

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

<p>In the Matter of</p> <p>The Registration Statement of American</p> <p>CryptoFed DAO LLC,</p> <p>Respondent.</p>
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**MOTION TO HOLD PREHEARING
CONFERENCE PURSUANT TO RULE
221 (d) REQUIRED PREHEARING
CONFERENCE**

The Securities and Exchange Commission (“SEC” or “Commission”) instituted this proceeding with an Order Instituting Proceedings (OIP) on November 18, 2022. The OIP ordered American CryptoFed DAO LLC (“American CryptoFed”) to file an Answer within ten days after service of the OIP and ordered that a hearing before Administrative Law Judge Carol Fox Foelak commence at 10:00 a.m. EST on December 1, 2022. On November 22, 2022, American CryptoFed received an order signed by Judge Foelak with a file name of “AP-6882 **PREHEARING ORDER_2_signed**” (Emphasis added), which states the following:

The parties are ordered to **confer and file a joint report by November 29, 2022**, estimating the length of the hearing, including their proposed witness and exhibit lists, and proposing a post- hearing briefing schedule. (Emphasis added).

On November 25, 2022, Judge Foelak provided a clarification on the prehearing conference with an order stating the following:

The OIP does not authorize the undersigned to postpone the commencement of the hearing. Further, **the undersigned did not order a prehearing conference**. Rather, the parties were ordered to file a report. (Emphasis added).

As a result, as of today, a prehearing conference to which American CryptoFed is entitled pursuant to Rule 221 (d) Required prehearing conference, has not yet been scheduled.

I

Non-emergency and Non-urgency Matter

Since November 20, 2022, one business day after receiving the service on Friday, November 18, 2022, American CryptoFed has communicated to the Division of Enforcement (“Division”) that there is no urgency and no emergency in this matter, given that there should be no possible damage to anyone, because, i) “Respondent’s Registration Statement is pending and is not yet effective” (OIP at p.1), and ii) it is an undisputable fact that American CryptoFed’s Form S-1 Registration Statement filing includes a “delaying amendment”. (*see* Exhibit 1, p.1-2).

The Division did not oppose this non-emergency and non-urgency statement of American CryptoFed. In the Division’s November 23, 2022 email attached as Exhibit 2 (“November 23, 2022 Email”), the Division was unable to even answer American CryptoFed’s first two key questions, which are cited below:

Question 1: With the delaying amendment in effect, can you in good faith provide us with any substantial reasons, to justify “the expedited nature of these proceedings” and “the expedited schedule”? (*see* Exhibit 1, p.2).

Question 2: Can you provide us with any substantial reasons, in good faith, to explain whether the Division of Enforcement will be substantially prejudiced, if the current schedule, including the time extension of the scheduled date of the public hearing (December 1, 2022), the prehearing date (November 29, 2022) and the due date to file an Answer to the OIP (November 28, 2022) is extended? (*see* Exhibit 1, p.3).

II

Prehearing Conference Pursuant to Rule 221 (d)

American CryptoFed is entitled to a Prehearing Conference Pursuant to Rule 221 (d), which states the following:

Rule 221(d) Required prehearing conference.

(d) Required prehearing conference. Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held.

Given that no “emergency nature of a proceeding would make a prehearing conference clearly inappropriate, **at least one prehearing conference** should be held”, pursuant to **Rule 221 (d) Required prehearing conference** above. (Emphasis added).

To the extent that the current schedule does not allow the “**Rule 221 (d) Required prehearing conference**”, the current schedule, including the scheduled date of the public hearing (December 1, 2022), the report filing date (November 29, 2022) ordered by Judge Foelak, and the due date to file an Answer to the OIP (November 28, 2022), violates the **Rule 221 (d) Required Prehearing Conference** above. American CryptoFed is entitled to have **at least one prehearing conference**. The prehearing conference schedule should reflect the absolute rights of American CryptoFed specified by Rule 250 (a) Motion for a ruling on the pleadings, and Rule 250 (b) Motion for summary disposition in 30- and 75-day proceedings. As American CryptoFed has made clear in its MOTION TO EXTEND THE THREE SCHEDULES OF THE PUBLIC HEARING, THE PREHEARING CONFERENCE AND FILING AN ANSWER TO THE ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933 (“Motion to Extend Schedule”), filed on November 23, 2022, American CryptoFed will file a **Motion for a Ruling on the Pleadings**, and a **Motion for Summary Disposition**, pursuant to Rule 250 Dispositive motions (a) and (b) which state the following (Emphasis added):

Rule 250 Dispositive motions (a) and (b)

- (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.

- (b) **Motion for summary disposition in 30- and 75-day proceedings. In any proceeding under the 30- or 75-day timeframe designated pursuant to Rule 360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 230, any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.** The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

III

Subjects to Be Discussed Pursuant to Rule 221 Prehearing Conference (c)

Rule 221. Prehearing conference (c), states the following:

(c) Subjects to be discussed. At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

- (1) Simplification and clarification of the issues;*
- (2) Exchange of witness and exhibit lists and copies of exhibits,*
- (3) Timing of expert witness disclosures and reports, if any*
- (4) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;*
- (5) Matters of which official notice may be taken;*
- (6) The schedule for exchanging prehearing motions or briefs, if any;*
- (7) The method of service for papers other than Commission orders;*
- (8) The filing of any motion pursuant to Rule 250;*
- (9) Settlement of any or all issues;*
- (10) Determination of hearing dates;*
- (11) Amendments to the order instituting proceedings or answers thereto;*
- (12) Production, and timing for completion of the production, of documents as set forth in Rule 230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232;*
- (13) Specification of procedures as set forth in Rule 202;*
- (14) Depositions to be conducted, if any, and date by which depositions shall be completed; and*
- (15) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.*

In order to have a fair public hearing for a **Motion for summary disposition in 30- and 75-day proceedings**, American CryptoFed is entitled to and will consider all the subjects to be discussed in accordance with Rule 221(c) above, including calling witnesses from the crypto industry.

III Conclusion

For all the reasons set forth above, American CryptoFed respectfully requests the Commission and/or Judge Foelak to, i) schedule a prehearing conference date so that the absolute rights of American CryptoFed specified by the due process of Rule 221 (d) Required prehearing conference, Rule 250 (a) Motion for a ruling on the pleadings, and Rule 250 (b) Motion for summary disposition in 30- and 75-day proceedings, can be respected and protected; and ii) reschedule the current public hearing date (December 1, 2022) accordingly. These Rules 221 (d), 250 (a) and (b) reflect the spirit of and should be protected by the Due Process Clause of the Fifth Amendment of the US Constitution.

Dated: November 25, 2022

Respectfully submitted

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

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 Notice of Appearance was filed by eFAP and was served on the following on this 25th day of November 2022, 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
scott.moeller@americancryptofed.org

Table of Exhibits

Exhibit 1: November 22, 2022 Letter
from American CryptoFed DAO to
the SEC's Division of Enforcement

Exhibit 2: November 23, 2022 Email
from the SEC's Division of Enforcement to
American CryptoFed DAO

RESPONDENT

AMERICAN CRYPTO FED DAO LLC

EXHIBIT 1



November 22, 2022
Via Electronic Mail

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

CC:

Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov
John Lucas, Division of Enforcement, LucasJ@sec.gov
Justin Dobbie, Division of Corporation Finance, dobbiej@sec.gov

**Re: In the Matter of The Registration Statement of American CryptoFed DAO LLC,
AP File No. 3-21243**

Dear Mr. Carney,

Thank you for your email dated November 22, 2022 (“November 22, 2022 Email”), attached at the bottom of this letter underneath our signatures, for ease of reference. American CryptoFed has four (4) key questions in this letter (two in Section I, one in Section II and III each) for the Division of Enforcement.

I

“The Expedited Nature of These Proceedings” and “The Expedited Schedule”

American CryptoFed has emphasized in its November 20, 2022 letter (“November 20, 2022 Letter”) that there is no urgency and emergency in this matter, given that there should be no possible damage to anyone, because:



- (i) “Respondent’s Registration Statement is pending and is not yet effective” (OIP at p.1) and,
- (ii) it is an undisputable fact that American CryptoFed’s Form S-1 Registration Statement filing includes a “delaying amendment”.

The Division of Enforcement did not oppose this non-emergency and non-urgency statement of American CryptoFed cited above. However, in your November 22, 2022 Email, you stated the following (emphasis added):

“Continuing to send us letters is not productive, given **the expedited schedule.**”

“As for your request about our availability for a prehearing conference, while we don’t believe such a conference is required given **the expedited nature of these proceedings**, we could be available on Monday November 28, should Judge Foelak deem such a conference necessary.”

Question 1: With the delaying amendment in effect, can you in good faith provide us with any substantial reasons, to justify “**the expedited nature of these proceedings**” and “**the expedited schedule**”?

American CryptoFed has sufficient facts to concluded that the Division of Enforcement is intentionally abusing the SEC’s power and is violating SEC’s Rules of Practice with “**the expedited nature of these proceedings**” and “**the expedited schedule**”, unless you provide a substantial answer to our **Question I** above.

Here is an example as to how the Division of Enforcement is willfully and knowingly abusing the SEC’s power and is violating SEC’s Rules of Practice. In our yesterday’s letter dated November 21, 2022 (“November 21, 2022 Letter”), we pointed out the Division of Enforcement’s violation of the Rule 221 as follows (emphasis added):

Rule 221. Prehearing conference (d), states the following:

(d) Required prehearing conference. Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held.

Given that no “emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held”, pursuant to Rule 221 (d) Required prehearing conference above.



To the extent that the current schedule does not allow the “Rule 221 (d) Required prehearing conference”, it violates the rule above. American CryptoFed is entitled to have at least one prehearing conference.

Today, the Division of Enforcement made a correction and the American CryptoFed received a prehearing order from Administrative Law Judge (ALJ) stating the following:

The parties are ordered to **confer and file a joint report by November 29, 2022**, estimating the length of the hearing, including their proposed witness and exhibit lists, and proposing a post-hearing briefing schedule.

However, the correction did not materially improve American CryptoFed’s situation, given that the scheduled date of the public hearing is December 1, 2022, only 2 days after the prehearing date, November 29, 2022, and the due date to file an Answer to the OIP, November 28, 2022 (only one date before the prehearing date, November 29, 2022), has not been extended. To be clear, American CryptoFed is entitled to a true and substantial prehearing conference schedule to process the following 15 items specified by Rule 221. American CryptoFed would be substantially prejudiced absent the time extension of the current schedule, including the time extension of the scheduled date of the public hearing, December 1, 2022, the prehearing date, November 29, 2022 and the due date to file an Answer to the OIP, November 28, 2022.

Rule 221. Prehearing conference (c), states the following:

(c) Subjects to be discussed. At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

- (1) Simplification and clarification of the issues;*
- (2) Exchange of witness and exhibit lists and copies of exhibits,*
- (3) Timing of expert witness disclosures and reports, if any*
- (4) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;*
- (5) Matters of which official notice may be taken;*
- (6) The schedule for exchanging prehearing motions or briefs, if any;*
- (7) The method of service for papers other than Commission orders;*
- (8) The filing of any motion pursuant to Rule 250;*
- (9) Settlement of any or all issues;*
- (10) Determination of hearing dates;***
- (11) Amendments to the order instituting proceedings or answers thereto;*
- (12) Production, and timing for completion of the production, of documents as set forth in Rule*



230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232;

(13) Specification of procedures as set forth in Rule 202;

(14) Depositions to be conducted, if any, and date by which depositions shall be completed; and

(15) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

American CryptoFed does not believe that the Division of Enforcement will be substantially prejudiced, if the current schedule, including the time extension of the scheduled date of the public hearing (December 1, 2022), the prehearing date (November 29, 2022) and the due date to file an Answer to the OIP (November 28, 2022) is extended.

Question 2: Can you provide us with any substantial reasons, in good faith, to explain whether the Division of Enforcement will be substantially prejudiced, if the current schedule, including the time extension of the scheduled date of the public hearing (December 1, 2022), the prehearing date (November 29, 2022) and the due date to file an Answer to the OIP (November 28, 2022) is extended?

II

Motion for a Ruling on the Pleadings

Rule 250 (a) states the following (emphasis added):

(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.

American CryptoFed is entitled to a Motion for a Ruling on the Pleadings, pursuant to Rule 250 (a). American CryptoFed is planning to file the Motion for a Ruling on the Pleadings on the 14th day after the Answer to the OIP has been filed. The Division of Enforcement is entitled to 5 days to respond to American CryptoFed's Motion for a Ruling on the Pleadings (excluding holidays and weekends), while American CryptoFed is entitled 3 days to reply to



Division of Enforcement's response (excluding holidays and weekends). As a result, 14 days (including holidays and weekends) + 5 days (excluding holidays and weekends) + 3 days (excluding holidays and weekends), in total, should reflect more than 22 calendar days. Both the Division of Enforcement and American CryptoFed should allow about 10 calendar days for the ALJ to make decisions. Therefore, it is reasonable to reschedule the prehearing conference date to early or middle January 2023.

Question 3: Does the Division of Enforcement have any legal basis to oppose a proposal to reschedule the prehearing conference date to early or middle January 2023?

III

Motion for Summary Disposition in 30- and 75-day Proceedings

Rule 250 (b) states the following (emphasis added):

(b) Motion for summary disposition in 30- and 75-day proceedings. **In any proceeding** under the 30- or 75-day timeframe designated pursuant to Rule 360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to Rule 230, **any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.** The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

American CryptoFed is entitled to a Motion for Summary Disposition, pursuant to Rule 250 (b), even if its Motion for a Ruling on the Pleadings is denied. If the Motion for a Ruling on the Pleadings is denied, and the prehearing conference has to be held in early or middle January, 2023, the Division of Enforcement and American CryptoFed should decide the hearing date pursuant to Rule 221 (c) (10) cited above, for the Motion for Summary Disposition. The determination of hearing date should take into account of the time schedule of arranging witnesses and limited discovery allowed by the SEC's Rules of Practice and ALJ. American CryptoFed believe that 60 days are reasonable to organize witnesses, conduct limited discovery and process the other 15 items specified at Rule 221 (c) of the Prehearing Conference above,



which will naturally extend the hearing date for Motion for Summary Disposition to early or middle March 2023.

Question 4: Does the Division of Enforcement have any legal basis to oppose the proposal to extend the hearing date for Motion for Summary Disposition to early or middle March 2023?

IV
Conclusion

We look forward to your answers to the 4 key questions listed in this letter (two in Section I, one in Section II and III each), on or before 5:00 pm EST, November 23, 2022. Once we receive your answers, American CryptoFed will file necessary motions on November 23, 2022 to reschedule the current schedule, including the time extension of the scheduled date of the public hearing (December 1, 2022), the prehearing date (November 29, 2022) and the due date to file an Answer to the OIP (November 28, 2022).

Sincerely,

<p>/s/ Scott Moeller</p> <p>DocuSigned by: <i>Scott Moeller</i> A82E97EDD0C44FD...</p> <p>Name: Scott Moeller Title: Organizer/President</p>	<p>/s/ Xiaomeng Zhou</p> <p>DocuSigned by: <i>Xiaomeng Zhou</i> 6F7F189BD770455...</p> <p>Name: Xiaomeng Zhou Title: Organizer/COO</p>
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----- Forwarded message -----

From: Carney, Christopher <CarneyC@sec.gov>

Date: Tue, Nov 22, 2022 at 7:18 AM

Subject: RE: In the Matter of The Registration Statement of American CryptoFed DAO LLC, AP File No. 3-21243

To: Scott Moeller <scott.moeller@americancryptofed.org>

Cc: Bruckmann, Christopher <bruckmannc@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Mr. Moeller:

We have received your letter. It sounds as if you are now suggesting that not only should the time for American CryptoFed's answer to the OIP be extended, but that you also want to move the date of the hearing established by the OIP to some unspecified day in the future. At this point the scheduled hearing is nine days away. If American CryptoFed is seeking to delay these proceedings it should file its motion with Judge Foelak now, so that she is aware of your request as soon as possible, and we will respond to it. Continuing to send us letters is not productive, given the expedited schedule.

As for your request about our availability for a prehearing conference, while we don't believe such a conference is required given the expedited nature of these proceedings, we could be available on Monday November 28, should Judge Foelak deem such a conference necessary.

Regards,

Chris

RESPONDENT

AMERICAN CRYPTO FED DAO LLC

EXHIBIT 2

----- Forwarded message -----

From: Carney, Christopher <CarneyC@sec.gov>

Date: Wed, Nov 23, 2022 at 8:52 AM

Subject: RE: In the Matter of The Registration Statement of American CryptoFed DAO LLC, AP File No. 3-21243

To: Scott Moeller <scott.moeller@americancryptofed.org>

Cc: Bruckmann, Christopher <bruckmannc@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Mr. Moeller,

The time for American CryptoFed to answer and the date of the hearing were established by the Order Instituting Proceedings issued by the Commission. As staff of the Enforcement Division we do not have the power to change the date of that hearing. As I said yesterday, American CryptoFed should file a motion with Judge Foelak explaining the legal and factual basis for its request to postpone these dates.

With respect to the order Judge Foelak issued yesterday requiring the parties “to confer and file a joint report by November 29, 2022 estimating the length of the hearing, including their proposed witness and exhibit lists, and proposing a post-hearing briefing scheduled,” we are available the afternoon of Monday, November 28th to meet and confer. Please let us know what time on Monday works for you.

Regards,

Chris