

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 11134 / November 18, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21243**

**In the Matter of**

**The Registration Statement of  
American CryptoFed DAO LLC**

**Respondent**

**RESPONDENT AMERICAN CRYPTOFED  
DAO LLC'S REPLY TO DIVISION OF  
ENFORCEMENT'S OPPOSITION TO  
RESPONDENT'S MOTION TO FILE A NIL  
FINANCIAL STATEMENT AUDITED BY  
AN ACCOUNTING FIRM REGISTERED  
WITH PCAOB**

American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) respectfully submits this reply to the Division of Enforcement’s Opposition to Respondent’s Motion to File a Nil Financial Statement Audited by an Accounting Firm Registered with PCAOB (the “Opposition”).

**I.**  
**A Court Order Is Needed to Release American CryptoFed**

Given that the Division of Enforcement (“Division”) stated “There is nothing stopping American CryptoFed from hiring an auditor firm to review its financial statements” (Opposition p.1), to ensure clarity, American CryptoFed should be released by a court order from the following promise made by Respondent during the hearing:

JUDGE FOELAK: Okay. And are you going to file written stipulations?

MR. MOELLER: If -- if you request, yes, we can -- we can do that. So, stipulate that we're -- no changes in our financials and no -- no removal on the delaying amendment, correct?

JUDGE FOELAK: Right.

MR. MOELLER: Okay. (Transcript, p. 606:4-11).

The promise made above was to satisfy the Division's request during the hearing:

MR. BRUCKMANN: Your Honor, frankly, the Division has concerns that they are trying to drag this out and make this take as long as possible and postpone because they don't have audited financials. (Transcript, p. 600:22-25 & 601:1).

American CryptoFed agrees with the Division's statement in their Opposition: "But the hearing in this matter is closed, and any financial statements, even if audited, should not be part of the record in this proceeding."

## II.

### The OIP's Scope and the Division's Obligations Are Defined by the OIP's Allegations

The Division's Opposition stated "Further, it is not the Division's obligation to prove that Respondent has assets, revenue, or liabilities." (p.2). To the extent that the Division has included in the OIP the following allegation (#20), the Division absolutely has the "obligation to prove that Respondent has assets, revenue, or liabilities".

On June 21, 2022, Respondent sent a letter to the Commission staff via e-mail. In that letter, Respondent objected to each request contained in the June 15, 2022 subpoena on the basis that each request:

is not reasonably calculated to lead to the discovery of relevant, admissible evidence which can rebut American CryptoFed's assertion that American CryptoFed has **No Fund Raising, No Revenue, No Costs, No Profits and No Assets** and therefore there is no traditional balance sheet equation of **Assets = Liabilities + Shareholder's Equities** to generate securities subject to the SEC's jurisdiction.

Furthermore, the Division's obligation above is undisputable given Judge Foelak's instruction below:

JUDGE FOELAK: So, you do get the opportunity. And the Division's -- in this situation, **the Division has to prove what is --has to positively prove what is in the OIP as, you know, being true** or something. And you don't have to positively disprove it. You -- if you get the distinction. (Transcript, p.811:6-12, emphasis added).

It is undisputed that the OIP's scope is defined by the OIP's allegations. As a result, the following statement regarding the OIP's scope in the Division's Opposition is false.

Second, the Motion requests that this tribunal "order both the Divisions of Enforcement and Corporation Finance to provide comments on American CryptoFed's assertion of No Revenue, No Asset, No Profit, No Fundraising, No Cost and No Liability. **This request seeks relief beyond the scope of the Order Instituting Proceedings,...**" (p.2, emphasis added).

**III.**  
**The OIP's Scope and the Division's Obligations**  
**Are Defined by the Fair Notice Mandate of Section 8(d)**

This OIP was issued pursuant to Section 8 (d) of the Securities Act of 1933 ("Section 8(d)") which includes the following fair notice mandate:

...the Commission may, ...issue a stop order suspending the effectiveness of the registration statement. **When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.** (Emphasis added).

The Section 8(d) mandates the stop order must be clear enough to make it possible for the registration statement to be amended "in accordance with such stop order". If such stop order does not include "**precision and guidance**" for Respondent to enable an amendment to the registration statement filing as required by the US Supreme Court's opinion below in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (emphasis added), the stop order will be deemed invalid due to "**the void for vagueness doctrine**".

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’ ” (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.** A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Ibid.* As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved. See *id.*, at 306.

Even when speech is not at issue, **the void for vagueness doctrine** addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, **precision and guidance** are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. See *Grayned v. City of Rockford*, 408 U. S. 104, 108–109 (1972). When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech. (Ex.6, p.253-254).

In a March 11, 2022 order in *SEC v. Ripple Labs*, Judge Analisa Torres of the Southern District of New York, United States District Court, cited the same US Supreme Court opinion, applied this US Supreme Court opinion to the cryptocurrency industry, and allowed Ripple Labs’ Fair Notice affirmative defense (Ex.7 p. 6-7).

In the case of American CryptoFed, should a stop order be issued in this proceeding, such stop order must include the **“precision and guidance”** as to how to file a nil financial statement audited by an accounting firm registered with PCAOB, given that i) the Division has not yet proven that American CryptoFed has Fund Raising, Revenue, Costs, Profits and Assets, and ii) the Division cannot completely foreclose the possibility of an accurate, but nil financial statement being produced by an accounting firm registered with PCAOB. If the stop order fails

to include the “**precision and guidance**” as to how to file a nil financial statement audited by an accounting firm registered with PCAOB, and the audited report is a nil financial statement, such stop order will be deemed invalid due to “the void for vagueness doctrine”.

It is highly possible that American CryptoFed DAO will have to file a nil financial statement according to an article below published by two lawyers (Ex.58 p.1) who independently reviewed American CryptoFed’s case. American CryptoFed does not know these two authors as of today.

This highlights several issues with being able to register DAO-issued tokens under the current regulatory framework. The SEC disclosure forms rightly require financial statements and business information regarding the issuer. **That said, a DAO is not really an entity.** There often is **a supporting entity** in place alongside a DAO, and in some instances an organization that isn’t really decentralized may be mislabeled as a DAO, **but the DAO itself in almost all circumstances would not be able to produce financial statements prepared in accordance with generally accepted accounting principles.** (Emphasis added).

American CryptoFed does NOT predetermine the result of the audited financial statement. American CryptoFed fully agrees with the Division’s position below:

An auditor cannot be engaged simply to rubber stamp management’s conclusions. See Anton & Chia, LLP, Rel. No. 34-87033, 2019 SEC LEXIS 2864 at \*56, (Sept. 20, 2019) (“[The auditor] was required to exercise due professional care, including professional skepticism, in planning and performing the audits. ‘Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence’ (PCAOB Standard AU § 230.07, Due Professional Care in the Performance of Work), and requires auditors to ‘neither assume[] that management is dishonest nor assume[] unquestioned honesty’ (AU § 230.09).”). (Opposition, p.3).

To demonstrate American CryptoFed’s good faith by furnishing a professional audited financial statement in accordance with the Division’s position described above, American CryptoFed requests the Division to provide its comments on American CryptoFed’s assertion of

No Revenue, No Asset, No Profit, No Fundraising, No Cost and No Liability, which has been detailed in the Motion to File a Nil Financial Statement. Furthermore, the Division also has this obligation to provide such comments because of the OIP's allegation (#20). American CryptoFed will ensure that the auditor will provide a point-by-point opinion in response to the Division's comments. The Division will clearly act **NOT** in good faith if the Division refuses to provide comments, while arguing that "An auditor cannot be engaged simply to rubber stamp management's conclusions."

To the extent that this OIP was issued pursuant to the Section 8 (d), to the extent that the Section 8 (d) includes a fair notice mandate of the "**precision and guidance**" for American CryptoFed to amend its registration statement filing, to the extent that the OIP included an allegation of material omission of an audited financial statement (#5), the following statement in the Division's Opposition regarding the scope of the OIP is false, and thus has the obligation to accept the audited financial statement even if the audited report is a nil financial statement.

Third, the Motion requests this tribunal "order both Divisions to accept the audited financial statement even if the audited report is a nil financial statement." **This request seeks relief beyond the scope of the Order Instituting Proceedings...** (p.2, emphasis added).

**IV.**  
**The Division of Corporation Finance's Obligations**  
**Are Defined by Section 8 (d) and the SEC's Filing Review Process**

To the extent that Section 8 (d) includes a fair notice mandate of the "**precision and guidance**" for American CryptoFed to amend its registration statement filing; to the extent that the Division of Corporation Finance is in charge of American CryptoFed's Filing Review Process; to the extent that American CryptoFed stated "On pages 23-25, Section 2.5 of Form 10 filing, we clearly explain CryptoFed does not have and will never have any revenue or costs" in a

letter dated October 12, 2021 to the Division of Corporation Finance and the five Commissioners (Division's Ex.19, p.3), to the extent that the Division of Corporation Finance never responds to Respondent's October 12, 2021 point-by-point answers to the Division of Corporation Finance's allegations despite multiple requests (Ex.39, p.4), to the extent that the SEC's Filing Review Process mandates the Division of Corporation Finance to provide comments and clarification below (Ex.3, p.2-3), the Division of Corporation Finance **has** the obligation to provide comments on American CryptoFed's assertion of No Revenue, No Asset, No Profit, No Fundraising, No Cost and No Liability.

#### **Company Response to Comments**

**If a company does not understand a comment or the staff's purpose in issuing it, it should seek clarification from the examiner before it responds. If the company does not understand the comment after discussing it with the examiner, it may wish to speak with the staff member who approved the comment.** To make it easier for a company to identify the appropriate people to contact about a filing review, the Division includes the name of the office conducting the review as well as the names and phone numbers of the staff members involved in that review in each of its comment letters.....

**A company should direct a reconsideration request to the Chief of the office conducting the filing review. The company or its representatives should feel free to involve the Disclosure Program Director, the Division's Deputy Director or Director at any stage in the filing review process.** (Emphasis added).

#### **V.** **Conclusion**

For all the reasons set forth above, American CryptoFed respectfully requests that Judge Foelak i) permit American CryptoFed to engage a PCAOB accounting firm for an audited financial statement, ii) order both the Divisions of Enforcement and Corporation Finance to provide comments on American CryptoFed's assertion of No Revenue, No Asset, No Profit, No

Fundraising, No Cost and No Liability, and iii) order both Divisions to accept the audited financial statement even if the audited report is a nil financial statement.

Dated: February 5, 2023

Respectfully submitted

DocuSigned by:

*Scott Moeller*

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By /s/ Scott Moeller

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this **RESPONDENT AMERICAN CRYPTO FED DAO LLC'S REPLY TO DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S MOTION TO FILE A NIL FINANCIAL STATEMENT AUDITED BY AN ACCOUNTING FIRM REGISTERED WITH PCAOB** was filed by eFAP and was served on the following on this 5th day of February 2023, in the manner indicated below:

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