

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 CRYPTO FED
DAO LLC'S MOTION TO CONFIRM THE
DIVISION OF ENFORCEMENT'S
OBLIGATION TO PROVE OIP
ALLEGATION #20

The Securities and Exchange Commission (“SEC” or “Commission”) instituted this proceeding by an Order Instituting Proceedings (OIP) on November 18, 2022. The OIP ordered American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) to file an Answer within ten days after service of the OIP and ordered that a public hearing before Administrative Law Judge Carol Fox Foelak commence at 10:00 a.m. EST on December 1, 2022. Hearing sessions were held on December 1, 2, and 6, 2022, and January 18 and 19, 2023.

On January 29, 2023 (effective on 01/30/2023), American CryptoFed filed “RESPONDENT AMERICAN CRYPTO FED DAO LLC’S MOTION TO FILE A NIL FINANCIAL STATEMENT AUDITED BY AN ACCOUNTING FIRM REGISTERED WITH PCAOB” (“Motion to File a Nil Financial Statement”). On February 2, 2023, the Division of Enforcement (“Division”) filed DIVISION OF ENFORCEMENT’S OPPOSITION TO AMERICAN CRYPTO FED’S MOTION TO FILE A NIL FINANCIAL STATEMENT AUDITED BY AN ACCOUNTING FIRM REGISTERED WITH PCAOB (“Opposition”). In

the Division's Opposition, the Division states, "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, p.4), the Division absolutely has the "obligation to prove that Respondent has assets, revenue, or liabilities".

20. 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 instructions were clearly stated during the hearing, as shown 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).

The November 18, 2022 OIP is an order of the Commission functioning as a government agency. Therefore, the OIP **must** comply with the Administrative Procedure Act (APA) which is a federal act governing the procedures of administrative law. The APA is codified in *5 U.S.C. §§ 551–559* which includes the following plain text of *5 U.S. Code § 556*.

5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; **burden of proof**; evidence; record as basis of decision

(d) Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof.** (Emphasis added).

It is undisputable that the Division or the Commission is “**the proponent of a rule or order**” of the OIP. As a proponent, in accordance with *5 U.S. Code § 556*, the Division or the Commission “**has the burden of proof.**” Therefore, the Division’s statement in its Opposition “Further, it is not the Division’s obligation to prove that Respondent has assets, revenue, or liabilities.” (p. 2), is false, given that the OIP is a Commission’s Order, and includes this allegation #20 above.

For all the reasons set forth above, American CryptoFed respectfully requests that Judge Foelak confirm that the Division has the “obligation to prove that Respondent has assets, revenue, or liabilities”.

Dated: February 14, 2023

Respectfully submitted

DocuSigned by:

Scott Moeller

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By /s/ Scott Moeller

Scott Moeller, President

Xiaomeng Zhou, Chief Operating Officer

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this **RESPONDENT AMERICAN CRYPTO FED DAO LLC'S MOTION TO CONFIRM THE DIVISION OF ENFORCEMENT'S OBLIGATION TO PROVE OIP ALLEGATION # 20**, was filed by eFAP and was served on the following on this 14th day of February 2023, in the manner indicated below:

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By /s/ Scott Moeller

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