cleaned up). Put another way, a motion for a more definite statement is not an opportunity for a respondent to propound interrogatories upon the Division or the Commission, or move to dismiss the OIP as “unlawful” (*See* Motion at 2, 4, and 5). Rather, such motions are for situations where a lack of clarity or specificity in the OIP renders it defective or unfair.

Thus, in considering such a motion, the Commission also looks to Rule 200, which requires that an OIP set forth factual and legal bases “in such detail as will permit a specific response thereto.” In denying a motion for a more definite statement in *Daniel Joseph Touzier*, the Commission explained that this means that the “OIP must inform the respondent of the charges in enough detail to allow the respondent to prepare a defense, but it need not disclose to the respondent the

evidence upon which the Division intends to rely.” *Daniel Joseph Touizer*, Exchange Act Release No. 86420, 2019 SEC LEXIS 1796 at *4 (July 19, 2019) (citing *Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005)); *see also Timbervest, LLC, et al.*, Investment Advisers Act of 1940 Release No. 4197, 2015 SEC LEXIS 3854 at *75 (Sept. 17, 2015) (finding that “the limited function of an OIP is to provide notice of *what* violations of the securities laws are alleged; it need not detail *how* the Division ultimately will try to prove them.”) (emphasis in original).

2) The Commission Has Historically Only Required More Definite Statements When Important Information Is Missing.

Where the Commission has required the Division to provide additional information in response to a motion for more definite statement, it is often information such as the identities of persons referred to in the OIP or the time period applicable to certain allegations in the OIP. In contrast, the Commission has denied broad requests that the Division explain its plans to prosecute its case. *See Raymond J. Lucia Co., Inc. et al.*, AP Rulings Release No. 6735, 2020 SEC LEXIS 3364, Feb. 24 2020 at *4 (Where “the crux of its case is the alleged misrepresentations in the slideshow . . . the Division . . . should advise Respondents of the dates . . . the slideshow was used. The motion for a more definite statement is otherwise denied.”) (footnotes omitted); *Bandimere*, 2019 SEC LEXIS 491 at *10-11 (requiring Division to identify certain investors and state when Respondent learned of red flags, but denying request to learn Division’s legal theory); *Laurence I. Balter d/b/a Oracle Investment Research*, AP Rulings Release No. 4534, 2017 SEC LEXIS

185 at *2 (Jan. 19, 2017) (requiring the Division to provide a finalized list of trades and transactions at issue and denying remainder of the motion); *W. Pac. Capital Mgmt.*, AP Rulings Release No. 691, 2012 SEC LEXIS 434, *9 (Feb. 7, 2012) (requiring the Division to identify which clients failed to receive a disclosure and denying the remainder of the motion).

B) The OIP Contains Detailed and Specific Allegations.

1) The OIP Listed the Missing and Materially Misleading Information.

Here, the OIP recites the specific facts giving rise to this Section 8(d) proceeding. The crux of this case is that American CryptoFed did not include certain required information in the Form S-1, included other information that was materially misleading, and failed to cooperate with the Section 8(e) examination. The OIP recites exactly what types of information are missing and exactly what provisions of law require the information.² For example in paragraph 5, the OIP alleges that “Articles 3 and 8 of Regulation S-X require that a Form S-1 contain audited annual and unaudited interim financial statements. Respondent’s Registration Statement does not contain any financial statements, audited or otherwise.” The OIP also sets forth the materially misleading statements and explains why they are misleading. And the OIP sets forth the details of the failure to cooperate.

The Commission has denied motions for a more definite statement involving similarly specific OIPs. *See Touizer*, 2019 SEC LEXIS 1796 at *2 (denying motion

² See OIP at ¶¶4 to 32.

for more definite statement where OIP “sets forth eight specific admissions”); *Miguel A. Ferrer*, AP Rulings Release No. 706, 2012 SEC LEXIS 1843 at *13 (June 13, 2012) (denying motion for more definite statement because “[t]he OIP is clear, unambiguous and detailed”); *Marc Sherman*, AP Ruling Release No. 2106, 2014 SEC LEXIS 4694 at *3 (Dec. 5, 2014) (denying motion where OIP contained “a number of specific allegations relating to” the respondents).

The OIP includes specific allegations and does not have any of the categorical, ambiguous, or undefined assertions that have led to the Commission requiring a more definite statement in other proceedings. The Motion fails to cite any authority that supports the claim that more is required. Nor does it explain with any clarity what specific information is missing or that the Division should be compelled to provide.

2) By Providing Additional Voluntary Disclosures, the Division Has More Than Met Its Burden.

Over time, the Commission has expressed a preference for greater disclosure in administrative proceedings. *See Lucia*, 2020 SEC LEXIS 3364, at n.2 (clarifying that *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959) was no longer to be relied on for the proposition that mid-hearing continuances could be used if a respondent needed more time to prepare).

Accordingly, here, the Division both voluntarily disclosed its investigative file under Rule 230 earlier than required and provided an affidavit that sets forth key aspects of the anticipated testimony of one of its witnesses. Combined with the detailed allegations in the OIP, this has provided American CryptoFed with more

than sufficient information to prepare its defense. *See OptionsXpress, Inc.*, AP Rulings Release No. 710, 2012 SEC LEXIS 2231 at *5-6 (July 11, 2012) (denying motion for a more definite statement in part due to Division’s compliance with Rule 230 and additional disclosures).

Considering all the information the Division has already provided, even the preference for greater disclosure expressed in *Lucia* does not require the Division to provide additional information in response to American CryptoFed’s Motion. The OIP here was specific and detailed, and the matters about which American CryptoFed seeks more information are simply not appropriate for a motion for a more definite statement.

- C) No Portion of the Motion Sets Forth an Appropriate Claim for a More Definite Statement.**
 - 1) The Division Does Not Need to Explain the Commission’s Choice to Use Section 8(d) Instead of Section 8(b).**

In Section I of the Motion, American CryptoFed disregards the statutory language that a Section 8(d) proceeding can be brought “at any time,” and seeks a more definite statement from the Division regarding why the Commission instituted a proceeding under Section 8(d) instead of Section 8(b) (which notably says the Commission “may” —not must— use that provision). *See* 15 U.S.C. § 77h(b) and (d). American CryptoFed says nothing about what additional information the Division should be required to provide. Accordingly, this portion of the motion should be denied.

And in any event, Respondent's legal position regarding Section 8(d) is incorrect. *See Registration Statement of Canso Enterprises Ltd.*, Initial Decision Release No. 1155, 2017 SEC LEXIS 2215 at *32-33 (July 26, 2017):

Section 8(d) authorizes the Commission to "issue a stop order suspending the effectiveness of [a] registration statement." 15 U.S.C. § 77h(d). This could be read to apply only to registration statements that have become effective, and only Universal Movers received a notice of effectiveness. The Commission, however, has interpreted Section 8(d) to permit it to suspend registration statements that have not yet become effective because to interpret it otherwise "would lead to absurd and inequitable results from the point of view of decent administration and investor protection." *Red Bank Oil Co.*, Securities Act Release No. 3095, 1945 SEC LEXIS 204 (Oct. 11, 1945) ("We think it utterly repugnant to the objectives of the Act to interpret it to require us to sit by until a false and misleading registration statement becomes effective before commencing action under Section 8(d)."); *see* William R. McLucas, *Stop Order Proceedings Under the Securities Act of 1933: A Current Assessment*, 40 Bus. L. 515, 530-31 (1985) (noting that courts have implicitly upheld the Commission's position).

See also Petrofab International, Inc. 48 S.E.C. 998, 1988 SEC LEXIS 782 at *17 (April 20, 1988) (issuing stop order regarding registration statement that had never become effective); 15 U.S.C. 77e(c) (explicitly noting that registration statement could be subject to proceedings under Section 8 prior to a registration statement becoming effective).

2) Section II of the Motion is Duplicative.

Section II of the Motion makes essentially the same argument as Section I and should be denied for the same reasons.

3) The SEC's Filing Review Process Does Not Require a More Definite Statement.

In Section III of the Motion, American CryptoFed claims that the OIP somehow violates the SEC's filing review process. Putting aside that American

CryptoFed has not made an intelligible claim as to how the SEC allegedly violated its filing review process, Respondent has also not specified either how the filing review process could trump the statutory provision of Section 8(d) allowing the SEC to bring a proceeding such as this “at any time,” or what information the Division should be compelled to provide via a motion for more definite statement.

Accordingly, this portion of the motion should be denied.

4) Section IV of the Motion is Duplicative.

Section IV of the Motion makes essentially the same argument as Section III and should be denied for the same reasons.

CONCLUSION

For the reasons stated above, Respondent’s Motion should be denied.

Dated: November 29, 2022

Respectfully submitted,

/s/ Christopher Bruckmann

Christopher Bruckmann (202) 551-5986

Christopher Carney (202) 551-2379

Martin Zerwitz (202) 551-4566

Michael Baker (202) 551-4471

Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549-5949

bruckmann@sec.gov

carney@sec.gov

zerwitz@sec.gov

bakermic@sec.gov

COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Division of Enforcement's Omnibus Response to American CryptoFed's Recent Motions was served on the following on this 29th day of November 2022, in the manner indicated below:

By Email:

Scott Moeller
scott.moeller@americancryptofed.org
President
American CryptoFed DAO LLC

Zhou Xiaomeng
zhouxm@americancryptofed.org
Chief Operating Officer
American CryptoFed DAO LLC

/s/ Christopher Bruckmann
Christopher Bruckmann