

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INITIAL DECISION RELEASE NO. 1415 / May 17, 2023
ADMINISTRATIVE PROCEEDING, File No. 3-21243

In the Matter of

THE REGISTRATION STATEMENT OF
AMERICAN CRYPTOFED DAO LLC

RESPONDENT

AMERICAN CRYPTOFED DAO LLC'S
MOTION TO CORRECT MANIFEST
ERRORS OF FACT IN THE INITIAL
DECISION

"Half the Truth is often a great Lie" -- Benjamin Franklin

"He tried to push through just the half truth,
but the half true in this world is a big, big, big lie."

Testimony, Xiaomeng Zhou for American CryptoFed DAO
Day 3, December 6, 2022, Transcript, at 445:4-6

Scott Moeller, President
Xiaomeng Zhou, Chief Operating Officer
American CryptoFed DAO LLC
1607 Capitol Ave Ste 327, Cheyenne, WY. 82001
Phone (307) 206-4210
scott.moeller@americancryptofed.org
zhouxm@americancryptofed.org

May 29, 2023

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6. PETITION 19

The Securities and Exchange Commission (“SEC” or “Commission”) instituted this proceeding by an Order Instituting Proceedings (OIP) on November 18, 2022. Pursuant to Rule 111 of the Commission’s Rules of Practice, 17 C.F.R. § 201.111, American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) files this Motion to Correct Manifest Errors of Fact in this Initial Decision issued by Judge Carol Foelak (“Initial Decision”), because these manifest errors are material and could result in a different Conclusion of Law for the Commission’s final order. For each manifest error, American CryptoFed provides the original citation in the Initial Decision, followed by proposed corrections to the manifest error, facts on the record which support corrections, and the justification for the proposed corrections. The proposed corrections leave the original text in place for these original citations, only adding the missing material facts in accordance with the evidence on the record, so that the half-truths which are evident in the Initial Decision’s “Findings of the Fact” can be transformed to the whole truth.

1. MANIFEST ERRORS at PARAGRAPH 1, PAGE 6 and ITS FOOTNOTE

1.1. The Initial Decision Citation Including Footnote 13

Thereafter, Mr. Dobbie attempted to arrange telephone calls with Respondent to discuss further the Forms 10 and S-1, but received an email from Respondent stating they would only correspond with the staff in writing. Tr. 68-69.¹

Mr. Zhou explained that he is not a native English speaker and Respondent wanted a written record to review. Tr. 98.... Mr. Zhou addressed the “talk to Zhou” questions in his testimony on January 19, 2023. Tr. 721-873.

1.2. Proposed Corrections in Italics.

¹ Citations to the transcript will be noted as “Tr. ___.” Citations to exhibits offered by the Division and by Respondent will be noted as “Div. Ex. ___” and “Resp. Ex. ___,” respectively. A number of exhibits in evidence were offered by both parties, e.g., Respondent’s Registration Statement – Div. Ex. 1 and Resp. Ex. 1.

Thereafter, Mr. Dobbie attempted to arrange telephone calls with Respondent to discuss further the Forms 10 and S-1, but received an email from Respondent stating they would only correspond with the staff in writing *for the purposes of clarity and record to review, and subsequently multiple additional requests for answers in writing, to which, the undersigned confirmed on the record multiple times, CorpFin and Division of Enforcement never responded.* Tr. 68-69, 97-98, 477, 486, 539, 505.

Mr. Zhou explained that he is not a native English speaker and Respondent wanted a written record to review, *because as he testified, "we want clarity", "we do prefer response in writing", and there are no "substantial reasons" the CorpFin "cannot respond to us in writing".* Tr. 97-98.... Mr. Zhou addressed the "talk to Zhou" questions in his testimony on January 19, 2023, *proving that Mr. Zhou's English comprehension was not the primary issue in seeking written communication for clarity from CorpFin.* Tr. 721-873.

1.3. The Facts on the Record (Emphasis Added in Bold)

- Transcript. Tr. 505:6-8

Q Did we actually ask you send what we discussed in writing?
A Yes, you did.

- Transcript. Tr. 97:24-25 - 98:1-6

MR. ZHOU: Okay, thank you. She promised that respond us in writing because **we want clarity. We want a record so that we can review.** And I'm not native English speaker. So, we do prefer response in writing.

There are no -- there are no -- substantial reasons the Division of Corporate Finance cannot respond to us in writing.

- Transcript. Tr. 477:14 -19

JUDGE FOELAK: Yes, sir. Yes, sir. You're -- you're very -- your exchange of correspondence where you never got any reply, that is in evidence. It is -- there is -- **the evidence shows that you asked seven questions repeatedly and never got an answer.**

- Transcript. Tr. 486:18 - 21:

JUDGE FOELAK: Sir, as I keep saying, **there is no doubt that you didn't get the answers to your -- the questions -- that -- the seven questions. So, you don't have to keep proving it.**

- Transcript. Tr. 539:23-25 – 540:1-10:

JUDGE FOELAK: Right. Right. And **I understand, for example, on your seven points -- seven questions, okay.** Do you have any more questions within that framework, Mr. Zhou?

MR. ZHOU: So, Your Honor, **we already established the fact there are no response to our answers to their bullet points?**

JUDGE FOELAK: **Correct.**

MR. ZHOU: Okay. That fact is **established and admitted by Your Honor** we do not have more questions.

1.4. Justification for the Proposed Correction

While Mr. Zhou is not a native English speaker, but his personal comprehension is not the primary issue. Mr. Zhou is able to understand telephone/Webex conversation in English as he did with Ms. Purnell at the Division of Corporation Finance (“CorpFin”) on October 4, 2021. The key rationale that American CryptoFed repeatedly sought for written responses is, as Mr. Zhou testified during the hearing, “because we want clarity”. In a Report No. 542 dated September 13, 2017, which was entitled “Evaluation of the Division of Corporation Finance’s Disclosure Review and Comment Letter Process”², the Commission’s Office of Inspector General stated in the Executive Summary “examiners and reviewers inconsistently documented oral comments to companies.” (p.i). The Commission’s Office of Inspector General concluded that “documented oral comments” could be inconsistent with the actual oral comments, echoing the truth of Mr. Zhou’s testimony: “...because we want clarity. We want a record so that we can review.” From the purposes of clarity, consistency, and record to review, American CryptoFed’s ongoing, multiple requests for correspondence to be in writing was reasonable and is strongly supported by this report of the Commission’s Office of Inspector General.

² <https://www.sec.gov/files/Final-Report-Evaluation-of-Division-Corp-Fin-Disclosure-Review-and-Comment-Ltr.pdf>

The manifest material fact that American CryptoFed never received written response to its queries, despite repeated requests, was confirmed on the record by Judge Foelak multiple times, and is fundamentally material to the OIP and should not be explained away condescendingly through the excuse that Mr. Zhou is not a native English speaker. It is an indisputable fact that the following fundamental issue identified in the FINDINGS OF FACT section of the Initial Decision at page 5-6 citing to Respondent's October 12, 2021 letter, remained unanswered. As cited in the Initial Decision:

In conclusion, the letter stated, “[i]f we are asked to disclose information which does not exist and will never exist, it is highly possible that the Securities Laws were not designed for the CryptoFed monetary system and should not apply to [it]”; and asked that the SEC either allow the Form 10 to become effective, continue reviewing the Form S-1, or declare that CryptoFed is not subject to the SEC's jurisdiction.

2. MANIFEST ERRORS at PARAGRAPH 2, PAGE 4

2.1. The Initial Decision Citation

Respondent filed a request to withdraw its Form S-1 on June 6, 2022. Resp. Ex. 18. The Commission denied the request, stating that on May 30, 2022, Respondent had informed staff that it would proceed with implementing its business plan in July 2022 without regard for whether the Form S-1 was effective. *American CryptoFed DAO LLC*, Securities Act Release No. 11074, 2022 SEC LEXIS 1552 (June 17, 2022). The Form S-1 contains a so-called “delaying amendment.” Div. Ex. 1. However, during the course of the Section 8(e) examination Respondent threatened to remove the delaying amendment, for example in an October 27, 2022, letter to Division counsel. Div. Ex. 15, at 13.

2.2. Proposed Corrections in Italics

Following the Division's reminder to Respondent dated June 3, 2022 “you choose to register these tokens as securities by filing with the Commission a Form 10”, Resp. Ex. 16, at 3, Respondent filed a request to withdraw its Form S-1 on June 6, 2022, Resp. Ex. 18, which stated “CryptoFed is seeking withdrawal of the Registration Statement S1 because CryptoFed's Locke token and Ducat token are not securities.” Resp. Ex. 37, at 1. The Commission denied the request, stating that on May 30, 2022, Respondent had informed staff that it would proceed with implementing its business plan in July 2022 without regard for whether the Form S-1 was effective, American CryptoFed DAO LLC, Securities Act Release No. 11074, 2022 SEC LEXIS 1552 (June 17, 2022), unless a Cease-and-Desist Order was issued, which “should include a Howey Test Analysis or other legal justifications from the Division to prove that Locke token and Ducat token are securities.” Div. Ex. 13, at 2. The Form S-1 contains a so-called “delaying amendment.” Div. Ex. 1. However, during the

course of the Section 8(e) examination Respondent threatened to remove the delaying amendment, for example in an October 27, 2022, letter to Division counsel, *stating "Our approach is to do our best in good faith, to let the Division of Corporation Finance and/or the Division of Enforcement exhaust all possible legal arguments, while the delaying amendment is still in place. When, and only when both Divisions have no more legal arguments to further justify the need of the delaying amendment, will we remove the delaying amendment."* Div. Ex. 15, at 13.

2.3. The Facts on the Record (Emphasis Added in Bold)

- **On May 30, 2022**, Respondent's letter, Div. Ex. 13, at 2-4, stated:

If the SEC Division of Enforcement ("Division") perceives any violations of related securities laws and wants to prohibit American CryptoFed from launching the Locke refundable auction, or distributing Locke tokens to contributors, **please send CryptoFed a Cease-and-Desist Order within 30 business days, on or before June 30, 2022. This Cease-and-Desist Order should include a Howey Test Analysis or other legal justifications from the Division to prove that Locke token and Ducat token are securities...**

...

In addition, American CryptoFed filed the Motion to Lift the Stay Order on December 15, 2021, pursuant to **Rule 250. Dispositive motions** stating the following:

(a) Motion for a ruling on the pleadings. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. **The hearing officer shall promptly grant or deny the motion** (emphasis added).

More than 5 months has passed, and the Commission has not yet made a decision regarding this Motion to Lift the Stay Order. Without complaining about the Commission's nondecision and indecision, American CryptoFed will continue waiting for the Commission's ruling with patience. **However, American CryptoFed has a critical mission to accomplish. American CryptoFed has no choice but to move forwards to execute its business plan described in its Form 10 and Form S1 filing.**

- Transcript. Tr. 815:19-23:

JUDGE FOELAK: That's a yes or no answer. Sir, **I understand that you're referring to the Catch 22 situation where if you're a security you want to register and if you're not, you're going to move forward, but--.**

- **On June 3, 2022**, in response, Division, Resp. Ex. 16, at 2-3, stated:

The Form S-1 is not yet effective as it contains a **delaying amendment**. Moreover, the Commission, on **November 9, 2021**, issued an **Order Directing Examination and Designating Officers** Pursuant to Section 8(e) of the Securities Act of 1933 (“8(e) Examination Order”), **which we are serving on you today along with this letter**.

We also remind you that **you choose to register these tokens as securities by filing with the Commission a Form 10** which stated on the cover page that the Locke and Ducat tokens were “Securities to be registered pursuant to Section 12(g) of the Act”.

- **On June 6, 2022**, following the Division’s reminder dated June 3, 2022 above “you choose to register these tokens as securities by filing with the Commission a Form 10”, American CryptoFed filed Form RW to withdraw the Form S-1 Registration Statement, stating “CryptoFed is seeking withdrawal of the Registration Statement S1 **because CryptoFed’s Locke token and Ducat token are not securities.**” Resp. Ex. 37, at 1.

- **On June 13, 2022**, Corporation Finance, sent a letter to request American CryptoFed to voluntarily withdraw the Form RW, stating:

If you do not withdraw the Form S-1 withdrawal request, we intend to recommend that the Commission deny the withdrawal request. Resp. Ex.18, at 3.

- **On June 13, 2022**, the same day, in response, American CryptoFed requested as below that the Corporation Finance prove that Locke and Ducat tokens were securities, citing 5 U.S. Code § 556(d) regarding the burden of proof. Resp. Ex.18, at 1-2.

American CryptoFed seeks withdrawal of the Form S-1, because, as we have attested in the S-1, CryptoFed’s Locke token and Ducat token are not securities. We will seriously consider your request for withdrawing “the June 6 request for withdrawal of the Form S-1”, **if you can apply the Howey Test to American CryptoFed’s Locke and Ducat tokens to prove that Locke and Ducat are securities, and subject to the SEC’s jurisdiction. As of today, the Division of**

Enforcement is still unable or unwilling to apply a Howey Test analysis to prove that American CryptoFed's Locke and Ducat tokens are securities...

Mr. Dobbie, as Acting Office Chief, does your Division or does the Commission have any legal justification to classify Locke and Ducat tokens as Securities other than by American CryptoFed's filing of a Form S-1 with the Commission per se?

In accordance with the plain text of 5 U.S. Code § 556 as shown below, your Division and the Commission have the burden of proof to show that Locke token and Ducat token are securities, given that you stated today in both voicemail and email formats that you will seek an order from the Commission to deny American CryptoFed's June 6 request for withdrawal of the Form S-1.

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).

- **On October 27, 2022**, Respondent's letter stated:

Our approach is to do our best in good faith, **to let the Division of Corporation Finance and/or the Division of Enforcement exhaust all possible legal arguments, while the delaying amendment is still in place. When, and only when both Divisions have no more legal arguments to further justify the need of the delaying amendment, will we remove the delaying amendment.** Div. Ex. 15, at 13.

2.4. Justification for the Proposed Correction

The only reason that American CryptoFed filed a request to withdraw its Form S-1 on June 6, 2022 was, because the Division of Enforcement ("Division") stated in a letter to American CryptoFed dated June 3, 2022 "you choose to register these tokens as securities by filing with the Commission a Form 10". The Division's statement was written in reply to American CryptoFed's May 30, 2022 letter which requested for a Cease-and-Desist Order including "a Howey Test Analysis or other legal justifications from the Division to prove that Locke token and Ducat token are securities", if the Division "perceives any violations of related securities laws and wants to prohibit American CryptoFed from launching the Locke refundable auction, or distributing Locke

tokens to contributors”. The rationale for American CryptoFed’s May 30, 2022 letter was confirmed on the record by Judge Foelak’s statement “I understand that you're referring to the Catch 22 situation where if you're a security you want to register and if you're not, you're going to move forward.” The May 30, 2022 letter was written, because “More than 5 months has passed, and the Commission has not yet made a decision regarding this Motion to Lift the Stay Order” which was filed on December 15, 2021 pursuant to Rule 250 requiring “The hearing officer shall promptly grant or deny the motion.”

After the Commission issued an order on June 17, 2022 denying American CryptoFed’s Form S-1 withdrawal request, pursuant to Administrative Procedure Act (APA), 5 U.S. Code § 556 (d), American CryptoFed repeatedly requested the Division and CorpFin to fulfill their burden of proof obligation to prove that Locke token and Ducat token are securities. It is indisputable fact that despite multiple requests, neither the Commission, nor the Commission’s subsidiary Divisions of Corporation Finance and Enforcement fulfilled their burden of proof obligation mandated by APA to prove that Locke token and Ducat token are securities, subject to the Commission’s jurisdiction. As a result, American CryptoFed had no choice but to ask both the Division of Enforcement and CorpFin to “exhaust all possible legal arguments, while the delaying amendment is still in place”, while emphasizing “When, and only when both Divisions have no more legal arguments to further justify the need of the delaying amendment, will we remove the delaying amendment.”

3. MANEFIST ERRORS at PARAGRAPH 3, PAGE 4

3.1. The Initial Decision Citation

It does not believe that the tokens are securities but filed the Form S-1 to comply with securities laws. Tr. 814-19 & passim; Div. Ex. 6 at 13, 21-26, 54, 75 & passim.

3.2. Proposed Correction in Italics

It does not believe that the tokens are securities but filed the Form S-1 to comply with securities laws, *proactively in case the Commission may disagree with their position and go after them, because Chairman Gensler has made a variety of assertions through public speeches and testimonies implying that almost all crypto products and tokens are securities and should therefore register with the SEC.* Tr. 814-19 & passim; Div. Ex. 6 at 13, 21-26, 54, 75 & passim.

3.3. The Facts on the Record

- **On October 12, 2021**, in a letter directly addressed to Chairman Gensler, all Commissioners and CorpFin Staff (Ms. Purnell), American CryptoFed stated the reasons as to why American CryptoFed filed registration statements with the Commission:

Currently, SEC does not provide a better form than the Form 10 for CryptoFed to disclose information to the SEC and the general public. If we had not filed Form 10 for disclosure, the SEC could possibly prosecute CryptoFed under the leadership of Chairman Gensler who publicly stated on August 3, 2021 **“No single crypto asset, though, broadly fulfills all the functions of money.”**³ (Emphasis added). In other words, it is apparent that Chairman Gensler believes that every single asset is subject to the SEC’s jurisdiction. Div. Ex. 19, at 7.

- Transcript. Tr. 87:13-18 (Emphasis added in bold)

JUDGE FOELAK: Right. I understand you had conversations and exchange of letters with him. And I -- and I -- and I understand that you don't really think these things are securities, but **you're registering them anyway because you don't want the government to come after you.** (Tr.87:13-18).

- Transcript. Tr. 817:1-25 – 818:1-13 (Emphasis in Original in bold)

Q American CryptoFed decided on its own to file an S-1 registration statement to register its tokens as securities, right?

A Well, we have no choice because the chairman keep saying everything is security. That's the public announcement everywhere. And the government go after us if we do not file. And he invite us to file, to come to us, to talk to you, that's what --

³ <https://www.sec.gov/news/speech/gensler-aspen-security-forum-2021-08-03>

Q Okay, sir. And so, my -- my question was, you decided on your own to file an S-1 registration statement to register your tokens as securities, right?

A Under the invitation of the chairman.

Q So, did the chairman personally -- did the chairman personally invite American CryptoFed to file an S-1 registration statement?

MR. MOELLER: Objection, that's speculation.

A His testimony -- his testimony and his publications, everything, gave us the direction. We trust the government officer public announcement. That announcement we treat it as a fair notice. If that notice we cannot trust, if we are required to contact the chairman individually, he never give us the chance, okay. So, how can we contact him?

We did wrote -- we did write to him directly after we file. We say something along here, can you pay attention to that? We put five commissioners in our letter send October 12, 2021 and -- a couple of them. Including you guys quickly launch enforcement action hijack the filing review process. It surprise us. Including this -- including all of this Section 8(d), all this, I mean, process are really, really illegal. And that shouldn't be part of filing review process.

3.4. Justification for the Proposed Correction

Chairman Gensler has made a variety of assertions through public speeches and testimonies which have introduced fear and uncertainty in the crypto industry. His public comments and actions imply that almost all crypto products and tokens are securities and should therefore register with the SEC, while also painting the crypto industry as composed of willful lawbreakers who actively chose not to follow simple rules. In order to show good faith, in order to avoid unlawful persecution, in order to demonstrate American CryptoFed's willingness to comply with the Securities Act and Exchange Act in case the Division and CorpFin could prove that Locke and Ducat tokens are securities, American CryptoFed had better file with the Commission the Form S-1 and Form 10 Registration Statements, while emphasizing American CryptoFed's true belief that Locke and Ducat tokens are not securities. If American CryptoFed's filing Form S-1 with the

Commission per se were the issue, the Commission should have approved American CryptoFed's withdrawal request of the Form S-1. However, the Commission denied American CryptoFed's withdrawal request. The Initial Decision citation ("It does not believe that the tokens are securities but filed the Form S-1 to comply with securities laws.") fails to provide the whole truth consistent with the Commission's actions.

4. MANIFEST ERRORS at PARAGRAPH 2, PAGE 5

4.1. The Initial Decision Citation

Additional material information required pursuant to Regulation S-K to be provided is missing from the Form S-1. This includes information as to the ownership of directors and executive officers and greater than 5% holders, compensation paid to the executive officers, and material contracts. Respondent's evidence concerning these items is not convincing. See Tr. 218, 282, 285, 291-92, 314. Respondent's explanation stresses that, as a DAO, it has no hierarchy, directors, or management. Organizers Zhou and Moeller have identified themselves as officers only for the purpose of the representing Respondent concerning its filings with the Commission. Tr. 172-78, 187-88; Div. Ex. 6 at 16, 18, 26. The Division's evidence shows that organizers and others have or will have compensation, and that material contracts exist. Tr. 857, 860-62, 865-66; Resp. Ex. 289.

4.2. Proposed Correction in Italics

Additional material information required pursuant to Regulation S-K to be provided is missing from the Form S-1. This includes information as to the ownership of directors and executive officers and greater than 5% holders, compensation paid to the executive officers, and material contracts, *although Respondent disclosed the following information as cited below:*

"As the founding organization, MShift, Inc. (MShift) is the sole member of CryptoFed whose powers and rights will completely and irreversibly become delegated to Locke token holders as defined in this Constitution. The delegation of powers and rights will become automatically effective immediately after the U.S. Securities and Exchange Commission (SEC) declares the effectiveness of CryptoFed's Form S-1 filing for Locke and Ducat token registration. For compliance purposes, MShift will discuss with the SEC and incorporate their comments in future revisions to this Constitution until they declare CryptoFed's Form S-1 filing effective." American CryptoFed DAO LLC's Constitution, Section 4.1. Div. Ex. 1A, at 3.

"As the founding organization, MShift will cover CryptoFed operating costs until December 31, 2021. The costs are one time setup expenses which will no longer continue

for the ongoing operation of CryptoFed. From January 1, 2022, CryptoFed will completely operate as a token economic DAO without fiat currency.” Div. Ex. 1, at 26.

“Marian Orr, CEO and one of the three organizers of American CryptoFed DAO, is on MShift’s payroll with annual salary \$150,000 USD, and has been promised 2 billion Locke tokens which cannot be sold below \$ 0.05 USD per Locke token.” Div. Ex. 1, at 31.

“MShift is the sole member of American CryptoFed DAO LLC. Out of the total maximum authorized finite number of 10 trillion Locke tokens, 25% will be reserved for MShift as the founding organization. Out of the total 25% allocated to MShift, 1/5th of this allocation (5% of the total) will be used to maintain, defend and protect the intellectual property which will be permanently, exclusively, and irreversibly licensed to CryptoFed, free of charge.” Div. Ex. 1, at 32.

“Scott Moeller, MShift CEO, and one of the three organizers of American CryptoFed DAO LLC, works voluntarily without salary. His Locke token grant from MShift’s 25% initial allocation outlined in the CryptoFed Constitution will be decided after CryptoFed’s Form S -1 filing.” Div. Ex. 1, at 32.

“Xiaomeng Zhou, COO, MShift Inc. and one of the three organizers of American CryptoFed DAO LLC, works voluntarily without salary. His Locke token grant from MShift’s 25% initial allocation outlined in the CryptoFed Constitution will be decided after CryptoFed’s Form S -1 filing.” Div. Ex. 1, at 32.

Respondent’s evidence concerning these items is not convincing. See Tr. 218, 282, 285, 291-92, 314. Respondent’s explanation stresses that, as a DAO, it has no hierarchy, directors, or management, *and only one contract which is Respondent’s Constitution. Tr. 726 – 727.* Organizers Zhou and Moeller have identified themselves as officers only for the purpose of the representing Respondent concerning its filings with the Commission, Tr. 172-78, 187-88; Div. Ex. 6 at 16, 18, 26, *and other regulators, for the time being, because once the Form S-1 is declared effective by the Commission, all the powers and rights of MShift, Inc, the sole member of American CryptoFed DAO LLC, “will completely and irreversibly become delegated to Locke token holders as defined in this Constitution.” American CryptoFed DAO LLC’s Constitution, Section 4.1& 4.4. Div. Ex. 1A, at 3-4; Tr. 726 – 727.* The Division’s evidence shows that organizers and others have or will have compensation, and that material contracts exist, Tr. 857, 860-62, 865-66; Resp. Ex. 289, *which are with MShift before the Form S-1 is declared effective by the Commission and are incorporated in Respondent’s Constitution articles after the Form S-1 is declared effective by the Commission. American CryptoFed DAO LLC’s Constitution, Section 4.1. Div. Ex. 1A, at 3; Tr. 726 – 727, 824 – 825.*

4.3. The Facts on the Record

- American CryptoFed DAO LLC's Constitution, Section 4.1, as quoted in the Proposed Correction in Italics above. Div. Ex. 1A, at 3.

- American CryptoFed DAO LLC’s Constitution, Section 4.4. Div. Ex. 1A, at 3-4

There is no hierarchy, such as an executive branch, a board of directors, or an advisory board, at CryptoFed. CryptoFed will be decentralized to the extent that a CEO is no longer needed within three years. For the time being, the current CEO is a symbolic position to communicate with regulators together with MShift because regulators, such as the SEC, or other agencies, may require contact people and the founding company to be responsible for document filing.

- Form S-1 Registration Statements as quoted in the Proposed Correction in Italics above. Div. Ex. 1, at 26, 31-32.
- Tr. 726:7-25 – 727:1-3 (Emphasis Added in Bold)

Now, Step One: Identify the contract with a customer. Your Honor, we only have one contract. We do not have other contract. No one is authorized to sign any other contract. Only one contract, the constitution. If there are any contracts beyond the constitution, that is only authorized by the constitution to sign the contract with regulators.

So, because the regulators still need centralized people or identify officers, titles, to do this, except that our constitution in the section 4.4 clearly define there are no hierarchy, there are no employee, no board of director, no management. The only symbolic CEO is to handle the contact process filings with the regulators, agencies.

So, the only contract with customers, everything is built in in this constitution. This constitution is our bible. It's -- it's a -- it's consent -- government by consent. It's -- it's constituted government. So, we use constitution. That's a contract.

- Tr. 824:25 – 825:1-3 (Emphasis in Original in Bold)

Q And so, you signed the S-1 that was filed with the SEC, right?

A Yeah. This -- this my signature, MShift, Inc., Sole Member of American CryptoFed DAO, LLC. That means MShift, Inc. COO, okay, I -- my title is MShift, Inc. COO. That's what I signed.

4.4. Justification for the Proposed Correction

4.4.1. The Phase before the Effectiveness of Form S-1

Before the Form S-1 is declared effective by the Commission, MShift Inc. is the sole member of American CryptoFed DAO LLC pursuant to Section 4.1 of American CryptoFed’s Constitution. MShift is the sole owner and decision maker. At this pre-effectiveness phase, American CryptoFed DAO LLC is no more than a division of

MShift Inc., pursuant to IRS Rule below entitled “Single Member Limited Liability Companies.”⁴

If the single-member LLC is owned by a corporation or partnership, the LLC should be reflected on its owner's federal tax return as a division of the corporation or partnership.

All contracts, by default, are with MShift Inc., without exception. Therefore, the invoice from The U.S. Conference of Mayors to American CryptoFed, dated November 8, 2021, which was Resp. Ex. 289, is a contract with MShift. This is also consistent with the Form S-1 disclosure below:

As the founding organization, MShift will cover CryptoFed operating costs until December 31, 2021. The costs are one time setup expenses which will no longer continue for the ongoing operation of CryptoFed. From January 1, 2022, CryptoFed will completely operate as a token economic DAO without fiat currency. Div. Ex. 1, at 26.

Similarly, Mariann Orr, the CEO of American CryptoFed, was on MShift's payroll as disclosed in the Form S-1 below:

Marian Orr, CEO and one of the three organizers of American CryptoFed DAO, is on MShift's payroll with annual salary \$150,000 USD, and has been promised 2 billion Locke tokens which cannot be sold below \$ 0.05 USD per Locke token.” Div. Ex. 1, at 31.

4.4.2. The Phase Following the Effectiveness of Form S-1

However, once the Form S-1 is declared effective by the Commission, all the power and rights of MShift Inc., as the sole member of American CryptoFed DAO LLC, “will completely and irreversibly become delegated to Locke token holders as defined in this Constitution.” American CryptoFed DAO LLC's Constitution, Section 4.1. Div. Ex. 1A, at 3. As the CEO and COO of MShift Inc., Mr. Moeller and Mr. Zhou will no longer

⁴ <https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies>

have power to sign any contracts for American CryptoFed, except communication with regulators for document filing. Locke token holders will govern the American CryptoFed DAO via smart contracts in accordance with the American CryptoFed DAO LLC's Constitution, which is the only contract between and among participants.

5. MANIFEST ERRORS at PARAGRAPH 2, PAGE 6

5.1. The Initial Decision Citation

The subpoena required Respondent to produce documents relating to a number of topics, including Contributors (defined as those to whom Respondent intended to distribute Locke governance tokens as described in Div. Ex. 13, Respondent's May 30, 2022, letter to the Division); bank accounts and crypto asset exchange accounts which Respondent or any of its affiliates held or is a beneficial owner; and identity of crypto asset exchanges on which Ducat or Locke tokens will be listed for sale. Div. Ex. 3. Respondent's response to each category ordered to be produced was to object "on the grounds that the request is not reasonably calculated to lead to the discovery of relevant admissible evidence which can rebut American CryptoFed's assertion that [it] has No Fund Raising, No Revenue, No Costs, No Profits, and No Assets . . . to generate securities subject to the SEC's jurisdiction." Div. Ex. 4.

5.2. Proposed Correction in Italics

The subpoena required Respondent to produce documents relating to a number of topics, including Contributors (defined as those to whom Respondent intended to distribute Locke governance tokens as described in Div. Ex. 13, Respondent's May 30, 2022, letter to the Division, *and which Respondent originally planned to disclose via periodic filings as a reporting entity within the ordinary course of business as specified in Respondent's Constitution, the Form S-1 and Form 10 registration statements, but the disclosure process was stayed by the Commission that never made decision on Respondent's Motion to Lift the Stay Order timely filed for ruling on the pleadings pursuant to Rule 250(a). Div. Ex. 1A, at 6; Div. Ex. 2, at 33; Div. Ex. 1, at 33; Div. Ex. 13, at 3-4; American CryptoFed DAO LLC, Securities Exchange Act Release No. 93551, 2022 (November 10, 2021)*); bank accounts and crypto asset exchange accounts which Respondent or any of its affiliates held or is a beneficial owner; and identity of crypto asset exchanges on which Ducat or Locke tokens will be listed for sale. Div. Ex. 3. Respondent's response to each category ordered to be produced was to object "on the grounds that the request is not reasonably calculated to lead to the discovery of relevant admissible evidence which can rebut American CryptoFed's assertion that [it] has No Fund Raising, No Revenue, No Costs, No Profits, and No Assets . . . to generate securities subject to the SEC's jurisdiction", Div. Ex. 4, *while providing information with caveat statement, such as, statement for Request No.9 "Without waiving said objection, what American CryptoFed can say is that as of today, American CryptoFed does not*

have bank accounts and/or crypto exchange accounts. MShift Inc. as the sole member of American CryptoFed DAO LLC has bank accounts, but not crypto exchange accounts.” Div. Ex. 4, at 12.

5.3. The Facts on the Record

- American CryptoFed DAO’s Constitution States:

Even though CryptoFed defines Locke and Ducat tokens as utility tokens, the SEC may elect to classify Locke and Ducat tokens as securities. CryptoFed will seek to register Ducat and Locke tokens with the SEC to ensure compliance with Securities laws and related regulations. On September 15, 2021, CryptoFed will file Form 10 and Form S-1 to become a reporting company and subject itself to ongoing periodic reporting obligations, including but not limited to, Form S-8, S-3, 10-K, 10-Q, 8-K. CryptoFed will seek to outsource the filing tasks via smart contracts to vendors who accept Ducat tokens within one year after the Ducat token is launched. Ex. 1A, at 6.

- Form 10 Registration Statement Stated:

No Locke or Ducat tokens have been sold. Out of a maximum authorized finite number of 10 trillion Locke tokens, less than 0.2% has been promised to less than 15 people, free of charge. CryptoFed will file Form 8-K to provide details of the tokens distributed on November 16, 2021. Div. Ex. 2, at 33.

- Form S-1 Registration Statement Stated:

After this Form S-1 filing and the Form 10 filing, CryptoFed will allocate Locke tokens based on its Ducat Economic Zone Plan attached as Exhibit 2. Within one week of the effectiveness of CryptoFed’s Form 10 filing, CryptoFed will file Form S-8 and make it available to all CryptoFed contributors. CryptoFed will file Form 8-K to provide updates accordingly. Div. Ex. 1, at 33.

- Form 10 Stay Order Included in Order Instituting Proceedings

IT IS FURTHER ORDERED that the institution of these proceedings stays the effectiveness of the Respondent’s Form 10 filed on September 16, 2021. *American CryptoFed DAO LLC*, Securities Exchange Act Release No. 93551, 2022 (November 10, 2021)⁵.

- **On May 30, 2022**, Respondent’s letter, Div. Ex. 13, at 3-4, stated:

In addition, American CryptoFed filed the Motion to Lift the Stay Order on December 15, 2021, pursuant to **Rule 250. Dispositive motions** stating the following:

⁵ <https://www.sec.gov/litigation/admin/2021/34-93551.pdf>

(a) Motion for a ruling on the pleadings. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. **The hearing officer shall promptly grant or deny the motion** (emphasis added).

More than 5 months has passed, and the Commission has not yet made a decision regarding this Motion to Lift the Stay Order. Without complaining about the Commission's nondecision and indecision, American CryptoFed will continue waiting for the Commission's ruling with patience. **However, American CryptoFed has a critical mission to accomplish. American CryptoFed has no choice but to move forwards to execute its business plan described in its Form 10 and Form S1 filing.**

- American CryptoFed's Response to Subpoena Request No.9 stated:

Without waiving said objection, what American CryptoFed can say is that as of today, American CryptoFed does not have bank accounts and/or crypto exchange accounts. MShift Inc. as the sole member of American CryptoFed DAO LLC has bank accounts, but not crypto exchange accounts. Div. Ex. 4, at 12.

5.4. Justification for the Proposed Correction

American CryptoFed had planned disclosure of all information available and necessary, during the ordinary course of business as a reporting entity, as American CryptoFed's Constitution, the Form 10 and Form S-1 specified. However, American CryptoFed was shocked by the Commission's enforcement action issuing an Order Instituting Proceedings on November 10, 2021 pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Form 10 OIP"), which stayed the Form 10 disclosure. American CryptoFed timely filed the Motion to Lift the Stay Order on December 15, 2021, pursuant to Rule 250 (a), so that the disclosure could be moved forward, but the Commission did not make decision, although Rule 250 (a) mandates "The hearing officer shall promptly grant or deny the motion." Obviously, the Commission did not know how to make decision. If they had known, they would have complied with the mandate of Rule 250 (a)

and would have promptly made decision on American CryptoFed's Motion to Lift the Stay Order.

Facing this Stay Order, together with the indecision and non-decisions of the Commission, American CryptoFed must find out what the Filing Review Process is and how to make the disclosures possible, given that both the Form S-1 and Form 10 shared a lot of information together, while communicating with both Division of Enforcement and CorpFin, including but not limited to, the May 30, 2022 letter. Div. Ex. 13. However, American CryptoFed's May 30, 2022 letter only triggered additional enforcement actions, such as the Subpoena based on a non-public examination order, which was surprisingly issued as early as November 9, 2021, Resp. Ex. 5, one day before the Form 10 OIP and the Stay Order was issued. American CryptoFed still does not know why and how law enforcement could be allowed in the Filing Review Process⁶, given that the disclosure was planned and was already underway, and given that Mr. Gurbir Grewal, the Director of the Division of Enforcement, emphasized, *This is not "regulation by enforcement"*, three times at the end of his prepared remarks entitled 2021 SEC Regulation Outside the United States - Scott Friestad Memorial Keynote Address (November 8, 2021)⁷, two days before the Form 10 OIP was issued against American CryptoFed.

The indisputable key facts are that American CryptoFed already planned disclosures of all information available and necessary, during the ordinary course of business, without the Commission's enforcement actions, and this disclosure process was stopped by the Commission's Stay Order included in the Form 10 OIP, and by the

⁶ <https://www.sec.gov/divisions/corpfin/cffilingreview>

⁷ <https://www.sec.gov/news/speech/grewal-regulation-outside-united-states-110821>

Commission's indecision and nondecision regarding American CryptoFed's Motion to Lift the Stay Order.

6. PETITION

For all the reasons set forth above, American CryptoFed respectfully petitions that Judge Foelak approve the proposed corrections.

Dated: May 29, 2023

Respectfully submitted

DocuSigned by:

Scott Moeller

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By /s/ Scott Moeller

Scott Moeller, President

Xiaomeng Zhou, Chief Operating Officer

American CryptoFed DAO LLC

1607 Capitol Ave Ste 327, Cheyenne, WY. 82001

Phone (307) 206-4210

scott.moeller@americancryptofed.org

zhouxm@americancryptofed.org

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this, AMERICAN CRYPTOFED DAO LLC'S MOTION TO CORRECT MANIFEST ERRORS OF FACT IN THE INITIAL DECISION, was filed by eFAP and was served on the following on this 29th day of May 2023, in the manner indicated below:

By Email:
Christopher Bruckmann,
Trial Counsel, Division of Enforcement – Trial Unit
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-5949
202-551-5986
bruckmannc@sec.gov

By /s/ Scott Moeller

DocuSigned by:

Scott Moeller

A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO LLC
1607 Capitol Ave Ste 327
Cheyenne, WY. 82001
Phone (307) 206-4210
scott.moeller@americancryptofed.org