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 MOTION TO REQUEST THE DIVISION OF ENFORCEMENT TO PRODUCE A WITNESS**

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 hearing before Administrative Law Judge Carol Fox Foelak commence at 10:00 a.m. EST on December 1, 2022. On December 2, 2022, at the end of Day Two of the hearing, American CryptoFed was ordered by Judge Foelak to file a motion for this matter.

I
Transparency is Mandated by the SEC' Filing Review Process

The SEC publishes the following public policy of the **Filing Review Process** in the SEC's public facing website attached as Exhibit 1 (captured on November 28, 2022).

To increase the transparency of the review process, the Division makes its comment letters and company responses to those comment letters public on the SEC's EDGAR system no sooner than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective. (*see*, Exhibit 1, p.4).

OS Received 12/05/2022

As a result, the Division of Corporation Finance must make its comment letters and American CryptoFed's responses to those comment letters public.

II
The Division of Enforcement as an Extension of, not a Separation from, the Division of Corporation Finance and the SEC's Filing Review Process

Below is one example that The Division of Enforcement acted as an Extension of, not a Separation from, the Division of Corporation Finance and the SEC's Filing Review Process.

On August 28, 2022, American CryptoFed sent a letter attached as Exhibit 2 to **the Division of CORPORATION FINANCE** ("August 28, 2022"), directly addressed to Mr. Justin Dobbie, Acting Office Chief, Office of Finance, Division of Corporation Finance, to discuss the American CryptoFed's Filing Review Process. The letter specifically requested Mr. Dobbie's response at the bottom of the document above the signature. In order to avoid any misunderstandings, the entire letter is also cited below in *Italic*.

American CryptoFed's August 28, 2022 Letter starts here:

Dear Mr. Dobbie,

*This letter is the **sixth** letter which specifically requests you to provide American CryptoFed **with a proper mechanism** so that American CryptoFed can 1) complete the initial registration statements of the Form 10 and Form S-1 filed with the SEC on September 15 and 16, 2021 respectively and 2) continue to furnish information for ongoing disclosures, when the information requested by the Form 10 and S-1 does not exist and shall never exist within the American CryptoFed DAO's structure. The previous **five** letters were sent to your attention, as the Acting Office Chief of the Office of Finance, Division of Corporation Finance for the Securities and Exchange Commission ("SEC" or "Commission") on July 22, 2022 (two letters), July 31, August 4, 2022 and August 17, 2022.*

Today, as in each of my earlier letters to you, I emphasize to you that American CryptoFed's request is pursuant to the Supreme Court's opinion below:

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. F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) (emphasis added).*

American CryptoFed is not alone in its request that the SEC provide the necessary "precision and guidance" as required by the Supreme Court opinion above. On July 21, 2022, Coinbase Global Inc also asked the SEC to provide clear guidance via "Petition for Rulemaking – Digital Asset Securities Regulation" which stated the following at page 5 and 15 (emphasis added)[1]*:*

The issuer registration, disclosure, and listing requirements for securities are currently ***tailored to the issuers of debt and equity*** *in public companies. But most digital assets—coins and tokens that trade on exchanges like Coinbase—do not represent ownership stakes in complicated public companies or pay a return to investors through dividends or interest. (page 5).*

For example, even if these assets have value primarily based on the promoter's efforts, they generally do not provide holders any rights over the residual value of the issuer, or a claim on the issuer's assets. ***They are neither equity nor debt****. (page 15).*

Recently, the SEC's Chairman Gary Gensler not only recognized the differences between traditional securities and crypto tokens as outlined by Coinbase above, but also emphasized the SEC's exemptive authority to tailor disclosure for crypto tokens in his July 14, 2022 interview with Yahoo Finance below (emphasis added)[2]*.*

JENNIFER SCHONBERGER: Chair Gensler, given that you've said that nearly all tokens, with the exception of Bitcoin and perhaps Ethereum, would be classified as securities based on their use cases, ***how do you feel about applying the disclosure regime under current securities laws for equities to crypto****?*

[1] https://www.sec.gov/rules/petitions/2022/petn4-789.pdf

[2] https://finance.yahoo.com/video/sec-chair-investors-know-someone-153326153.html

GARY GENSLER: So it's really an age old concept. If you're raising money from the public and the public's anticipating profits based on the efforts of that common enterprise, that's a security. It's kind of a logical thing. And we at the SEC have a disclosure regime, as you said. ***I've said to the industry, to the lending platforms, to the trading platforms, come in, talk to us.***

We do have robust authorities from Congress also to use their exemptive authority so that we can tailor investor protection, and in your specific question about the tokens themselves, even tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token. *But I would note, we don't have the same disclosures for an asset-backed security that we do for a stock offering. So it's a thoughtful way to sort of tailor things.*

Mr. Dobbie, American CryptoFed urges you to abide by Chairman Gensler's instruction above and provide American CryptoFed with tailored disclosure requirements on or before September 5th, 2022. Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal.

As Acting Office Chief of the Office of Finance, within the SEC's Division of Corporation Finance, Mr. Dobbie you have the responsibility, obligation and authority to provide the American CryptoFed with ***a proper mechanism*** *to complete the registration statements. This responsibility is especially cogent given that you not only recommended the denial of American CryptoFed's Form S-1 withdrawal on June 13, 2022, but further stated in your July 15, 2022 letter regarding our Form 10, "the withdrawal of the registration statement does not mean that the staff agrees with your assertion in the withdrawal request that the Locke token and Ducat token are not securities".*

Mr. Dobbie, if you have difficulties to abide by Chairman' Gensler's instruction above to provide American CryptoFed with tailored disclosure requirements, please let me know immediately. I will write Chairman Gensler directly to ask him and all SEC Commissioners to provide you with necessary instructions to fulfill your duties. The public requires, and the entire crypto industry is actively demanding the SEC to provide the necessary "precision and guidance" as required by the Supreme Court opinion above in F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012). American CryptoFed is the first historic case to test whether Chairman Gensler's public statements as quoted above are true or false. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", is

unable to complete its Form S-1 and Form 10 registration, all the pending litigation actions that the SEC has brought against the entities and individuals in crypto industry under the name of "Unregistered Securities" could be proved unlawful, pursuant to "the ***void for vagueness doctrine****" upheld by the Supreme Court in F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) above, because there is no way to complete the registrations with the SEC, whatsoever. Given that the SEC has no necessary "precision and guidance" to complete registrations, the SEC has no legal basis to bring any legal actions against any entity and against any individual with allegations of "Unregistered Securities", when the actual pathway to registration with the Commission did not and does not exist. I will emphasize this point to Chairman Gensler and all Commissioners in my letter to them and remind them of the March 11, 2022 order in SEC v. Ripple Labs, issued by Judge Analisa Torres of the Southern District of New York, who allowed Ripple Labs' Fair Notice affirmative defense, citing F.C.C. v. Fox Television Stations, Inc. 567 U.S. 239, 253 (2012) below (emphasis added)*[3].

*"****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****." F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012). This clarity requirement is "essential to the protections provided by the* ***Due Process Clause of the Fifth Amendment****," and requires the invalidation of laws that are "impermissibly vague." Id. Laws fail to comport with due process when they "fail[] to provide* ***a person of ordinary intelligence*** *fair notice of what is prohibited," or* ***when they are so standardless that they authorize or encourage "seriously discriminatory enforcement."*** *Id. (citation omitted).*

Mr. Dobbie, I look forward to your response.

Sincerely,

/s/ Scott Moeller
Scott Moeller
President, American CryptoFed DAO
scott.moeller@americancryptofed.org

[3] https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf

American CryptoFed's August 28, 2022 Letter ends here.

However, Mr. Dobbie never responded to American CryptoFed's August 28, 2022 Letter cited above. Instead, on September 1, 2022, Mr. Christopher Bruckmann, t**he Division of Enforcement**, responded to American CryptoFed's August 28, 2022 Letter, emphasizing "a pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1". The entire letter from Mr. Bruckmann to American CryptoFed ("September 1, 2022 Letter") is cited in italic below (emphasis added):

Mr. Bruckmann's September 1, 2022 Letter attached as Exhibit 3 starts here:

Mr. Moeller,

*Your August 28, 2022 letter to **Justin Dobbie of the SEC's Division of Corporation Finance**, which you also sent to us, states in part: "Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal." We write to remind you that there is a pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1, and that Section 5(c) [15 U.S.C. §77e(c)] reads in part "It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security . . . while the registration statement is the subject of . . . any . . . examination under section 77h of this title." Additionally, your continuing refusal to cooperate with the Section 8(e) Examination by refusing to provide subpoenaed documents and refusing to answer questions asked of you during your testimony hampers the Division of Enforcement's ability to bring that examination to a prompt conclusion.*

Regards,
Chris Bruckmann

Mr. Bruckmann's September 1, 2022 Letter attached as Exhibit 3 ends here.

To the extent that **the Division of Enforcement** acted as an Extension of, without Separation from, the Division of Corporation Finance and the SEC' Filing Review Process, i) **the Division of Enforcement** should also be subject to the same SEC's Filing Reviewing Process cited again below, and as such, ii) no privileges whatsoever should be allowed, in order to preserve the integrity of the transparency mandated by the SEC's Filing Reviewing Process.

To increase the transparency of the review process, the Division makes its comment letters and company responses to those comment letters public on the SEC's EDGAR system no sooner than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective. (*see*, Exhibit 1, p.4).

One day after Mr. Bruckmann's September 1, 2022 Letter, American CryptoFed was forced to write a letter on September 2, 2022, to the Division of Enforcement ("September 2, 2022 Letter) regarding the SEC's Filing Reviewing Process related to the Fair Notice issue of "precision and guidance". At page 2-3 of the September 2, 2022 Letter attached as Exhibit 4, American CryptoFed stated the following, cited below in italic, which can demonstrate that the Division of Enforcement has effectively taken over the SEC's Filing Reviewing Process and the communication with Mr. Dobbie, Acting Office Chief, Office of Finance, Division of Corporation Finance, was completely disrupted and deterred:

This process will occur unless Mr. Dobbie at the Division of Corporation Finance, on or before September 5th, 2022, provides the necessary "precision and guidance" as required by the Supreme Court opinion below in F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012).

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. F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) (emphasis added).*

III
The Non- privileged Portion of the SEC's Investigative File and Rule 230 Production

In the "DIVISION OF ENFORCEMENT'S OMNIBUS RESPONSE TO AMERICAN CRYPTOFED'S RECENT MOTIONS" dated November 28, 2022 attached as Exhibit 5, the Division of Enforcement stated the following:

"Moreover, although not required to begin its **Rule 230 production** until 7 business days after service of the OIP, here the Division produced **the entire non- privileged portion of its investigative file** on the same day that the OIP was instituted and served. And even though American CryptoFed did not file a motion under Rule 231, the Division also voluntarily produced an affidavit outlining the anticipated testimony of one of the Division's witnesses." (Emphasis Added, *see,* Exhibit 5, page 3).

American CryptoFed's questions for the witness produced by the Division of Enforcement will not exceed the "non- privileged portion of its investigative file" and "Rule 230 production" which already have a large volume of data.

IV
Conclusion.

For all the reasons set forth above, American CryptoFed respectively requests Judge Foelak order that the Division of Enforcement to produce one witness with personal knowledge in this matter. By doing so, Judge Foelak's order will also uphold Mr.Gurbir S. Grewal's personal views as the SEC's Director of Division of Enforcement, which he expressed in his speech below on November 8, 2021.

This is not "regulation by enforcement."
This is not "regulation by enforcement."
This is not "regulation by enforcement."
There. I have said it thrice and what I tell you three times is true.[4]

Dated: December 5, 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

[4] 2021 SEC Regulation Outside the United States - Scott Friestad Memorial Keynote Address, https://www.sec.gov/news/speech/grewal-regulation-outside-united-states-110821

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this, RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO REQUEST THE DIVISION OF ENFORCEMENT TO PRODUCE A WITNESS, was filed by eFAP and was served on the following on this 5th day of December 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
Phone (307) 206-4210
scott.moeller@americancryptofed.org

Table of Exhibits

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 1

Filing Review Process

The Division of Corporation Finance selectively reviews filings made under the Securities Act of 1933 and the Securities Exchange Act of 1934 to monitor and enhance compliance with the applicable disclosure and accounting requirements. In its filing reviews, the Division concentrates its resources on critical disclosures that appear to conflict with Commission rules or applicable accounting standards and on disclosure that appears to be materially deficient in explanation or clarity.

The Division does not evaluate the merits of any transaction or determine whether an investment is appropriate for any investor. The Division's review process is not a guarantee that the disclosure is complete and accurate — responsibility for complete and accurate disclosure lies with the company and others involved in the preparation of a company's filings.

The Division assigns filings by companies in a particular industry to one of nine industry offices and conducts its primary review responsibilities through these offices, whose staff members have specialized industry, accounting and disclosure review expertise.

Required and Selective Reviews

As required by the Sarbanes-Oxley Act of 2002, the Division undertakes some level of review of each reporting company at least once every three years and reviews a significant number of companies more frequently. In addition, the Division selectively reviews transactional filings — the documents companies file when they engage in public offerings, business combination transactions and proxy solicitations. To preserve the integrity and effectiveness of the selective review process, the Division does not publicly disclose the criteria it uses to identify companies and filings for review.

Scope of Reviews

If the Division selects a company or a filing for review, the extent of that review will depend on many factors, including the criteria set forth in Section 408 of the Sarbanes-Oxley Act and the factors identified through our selective review criteria. The scope of a review may be:

- a full cover-to-cover review in which the staff will examine the

entire filing for compliance with the applicable accounting standards and the disclosure requirements of the federal securities laws and regulations;

- a financial statement review in which the staff will examine the financial statements and related disclosure, such as Management's Discussion and Analysis of Financial Condition and Results of Operations, for compliance with the applicable accounting standards and the disclosure requirements of the federal securities laws and regulations; or
- a targeted issue review in which the staff will examine the filing for one or more specific items of disclosure for compliance with the applicable accounting standards and/or the disclosure requirements of the federal securities laws and regulations.

Staff Comments

The staff may provide a company with comments where the staff believes a company can significantly enhance its compliance with the applicable requirements. The range of possible comments is broad and depends on the issues that arise in a particular filing review. Through the comment process, the staff may request that a company provide supplemental information to help the staff better understand the company's disclosure, revise disclosure in a document on file with the SEC, provide additional disclosure in a document on file with the SEC, or provide additional or different disclosure in a future filing with the SEC. The Division completes many filing reviews without issuing comments.

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 generally responds to each comment in a letter to the staff and, if appropriate, amends its filing(s). A company's explanation or analysis of an issue will often resolve a comment. Depending on the nature of the issue and the company's response, the staff may issue additional comments following its review of the company's response and any related amendments. .

At any time during the filing review process, a company or its representatives may request that the staff reconsider either a previously-issued comment or its view of the company's response to a comment. The Division does not require companies and their representatives to follow a formal protocol in seeking reconsideration of a staff comment. 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.

The Commission's Office of the Chief Accountant addresses questions concerning the application of generally accepted accounting principles while the Division resolves matters concerning the age, form and content of financial statements required to be included in a filing. A company or its representatives may involve the Commission's Office of the Chief Accountant at any stage of a filing review following the standard consultation procedures.

Closing a Filing Review

When a company has resolved all Division comments on a Securities Act registration statement, the company may request that the Commission declare the registration statement effective so that it can proceed with the transaction. When taking that action, the Division, through authority delegated from the Commission, gives public notice on the SEC's EDGAR system that the registration statement is effective. When a company has resolved all Division comments on an Exchange Act registration statement, a periodic or current report, or a preliminary proxy statement, the Division provides the company with a letter to confirm that its review of the filing is complete.

To increase the transparency of the review process, the Division makes its comment letters and company responses to those comment letters public on the SEC's EDGAR system no sooner than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective.

Modified: Sept. 27, 2019

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 2

American CryptoFed

August 28, 2022

Via Electronic Email

Justin Dobbie, Acting Office Chief,
Office of Finance, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone (202) 551-3469, dobbiej@sec.gov

CC:
Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@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

Re: American CryptoFed DAO LLC's Fair Notice Affirmative Defense
Form 10 File No.: 000-56339 and Form S-1 File No.: 333-259603

Dear Mr. Dobbie,

This letter is the **sixth** letter which specifically requests you to provide American CryptoFed **with a proper mechanism** so that American CryptoFed can 1) complete the initial registration statements of the Form 10 and Form S-1 filed with the SEC on September 15 and 16, 2021 respectively and 2) continue to furnish information for ongoing disclosures, when the information requested by the Form 10 and S-1 *does not exist and shall never exist within the American CryptoFed DAO's structure*. The previous **five** letters were sent to your attention, as the Acting Office Chief of the Office of Finance, Division of Corporation Finance for the Securities and Exchange Commission ("SEC" or "Commission") on July 22, 2022 (two letters), July 31, August 4, 2022 and August 17, 2022.

Today, as in each of my earlier letters to you, I emphasize to you that American CryptoFed's request is pursuant to the Supreme Court's opinion below:

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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. *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (emphasis added).

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The issuer registration, disclosure, and listing requirements for securities are currently **tailored to the issuers of debt and equity** in public companies. But most digital assets—coins and tokens that trade on exchanges like Coinbase—do not represent ownership stakes in complicated public companies or pay a return to investors through dividends or interest. (page 5).

For example, even if these assets have value primarily based on the promoter's efforts, they generally do not provide holders any rights over the residual value of the issuer, or a claim on the issuer's assets. **They are neither equity nor debt**. (page 15).

Recently, the SEC's Chairman Gary Gensler not only recognized the differences between traditional securities and crypto tokens as outlined by Coinbase above, but also emphasized the SEC's exemptive authority to tailor disclosure for crypto tokens in his July 14, 2022 interview with Yahoo Finance below (emphasis added)[2].

JENNIFER SCHONBERGER: Chair Gensler, given that you've said that nearly all tokens, with the exception of Bitcoin and perhaps Ethereum, would be classified as securities based on their use cases, **how do you feel about applying the disclosure regime under current securities laws for equities to crypto**?

GARY GENSLER: So it's really an age old concept. If you're raising money from the public and the public's anticipating profits based on the efforts of that common enterprise, that's a security. It's kind of a logical thing. And we at the SEC have a disclosure regime, as you said.

[1] https://www.sec.gov/rules/petitions/2022/petn4-789.pdf

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I've said to the industry, to the lending platforms, to the trading platforms, come in, talk to us.

We do have robust authorities from Congress also to use their exemptive authority so that we can tailor investor protection, and in your specific question about the tokens themselves, even tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token. But I would note, we don't have the same disclosures for an asset-backed security that we do for a stock offering. So it's a thoughtful way to sort of tailor things.

Mr. Dobbie, American CryptoFed urges you to abide by Chairman Gensler's instruction above and provide American CryptoFed with tailored disclosure requirements on or before September 5th, 2022. Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal.

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Mr. Dobbie, if you have difficulties to abide by Chairman' Gensler's instruction above to provide American CryptoFed with tailored disclosure requirements, please let me know immediately. I will write Chairman Gensler directly to ask him and all SEC Commissioners to provide you with necessary instructions to fulfill your duties. The public requires, and the entire crypto industry is actively demanding the SEC to provide the necessary "precision and guidance" as required by the Supreme Court opinion above in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012). American CryptoFed is the first historic case to test whether Chairman Gensler's public statements as quoted above are true or false. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", is unable to complete its Form S-1 and Form 10 registration, all the pending litigation actions that the SEC has brought against the entities and individuals in crypto industry under the name of

"Unregistered Securities" could be proved unlawful, pursuant to "the **void for vagueness doctrine**" upheld by the Supreme Court in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) above, because there is no way to complete the registrations with the SEC, whatsoever. Given that the SEC has no necessary "precision and guidance" to complete registrations, the SEC has no legal basis to bring any legal actions against any entity and against any individual with allegations of "Unregistered Securities", when the actual pathway to registration with the Commission did not and does not exist. I will emphasize this point to Chairman Gensler and all Commissioners in my letter to them and remind them of the March 11, 2022 order in *SEC v. Ripple Labs,* issued by Judge Analisa Torres of the Southern District of New York, who allowed Ripple Labs' Fair Notice affirmative defense, citing *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012) below (emphasis added)[3].

"**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**." *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012). This clarity requirement is "essential to the protections provided by the **Due Process Clause of the Fifth Amendment**," and requires the invalidation of laws that are "impermissibly vague." *Id*. Laws fail to comport with due process when they "fail[] to provide **a person of ordinary intelligence** fair notice of what is prohibited," or **when they are so standardless that they authorize or encourage "seriously discriminatory enforcement."** *Id*. (citation omitted).

Mr. Dobbie, I look forward to your response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller
Scott Moeller
President, American CryptoFed DAO
scott.moeller@americancryptofed.org

[3] https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 3

---------- Forwarded message ---------
From: **Bruckmann, Christopher** <bruckmannc@sec.gov>
Date: Thu, Sep 1, 2022 at 5:27 AM
Subject: RE: American CryptoFed DAO LLC's Fair Notice Affirmative Defense Form 10 File No.: 000-56339 and Form S-1 File No.: 333-259603
To: Scott Moeller <scott.moeller@americancryptofed.org>
Cc: Carney, Christopher <CarneyC@sec.gov>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>, Lucas, John <LucasJ@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Dobbie, Justin <DobbieJ@sec.gov>

Mr. Moeller,

Your August 28, 2022 letter to Justin Dobbie of the SEC's Division of Corporation Finance, which you also sent to us, states in part: "Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal." We write to remind you that there is a pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1, and that Section 5(c) [15 U.S.C. §77e(c)] reads in part "It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security . . . while the registration statement is the subject of . . . any . . . examination under section 77h of this title." Additionally, your continuing refusal to cooperate with the Section 8(e) Examination by refusing to provide subpoenaed documents and refusing to answer questions asked of you during your testimony hampers the Division of Enforcement's ability to bring that examination to a prompt conclusion.

Regards,

Chris Bruckmann

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 4

American CryptoFed

September 2, 2022

Via Electronic Email

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

CC:
Christopher Carney, Division of Enforcement, CarneyC@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 American CryptoFed, AP File No. 3-20650:

Dear Mr. Bruckmann,

Thank you for your email yesterday stating the following:

Your August 28, 2022 letter to Justin Dobbie of the SEC's Division of Corporation Finance, which you also sent to us, states in part: "Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal." We write to remind you that there is a **pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1**, and that Section 5(c) [15 U.S.C. §77e(c)] reads in part "It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security . . . while the registration statement is the subject of . . . any . . . examination under section 77h of this title." Additionally, your continuing refusal to cooperate with the Section 8(e) Examination by refusing to provide subpoenaed documents and refusing to answer questions asked of you during your testimony hampers the Division of Enforcement's ability to bring that examination to a prompt conclusion. (emphasis added).

In my August 7th, 2022 letter ("August 7, 2022 Letter" attached) addressed to Mr. Baker and cc'd you, I outlined the facts and legal basis why the "pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1" ("8 (e) Order") violated Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc.*(*see* Section **IV The 8(e)**

Order Violates Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*, page 9 - 10). Mr. Baker did not respond to this August 7, 2022 Letter.

As Mr. Baker has not been able to respond, Mr. Bruckmann, can you respond to my August 7, 2022 Letter on or before September 12th, 2022 and clearly explain why the 8 (e) Order does not violate Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*, given that you still use the 8 (e) Order to justify your argument above, including the unlawful subpoena pursuant to the 8 (e) Order?

Even though the 8 (e) Order and the subsequent subpoena pursuant to the 8 (e) Order are unlawful, in my August 7th, 2022 Letter to Mr. Baker, I still offered to provide him with the following (*see*, page 11-12).

As such, without waiving the objection on the grounds discussed above in this letter, American CryptoFed can consider providing an explanatory affidavit under perjury and answer your questions related to American CryptoFed DAO's operation with zero assets. No entity can generate securities or investment contracts, whatsoever, if the entity does not have **a traditional balance sheet equation of Assets = Liabilities + Shareholder's Equities**. Please let us know your question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP). American CryptoFed has confidence that no such documents exist.

However, Mr. Baker did not respond to this overture as well. I even sent a follow-up letter to his attention on August 18th, 2022 ("August 18, 2022 Letter" attached) to remind Mr. Baker of this offer. As of today, Mr. Baker has not yet responded.

Mr. Bruckmann, as Mr. Baker is either unable or unwilling to respond, can you, on or before September 12th, 2022, provide me with the "question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP)"? This request for the question and document list is especially cogent, given that in your letter yesterday, as quoted above, you complained to me about "refusing to provide subpoenaed documents and refusing to answer questions".

After the deadline of September 12th, 2022 passes, American CryptoFed will file a Form S-1 amendment to remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal. This process will occur unless Mr. Dobbie at the Division of Corporation Finance, on or before September 5th, 2022, provides the necessary

"precision and guidance" as required by the Supreme Court opinion below in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012).

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. *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (emphasis added).

The purpose of the Form S-1's delaying amendment is for American CryptoFed to accommodate the comments and guidance from the Securities and Exchange Commission ("SEC" or "Commission"). The delaying amendment is not for the SEC to unlawfully delay or stop or obstruct American CryptoFed's legitimate disclosure. It is time for American CryptoFed to remove the Form S-1 delaying amendment to make the Form S-1 effective, given that Mr. Dobbie does not provide the necessary "precision and guidance", despite multiple repeated requests for such. American CryptoFed does not believe that the effectiveness of the Form S-1 can be stopped by an unlawful Stop Order pursuant to the 8 (e) Order, because the 8 (e) Order itself is unlawful. Even if a Stop Order is unlawfully issued, the Stop Order and the detailed documentation trail of the communications between the SEC and American CryptoFed will:

i) create a historic precedence of case law that no necessary "precision and guidance" is available for American CryptoFed to complete its Form S-1 registration statement, and

ii) will have a profound consequence that will undisputedly prove the following public policy statements of the SEC's Chairman Gary Gensler in his July 14, 2022 interview with Yahoo Finance below are false and misleading (emphasis added)[1].

JENNIFER SCHONBERGER: Chair Gensler, given that you've said that nearly all tokens, with the exception of Bitcoin and perhaps Ethereum, would be classified as securities based on their use cases, **how do you feel about applying the disclosure regime under current securities laws for equities to crypto**?

[1] https://finance.yahoo.com/video/sec-chair-investors-know-someone-153326153.html

GARY GENSLER: So it's really an age old concept. If you're raising money from the public and the public's anticipating profits based on the efforts of that common enterprise, that's a security. It's kind of a logical thing. And we at the SEC have a disclosure regime, as you said. **I've said to the industry, to the lending platforms, to the trading platforms, come in, talk to us.**

We do have robust authorities from Congress also to use their exemptive authority so that we can tailor investor protection, and in your specific question about the tokens themselves, even tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token. But I would note, we don't have the same disclosures for an asset-backed security that we do for a stock offering. So it's a thoughtful way to sort of tailor things.

Therefore, before this historic precedence is established by an unlawful Stop Order issued pursuant to the unlawful 8 (e) Order, it will be fair for Chairman Gensler and all the Commissioners to be notified that their public policy statements above are not being implemented by the SEC staff. As I already told Mr. Dobbie directly in my August 28, 2022 letter, if Mr. Dobbie has difficulties to abide by Chairman' Gensler's instruction in his public policy statements above to provide American CryptoFed with tailored disclosure requirements, please let me know immediately. I will write Chairman Gensler directly to ask him and all SEC Commissioners to provide Mr. Dobbie with the necessary instructions to fulfill his duties.

The public requires, and the entire crypto industry is actively demanding the SEC to provide the necessary "precision and guidance" as required by the Supreme Court opinion above in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012). American CryptoFed is the first historic case to test whether Chairman Gensler's public policy statements as quoted above are true or false. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", is unable to complete its Form S-1 and Form 10 registration, **all** the pending litigation actions that the SEC has brought against the entities and individuals in crypto industry under the name of "Unregistered Securities" could be proved unlawful, pursuant to "the **void for vagueness doctrine**" upheld by the Supreme Court in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) cited above, because there is no way whatsoever for crypto industry entities to complete the registrations with the SEC. Given that the SEC has no necessary "precision and guidance" for crypto industry entities to complete registrations, the SEC has no legal basis to bring any legal actions against any entity and/or against any individual

with allegations of "Unregistered Securities", when the actual pathway to registration for crypto industry entities with the Commission did not and does not exist at all.

I will emphasize this point to Chairman Gensler and all Commissioners in my letter to them and remind them of the March 11th, 2022 order in *SEC v. Ripple Labs,* issued by Judge Analisa Torres of the Southern District of New York, who allowed Ripple Labs' Fair Notice affirmative defense, citing *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012) below (*see* page 6-7, emphasis added)[2].

"**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**." *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012). This clarity requirement is "essential to the protections provided by the **Due Process Clause of the Fifth Amendment**," and requires the invalidation of laws that are "impermissibly vague." *Id*. Laws fail to comport with due process when they "fail[] to provide **a person of ordinary intelligence** fair notice of what is prohibited," or **when they are so standardless that they authorize or encourage "seriously discriminatory enforcement."** *Id*. (citation omitted).

Mr. Bruckmann, I look forward to your response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller
Scott Moeller
President, American CryptoFed DAO
scott.moeller@americancryptofed.org

[2] https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 5

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 OMNIBUS RESPONSE TO AMERICAN CRYPTOFED'S RECENT MOTIONS

The Division of Enforcement ("Division"), by counsel, respectfully submits this omnibus response to the following motions recently filed by Respondent American CryptoFed DAO LLC ("Respondent" or "American CryptoFed"):

1) Motion to Hold Prehearing Conference Pursuant to Rule 221(d) Required Prehearing Conference;

2) Motion to Request Clarification on Authorized Decision Maker and Timely Decision Regarding Motion for Time Scheduling Extension; and

3) Motion to Stay Order of Release No. 6882 by Administrative Law Judge Carol Fox Foelak Requiring "To Confer and File a Joint Report by November 29, 2022."

Preliminary Statement

American CryptoFed's motions are meritless, duplicative, and confusing. American CryptoFed has been admonished before not to file such vexatious motions. In the related Section 12(j) proceeding *In the Matter of American*

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CryptoFed DAO LLC, AP File No. 3-20650, where the Commission itself was serving as the hearing officer, the Commission repeatedly admonished American CryptoFed not to file meritless, duplicative motions, before ultimately issuing an order that no motions could be filed without first seeking permission to file a motion. *See* Exhibit 1 at 2-3.[1] Here, the expedited schedule set forth by the Commission in the Order Instituting Proceedings ("OIP") is entirely appropriate for this proceeding under Section 8 of the Securities Act of 1933, and all of the above motions recently filed by American CryptoFed should be denied in their entirety.

BACKGROUND

A. Respondent Has Had Sufficient Notice and Time to Prepare in This Matter.

American CryptoFed's motion to delay the hearing in this matter has already been denied. American CryptoFed nonetheless continues to assert that they are entitled to delay the proceeding given their misreading of the rules governing administrative proceedings and their claim that there is insufficient time to prepare. The Division will therefore briefly note for the record the copious amount of time American CryptoFed has had to prepare in this matter.

The Commission issued the OIP in this matter on November 18, 2022, but the issues in the OIP have been known to American CryptoFed for far longer. More than a year ago, on November 10, 2021, the Commission issued an OIP under Section 12(j) of the Securities Exchange Act of 1934 regarding American CryptoFed's Form 10 registration statement. *See* Exhibit 2. That OIP raised many

[1] Relevant portions of all Exhibits have been highlighted for ease of reference.

of the same issues that are raised in this proceeding. *Id.* at 2-3. Also, the Division took investigative testimony from Scott Moeller on July 7, 2022 pursuant to the Section 8(e) Order of Examination which led to this proceeding. That testimony again covered many of the same topics set forth in the OIP.

Moreover, although not required to begin its Rule 230 production until 7 business days after service of the OIP, here the Division produced the entire non-privileged portion of its investigative file on the same day that the OIP was instituted and served. And even though American CryptoFed did not file a motion under Rule 231, the Division also voluntarily produced an affidavit outlining the anticipated testimony of one of the Division's witnesses.

B. Respondent Has Threatened to Pull the Form S-1 Delaying Amendment.

In multiple motions, American CryptoFed asserts that there is no urgency in this matter because the Form S-1 contains a delaying amendment. This statement is disingenuous and designed to mislead this tribunal. American CryptoFed misleadingly omitted from its motions the fact that it has repeatedly threatened to pull that delaying amendment and proceed with offering tokens. *See* Exhibit 3 (October 27, 2022 letter from American CryptoFed) at 13 "American CryptoFed is planning to file the 'Amendment No. 1 to Form S-1' to remove the delaying amendment, ***right after we receive your response to this letter*** . . ." (emphasis added); Exhibit 4 (November 1, 2022 letter from American CryptoFed) at 6: "When, and only when both Divisions have no more legal arguments (or refuse to provide legal arguments), to further justify the need of the Delaying Amendment, will we

remove the Delaying Amendment. ***We are close to that critical moment***."

(emphasis added).

Additionally, American CryptoFed has previously threatened to proceed with distributing the Ducat and Locke Tokens even if the Form S-1 was not effective. *See* Exhibit 5 (May 30, 2022 letter from American CryptoFed) at 1:

> While waiting for the Securities and Exchange Commission ("SEC", "Commission") to rule on the three pending motions below, American CryptoFed DAO LLC ("American CryptoFed") will proceed with implementing its business plan as described in the Form 10 and the Form S1 filed with the SEC on September 16 and 17, 2021 respectively. Starting from Q3 2022, we will distribute to contributors, in paper contracts, free of charge, Locke governance tokens which are restricted, untradeable and non-transferable. Starting from Q3, 2022 through December 31, 2022, we will conduct Locke token refundable auctions.

Thus, there is in fact an urgent reason to resolve this proceeding on an expedited basis.

ARGUMENT

I. Respondent's Motion to Hold a Prehearing Conference Should Be Denied.

American CryptoFed's claimed need for an order to hold a prehearing conference is based on an incorrect reading of the SEC's Rules of Practice. Although Rule 221 typically requires a prehearing conference, it contains an exception for instances where "where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate." 17 C.F.R. 201.221(d). Additionally, Rule 103(b) requires that "[i]n any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control." Here,

Section 8(d) sets forth that the hearing should take place within 15 days, and the Commission has thus ordered that the hearing take place on December 1, 2022. Accordingly, a prehearing conference addressing all of the topics in Rule 221 is neither necessary nor appropriate. Nevertheless, the Division is endeavoring to schedule a time to speak with Respondent's officers regarding the joint report required by the November 22, 2022 order, and is amenable to discussing the items typically discussed in a prehearing conference at that time, to the extent that they are relevant to the 8(d) hearing. Other items, such as a schedule for dispositive motions, are clearly inapplicable here, as discussed below. Accordingly, an order requiring a prehearing conference is neither necessary nor appropriate here.

II. Respondent's Motion to Request Clarification on Authorized Decision Maker and Timely Decision Regarding Motion for Time Scheduling Extension Should Be Denied.

American CryptoFed's motion regarding the hearing officer's authority is vague and does not make clear what relief it seeks. It should be summarily denied. The motion also misrepresents the Division of Enforcement's position regarding the hearing officer's authority, stating that "Both the Division and American CryptoFed truly believed that Judge Foelak has the authority to make a decision on the schedule extension proposal" and then quotes a letter in which the Division of Enforcement suggested that American CryptoFed file a motion seeking relief rather than repeatedly sending disjointed letters to the Division. The Division never authorized American CryptoFed to make the representation above on behalf of the Division and never waived its right to oppose any motion American CryptoFed would file. Additionally, although the broad grant of authority in Rules 111 and

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161(a) could arguably permit the hearing officer to extend the schedule for the hearing, the Division would strenuously oppose any such request in this proceeding. As discussed above, American CryptoFed has threatened to pull the delaying amendment in its Form S-1 or proceed with offering tokens even if the registration statement is not effective. Accordingly, the Division strongly believes that a prompt public hearing and decision regarding the gross deficiencies and material misrepresentations in the Form S-1 is necessary to protect investors who might otherwise be lured into purchasing the Ducat and Locke tokens. Moreover, nothing in any of American CryptoFed's motions comes close to meeting the required showing for an extension in Rule 161(b)(1), especially as American CrypoFed has been aware of the issues with its registration statements for over a year. Rule 161(b)(1) reads:

> In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of ***strongly disfavoring*** such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would ***substantially prejudice*** their case.

17 C.F.R. 201.161(b)(1) (emphasis added).

Further, American CryptoFed's motions recite various questions that American CryptoFed posed to the Division in letters and claims that the Division was "unable" to answer them. This tactic has been frequently employed by American CryptoFed. It sends the Division (and other divisions within the Commission) lists of questions and demands that we answer them. When we choose not to respond to the queries in the exact manner in which American CryptoFed

requests, or choose—as is our prerogative—not to preview our legal strategy and thinking, American CryptoFed claims we are unable to answer their questions. The questions here perfectly illustrate that point. Each of the questions seeks to have the Division justify why the *Commission* ordered the proceedings in this matter to take place on an expedited basis and to explain why the proceedings should not be moved. This approach gets it exactly backwards. As previously explained, to the extent the Commission-ordered proceedings could be postponed, it is American CryptoFed, not the Division, that must carry the burden for demonstrating that it would be "substantially prejudiced" if the proceedings are not moved. Here, as set forth above, delay in this case would prejudice the both Division and potential investors who may be duped into purchasing tokens that American CryptoFed has repeatedly threatened to offer for sale.

III. Respondent's Motion to Stay Should Be Denied.

American CryptoFed's Motion to Stay Order of Release No. 6882 by Administrative Law Judge Carol Fox Foelak Requiring "To Confer and File a Joint Report by November 29, 2022" is meritless and based on an inaccurate reading of the SEC's Rules of Practice. American CryptoFed does not have an "absolute right" to a prehearing conference. Rather, as discussed above, Rule 221 must be read in conjunction with Rule 103 and Section 8(d). The Motion also makes similar arguments regarding American CryptoFed's desire to file a motion for judgment on the pleadings and a motion for summary disposition. Again, the rules regarding these motions must be read in conjunction with Rule 103 and Section 8. The end

result is clear: where the provision of the SEC's Rules of Practice are in conflict with the expedited timing of Section 8, the rules must yield to the statute.

The Division will continue to attempt to work with American CryptoFed to compile a joint report, but is also prepared to submit a report solely on behalf of the Division should that prove necessary.

CONCLUSION

For the reasons stated above, Respondent's motions should be denied.

Dated: November 28, 2022 Respectfully submitted,

/s/ Christopher Bruckmann

Christopher Bruckmann (202) 551-5986
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COUNSEL FOR
DIVISION OF ENFORCEMENT

OS Received 12/05/2022

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 28th 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

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 OMNIBUS RESPONSE TO AMERICAN CRYPTOFED'S RECENT MOTIONS

EXHIBITS ONE THROUGH FIVE

EXHIBIT 1

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93922 / January 6, 2022

Admin. Proc. File No. 3-20650

In the Matter of

AMERICAN CRYPTOFED DAO LLC

ORDER DENYING MOTION FOR A BRIEFING SCHEDULE AND DIRECTING FURTHER PROCEDURES FOR THE FILING OF MOTIONS

On November 10, 2021, the Securities and Exchange Commission ("Commission") issued an Order Instituting Proceedings ("OIP") pursuant to Section 12(j) of the Securities Exchange Act of 1934 against American CryptoFed DAO LLC ("Respondent").[1] Since these proceedings were instituted, Respondent has filed 16 motions, including seven motions for a more definite statement, three motions relating to the prehearing conference, four motions for a judgment on the pleadings, a motion to lift the stay on the effectiveness of its Form 10 registration statement, and a motion for an exemption from Exchange Act Section 12(g). Respondent has indicated an intent to file additional "creative motions" to "explore" potential settlement approaches. The Division of Enforcement filed a motion requesting a briefing schedule "to approach any future motions in a more orderly fashion." In substance, the Division proposes that all subsequent motions, other than motions for summary disposition, be filed by a fixed date, with subsequent dates for the filling of (possibly omnibus) oppositions and/or replies. We deny the Division's motion for a briefing schedule, but set forth herein procedures for the submission of further motions in this proceeding.

On December 16, 2021, the Commission denied Respondent's three motions relating to the prehearing conference and, in doing so, advised Respondent that its filings were inconsistent with the Rules of Practice, which "discourage repetitive, overlapping, or duplicative filings that contribute to 'unnecessary delay or needless increase' in the resources needed to resolve the proceeding."[2] Respondent nevertheless proceeded to file four motions for a judgment on the pleadings between December 16 and December 20, 2021.

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1 *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93551, 2021 WL 5236544 (Nov. 10, 2021).

2 *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93806, 2021 WL 5966848, at *1 n.3 (Dec. 16, 2021).

These motions were procedurally improper, as we explained in a January 5, 2022 order: The Rules of Practice contemplate only a single motion for judgment on the pleadings per party. Moreover, the arguments raised and the relief sought did not "represent an appropriate use of the Rule 250(a) procedure, which is meant to secure a ruling on the 'sufficiency of the pleadings'"—not to secure piecemeal advisory opinions on disputed legal issues.[3] We reminded the parties that "repetitive, overlapping, or duplicative filings are not appropriate."[4] We stressed the importance of compliance with procedural rules that "serve the rational purpose of promoting accurate, efficient and final decisionmaking."[5] And we again placed the parties on notice about the consequences for continued non-compliance with those rules.[6]

The Division filed the instant motion, which requests a briefing schedule "to approach any future motions in a more orderly fashion." The Division proposes a single, unified briefing schedule "for motions filed on or after December 21, 2021, other than summary disposition motions." Respondent opposes the Division's motion, asserting that "the parties should wait for the Commission's ruling on existing motions." Respondent asserted in its opposition that "following the Commission's rulings, new motions may be needed for Respondent's effective defense" and that setting a briefing schedule might "preclud[e] Respondent's opportunities to file timely, proper and creative motions to explore proposals for settlement solution."

At this juncture, we do not believe that it is necessary to fix a certain date by which the parties must file motions other than a motion for summary disposition. Nevertheless, we are concerned that the continued filing of motions that fail to comply with procedural requirements or that are repetitive, overlapping, or duplicative will interfere with the orderly and efficient resolution of this proceeding. We remind the parties that Respondent's motions for a more definite statement and motion to lift the stay on the effectiveness of its Form 10 registration statement remain pending before the Commission.[7] We further remind the parties that the time

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[3] *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93905, 2022 WL 44323, at *2 (Jan. 5, 2022).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Respondent's request for an exemption from Exchange Act Section 12(g) is not, as we have explained, within the scope of the instant proceeding. *Id.* at *2 n.13. Applications for exemptive relief must be made in accordance with the distinct and separate procedures described in the Commission's regulations and webpages. *See* 17 C.F.R. § 240.0-12 (governing requests for exemptive relief under Section 36); *id.* § 200.30-1(f)(7) (delegating authority to the Division of Corporation Finance to consider, in the first instance, requests for exemptive relief under Section 12(h)); *Commission Procedures for Filing Applications for Orders for Exemptive Relief*, Exchange Act Release No. 39624, 63 Fed. Reg. 8101, 8101-02 & n.3 (Feb. 8, 1998) (describing procedures); *Exchange Act Exemptive Applications*, available at https://www.sec.gov/regulatory-actions/exchange-act-exemptive-applications; *Corporation Finance Submission Form for No-Action, Interpretive and Exemptive Letters*, available at https://www.sec.gov/forms/corp_fin_noaction.

period for filing a motion for judgment on the pleadings pursuant to Rule 250(a) has expired,[8] so any subsequent Rule 250(a) motion will be rejected as untimely. The only other kind of dispositive motion that the Rules of Practice authorize in a contested case is a motion for summary disposition pursuant to Rule 250(b).[9] Both parties have indicated an intent to file such motions, and a briefing schedule will be set by separate order.

In the interim, it would serve the interests of justice to prescribe procedures for regulating the filing of all other, non-dispositive motions.[10] Accordingly, it is ORDERED that the Division's motion is denied; and it is further ORDERED that the parties must meet and confer prior to filing any motion; and it is further ORDERED that the parties must seek and receive leave from the Commission prior to filing it. A request for leave must be in the form of a separate motion, not to exceed two pages in length, and concisely set forth the underlying relief sought, a statement of the basis for that relief, and a justification for why the underlying motion must be considered and determined prior to summary disposition. The request for leave must not attach or incorporate by reference the motion as to which permission for filing is sought.

Pursuant to Rule of Practice 180(c), a party's failure to comply with this order may result in the Commission's determination of the matter at issue against that party, a finding of waiver, dismissal of the proceeding, or such other sanction as the Commission finds appropriate.[11]

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

By: Jill M. Peterson
Assistant Secretary

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8 Rule of Practice 250(a), 17 C.F.R. § 201.250(a) (requiring that a motion for a ruling on the pleadings be made "[n]o later than 14 days after a respondent's answer has been filed").

9 Rule of Practice 250(b), 17 C.F.R. § 201.250(b).

10 Rules of Practice 100(c), 111(d), 17 C.F.R. §§ 201.100(c), .111(d).

11 Rule of Practice 180(c), 17 C.F.R. § 201.180(c).

OS Received 12/05/2022

EXHIBIT 2

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93551 / November 10, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20650

In the Matter of **American CryptoFed DAO LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. **American CryptoFed DAO LLC (CIK No. 1881928) ("American CryptoFed")**, was established in Wyoming on July 1, 2021 as a "Decentralized Autonomous Organization" ("DAO"). It is the successor entity to American CryptoFed, Inc., which was incorporated in Wyoming on February 11, 2021.

B. MATERIALLY DEFICIENT FORM 10 REGISTRATION STATEMENT

2. On September 16, 2021, American CryptoFed filed a Form 10 registration statement with the Commission, seeking to register two classes of digital assets, the

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Ducat token and the Locke token, as equity securities under Section 12(g) of the Exchange Act.[1]

3. On October 4, 2021, staff from the Commission's Division of Corporation Finance spoke with representatives from American CryptoFed and explained that the Form 10 was materially deficient (as described in detail below), suggested that American CryptoFed amend the Form 10 to correct each of the substantive deficiencies, or consider withdrawing the Form 10.

4. Two days later, on October 6, 2021, American CryptoFed filed a document that purported to be an amended Form 10, consisting of a cover page and several paragraphs asserting that the Ducat and Locke tokens were not securities. The amendment did not address any of the identified material deficiencies.

5. On October 8, 2021, the Division of Corporation Finance sent a letter to American CryptoFed stating that the Form 10 registration statement "fail[ed] in numerous material respects to comply with the requirements of the Securities Exchange Act of 1934, the rules and regulations thereunder and the requirements of the form."

6. Specifically, as was noted in the October 8, 2021 letter, American CryptoFed's Form 10 failed to contain:

- financial information as required by Items 303 and 305 of Regulation S-K;
- audited financial statements as required by Rule 3 or Rule 8 of Regulation S-X, as applicable;
- a beneficial ownership table that complies with Item 403 of Regulation S-K;
- an executive compensation table that complies with Item 402 of Regulation S-K;
- exhibits as required to be filed by Item 601 of Regulation S-K; and
- a clear and complete description of the general development of American CryptoFed's business or the terms, rights and obligations of the securities to be registered, as required by Items 101 and 202 of Regulation S-K, respectively.

7. The Form 10 also contained materially misleading statements and omissions. The Form 10 stated throughout that the Ducat and Locke tokens were not

[1] On September 17, 2021, a day after filing the Form 10, American CryptoFed filed a Form S-1 registration statement seeking to register transactions involving the Ducat and Locke tokens under the Securities Act of 1933. The Form S-1 contains serious deficiencies, but because it contains a delaying amendment, it will not become effective until the Commission declares it effective.

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securities, which was inconsistent with the statement on the cover page identifying the Ducat and Locke tokens as "[s]ecurities to be registered pursuant to Section 12(g) of the [Exchange] Act" and American CryptoFed's use of the Form 10 to register the tokens as securities under Section 12(g) of the Exchange Act.

8. The Form 10 also contained materially misleading information concerning American CryptoFed's intended distribution of the Locke tokens. Specifically, American CryptoFed asserted that upon effectiveness of the Form 10, it will use Form S-8 – a Securities Act of 1933 ("Securities Act") form for securities offered to employees through employee benefit plans – to distribute Locke tokens to more than 500 entities, such as municipalities, merchants, banks, and "crypto exchanges," and non-employee individual contributors. However, the Form 10 failed to disclose that Form S-8 is not legally available for such a distribution.

9. The individuals and entities to whom American CryptoFed planned to distribute Locke tokens are not employees of American CryptoFed, as the Form 10 itself said that American CryptoFed will not have any employees but instead "will be operated automatically by smart contracts and direct voting by Locke tokens." These non-employees also will not be receiving the tokens pursuant to an employee benefit plan, as required by Form S-8. Given this, use of a Form S-8 to distribute these tokens is not legally permitted, and the Form 10's claim that American CryptoFed intends to do so is materially misleading.

10. American CryptoFed failed to correct these material deficiencies and did not withdraw the Form 10. By operation of Section 12(g), the materially deficient Form 10 would automatically become effective on November 15, 2021.

C. RELEVANT SECTIONS, RULES AND REGULATIONS

11. Section 12(j) allows the Commission to deny, suspend the effective date of, suspend for a period not to exceed 12 months, or revoke the registration of a security if, after notice and opportunity for hearing, the Commission finds the issuer has failed to comply with the Exchange Act or its rules.

12. Section 12(g) of the Exchange Act states that parties may register a class of securities under the provision "by filing with the Commission a registration statement . . . with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to" Exchange Act Section 12(b).

13. Section 12(b) of the Exchange Act requires applications to include "[s]uch information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, . . . as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors," including information about "the organization, financial structure, and nature of the business; the terms, position, rights and privileges of the different classes of securities outstanding; [and] the terms on which

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their securities are to be, and during the preceding three years have been, offered to the public or otherwise . . . ".

14. Form 10 is a registration statement used to register a class of securities pursuant to Exchange Act Section 12(b) or (g) for which no other form is prescribed. The instructions to Form 10 identify 15 items of information described in Regulation S-K and Regulation S-X that must be included in the registration statement.

15. Exchange Act Rule 12b-20 requires that "in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading."

16. Regulation S-K states the requirements applicable to the content of registration statements under Exchange Act Section 12, including a description of the general development of the business of the registrant (Item 101), a description of the rights and obligations of the securities to be registered (Item 202), management's discussion and analysis of the financial condition and results of operations of the registrant (Item 303), qualitative and quantitative disclosures about market risk (Item 305), disclosure of all compensation awarded to executive officers and directors for all services rendered in all capacities to the registrant (Item 402), information about the security ownership of certain beneficial owners and management (Item 403), and other exhibits, such as material contracts, articles of incorporation and bylaws (Item 601).

17. Regulation S-X sets forth the form and content of and requirements for financial statements required to be filled as a part of registration statements under Exchange Act Section 12, including consolidated and audited financial statements (Rule 3 or Rule 8 as applicable).

18. As a result of the conduct described above, American CryptoFed failed to comply with Exchange Act Section 12(g), Exchange Act Rule 12b-20, and the provisions of Regulations S-K and S-X cited above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to deny, or suspend the effective date of the registration of each class of securities that may become registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that the institution of these proceedings stays the effectiveness of the Respondent's Form 10 filed on September 16, 2021.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answers, or fails to appear at a hearing or conference after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondent, may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the

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Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, www.sec.gov, at http://www.sec.gov/eFAP. Respondent also must serve and accept service of documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 30-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) the completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) the determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

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In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary

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EXHIBIT 3

American CryptoFed

October 27, 2022
Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit
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Re: American CryptoFed DAO LLC's Fair Notice Affirmative Defense
Form S-1 File No.: 333-259603

Dear Mr. Bruckmann

Thank you for your email dated October 25, 2022 ("October 25, 2022 Email"), which is attached at the bottom of this letter underneath our signatures, for ease of reference. Although your October 25, 2022 Email was delivered to us ahead of the deadline of October 26, 2022, your reply did not directly respond to any specific request or answer any question outlined in our letter dated October 23, 2022 ("October 23, 2022 Letter"). Let us review your October 25, 2022 Email against our October 23, 2022 Letter point-by-point to show that you lack operating in good faith.

I.
Examination on American CryptoFed's Assertion of No Assets and No Liabilities

In your October 25, 2022 Email, regarding American CryptoFed's Assertion of No Assets and No Liabilities, you stated the following:

You have asked for a question and document list related to American CryptoFed's claim that it does not have assets or liabilities. American CryptoFed's claim that it does not have assets

or liabilities is not the only issue in the Section 8(e) examination. Nor is that claim the only apparent flaw in American CryptoFed's Form S-1.

However, in your October 19, 2022 Email you specifically complained "American CryptoFed claims that it has no assets and no liabilities" and emphasized that American CryptoFed's Assertion of No Assets and No Liabilities needs to be examined by stating the following:

We are not required to accept American CryptoFed's assertions at face value. Rather, those assertions need to be tested through audit and/or examination for the protection of the investing public.

American CryptoFed has repeatedly offered the opportunity for examination with specific attention to American CryptoFed's Assertion of No Assets and No Liabilities. In the September 2, 2022 Letter, October 13, 2022 Letter and October 23, Letter, we requested you start the examination process through asking the same question below in a series of communications (first directed to Mr. Michael Baker in your Division on August 7, 2022 and August 18, 2022 and later to you).

Mr. Bruckmann, as Mr. Baker is either unable or unwilling to respond, can you, on or before September 12th, 2022, provide me with the "question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP)"?

However, as of today, neither you nor Mr. Baker responded to our offer. Documentation of our past communications demonstrates that you have no real interest in the examination of American CryptoFed's Assertion of No Assets and No Liabilities. Therefore, it is reasonable for American CryptoFed to conclude that your true purpose of this so-called examination of **American CryptoFed's Assertion of No Assets and No Liabilities** is no more than an excuse to unlawfully delay or stop or obstruct American CryptoFed's legitimate disclosure. This conclusion is independent of your allegation "American CryptoFed's claim that it does not have assets or liabilities is not the only issue in the Section 8(e) examination. Nor is that claim the only apparent flaw in American CryptoFed's Form S-1." This allegation will be addressed later in this letter.

II.
Unlawful 8 (e) Order

In your October 19, 2022 Email, you complained that I refused to provide information "in connection with the Commission's Order Directing Examination and Designating Officers Pursuant to Section 8(e) of the Securities Act of 1933." ("8 (e) Order") and again in your October 25, 2022 Email you further stated the following:

> Additionally, it is not for American CryptoFed to dictate to the staff how to conduct the Section 8(e) examination. That said, to the extent you desire a "Question and Document List," the questions are the questions posed to Mr. Moeller in his July 7, 2022 testimony which he either declined to answer or answered in a non-responsive manner, and the documents are the documents called for by our June 15, 2022 subpoena.

American CryptoFed is very curious as to why you continue to use the unlawful 8 (e) Order to attempt to justify your arguments and actions, while refusing to rebut American CryptoFed's position that the 8 (e) Order violates the Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*. 567 U.S. 239, 253 (2012): **"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"**.

The only reasonable explanation is that you either willfully and knowingly misinterpreted and abused Section 8(b), Section 8(d) and Section 8(e) of Securities Act (15 U.S. Code § 77h(b), (d) and (e)), or you lack knowledge of the operation of these three sections, the differences of which were summarized as early as 1935 by U.S. Court of Appeals for the Second Circuit below:

> The orders of the commission referred to are to be found in sections 8(b), 8(d) and 8(e), 15 USCA § 77h, subds. (b, d, e), all preceding section 9, which provides for a review of the orders. **Section 8(b) authorized an order refusing to permit a registration statement to become effective** until it has been amended as required in the order. **Sections 8(d) and 8(e) provide for the entry of a stop order suspending the effectiveness of the registration statement** at any time. *Jones v. Securities and Exchange Commission,* 79 F.2d 617 (2d Cir. 1935). (Emphasis added).

Given that American CryptoFed's Form S-1 registration statement has not yet become effective, Section 8(d) and Section 8(e) should not apply to American CryptoFed, because i) the plain text of Section 8(d) below makes it logically clear that it is impossible to **"issue a stop order suspending the effectiveness of the registration statement",** when a registration statement has not yet become effective, and ii) the plain text of Section 8(e) below makes it logically clear that the Section 8(e) examination is **"to determine whether a stop order should issue under subsection (d)."** The logical chain of the statutes' operation is that Section 8(e) depends on Section 8(d) which can only be applied to those cases whose Form S-1 registration statements have already become effective.

(d)Untrue statements or omissions in registration statement

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, **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).

(e)Examination for issuance of stop order

The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order. (Emphasis added).

Given that Section 8(d) and Section 8(e) do not apply to American CryptoFed's Form S-1 registration statement which has not yet become effective, the non-public 8 (e) Order issued by the Commission on November 9, 2021 is unlawful, and thereby all subpoena and testimony questions derived from the non-public 8 (e) Order are unlawful, including but not limited to,

"Section 8(e) examination", " the documents called for by our June 15, 2022 subpoena" and "the questions posed to Mr. Moeller in his July 7, 2022 testimony."

Given that American CryptoFed's Form S-1 registration statement has not yet become effective, in order to demonstrate you really are operating in good faith, Mr. Bruckmann, can you provide a legal explanation, **on or before October 31th, 2022**, as to why Section 8(d) and Section 8(e) of Securities Act could be applied to American CryptoFed's Form S-1 registration statement for the Commission to justify the issuance of the non-public 8 (e) Order and the subsequent subpoena for documents and testimony questions?

Given that American CryptoFed's Form S-1 has already included a delaying amendment in order to intentionally accommodate the comments and inputs from the Division of Corporation Finance, there is no risk that the Form S-1 registration statement could become effective without the permission of the Division of Corporation Finance. Therefore, the non-public 8(e) Order that was issued solely "to determine whether a stop order should be issued under Section 8(d) of the Securities Act" was not necessary and cannot be justified. To the extent that the sole purpose of the 8(e) Order is to issue a Stop Order, not to provide American CryptoFed with Fair Notice for compliance, for which American CryptoFed has repeatedly requested, specially under the condition that Form S-1 has already included a delaying amendment, the non-public 8(e) Order willfully violated Supreme Court opinions in *F.C.C. v. Fox Television Stations, Inc*. cited above. In the September 2, 2022 Letter, October 13, 2022 Letter and October 23, 2022 Letter, all addressed to your attention, we repeatedly asked you the following question (first to Mr. Michael Baker on August 7, 2022 and later to you), in our communications. Yet to date, neither you nor Mr. Baker have responded to this specific question:

As Mr. Baker has not been able to respond, Mr. Bruckmann, can you respond to my August 7, 2022 Letter on or before September 12th, 2022 and clearly explain why the 8 (e) Order does not violate Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*, given that you still use the 8 (e) Order to justify your argument above, including the unlawful subpoena pursuant to the 8 (e) Order?

If you refuse to answer these two questions above, it is reasonable to conclude that you are unable to oppose American CryptoFed's position that i) in order to justify the issuance of the non-public 8 (e) Order and the subsequent subpoena for documents and testimony questions, you willfully and knowingly misinterpreted and abused Section 8(d) and Section 8(e) of Securities

Act, and ii) the 8 (e) Order violates the Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*. 567 U.S. 239, 253 (2012): **"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"**.

III.
Whether the Ducat and Locke Tokens Are Securities Will Be Moot.

In your October 25, 2022 Email, you did not oppose American CryptoFed' position that once American CryptoFed's Form S-1 becomes effective after the removal of the delaying amendment, the issue as to whether the Ducat and Locke tokens are securities will be moot.

IV.
The Mandate of Section (b) of the Securities Act

We would like to change the original title of this section referenced in our October 23, 2022 Letter from "The Mandate of Section 8(d) of the Securities Act" to "The Mandate of Section (b) of the Securities Act". The plain text of Section 8(b) below gives the SEC the authority to issue **a refusal order** before a registration statement becomes effective, while the plain text of Section 8(d) cited above gives the SEC the authority to issue **a stop order** suspending the effectiveness of the registration statement.

(b)Incomplete or inaccurate registration statement

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, **issue an order prior to the effective date of registration refusing** to permit such statement to become effective until it has been amended in accordance with such order. **When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.** (Emphasis added).

However, both Section 8(b) and Section 8(d) have similar mandates for the SEC's issuance of an order. In our October 23, 2022 Letter, we already discussed the Mandate of

Section 8(d) of the Securities Act, although Section 8(d) should not apply to American CryptoFed's Form S-1 registration statement which has not yet become effective. In this letter, we focus on the Mandate of Section 8(b) of the Securities Act, in the instance that the Division of Corporation Finance and the Division of Enforcement may seek to apply Section 8(b) to American CryptoFed's Form S-1 registration statement.

In your October 25, 2022 Email, you stated the following:

> American CryptoFed's claim that it does not have assets or liabilities is not the only issue in the Section 8(e) examination. Nor is that claim the only apparent flaw in American CryptoFed's Form S-1.

We understand your allegation "American CryptoFed's claim that it does not have assets or liabilities is not the only issue in the Section 8(e) examination." Mr. Bruckmann, no matter how many issues you have with American CryptoFed in the Section 8(e) examination, given that the 8 (e) Order and the subsequent Section 8(e) examination should not apply to American CryptoFed's Form S-1 registration statement as it has not yet become effective, all these issues of the Section 8(e) examination you may have are unlawful. Furthermore, given that you continue to refuse to provide American CryptoFed with the question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP), we have no choice but to conclude that your true purpose of this so-called examination of **American CryptoFed's Assertion of No Assets and No Liabilities** is no more than an excuse to unlawfully delay or stop or obstruct American CryptoFed's legitimate disclosure.

We also understand your allegation cited above "Nor is that claim the only apparent flaw in American CryptoFed's Form S-1." However, we never claimed that **American CryptoFed's Assertion of No Assets and No Liabilities** is the only issue we have addressed. Regarding the "apparent flaw in American CryptoFed's Form S-1", the facts below can prove that American CryptoFed has already addressed all the issues point-by-point which were raised by the Division of Corporation Finance.

On October 8, 2021, Ms. Erin Purnell, Acting Legal Branch Chief, Division of Corporation Finance, sent American CryptoFed two letters regarding American CryptoFed's Form S-1 filing and Form 10 filing respectively and raised the issues of alleged untrue "serious

deficiencies" in these registration statements ("October 8, 2021 Letters"). On October 12, 2021, American CryptoFed responded to Ms. Erin Purnell's two October 8, 2021 letters point-by-point (American CryptoFed's letter was addressed to SEC Chairman Gensler, all Commissioners and Ms. Erin Purnell, "October 12, 2021 Letter"), deriving the following conclusion, to which Ms. Purnell never responded. Because the substance of the American CryptoFed Form S-1 filing and Form 10 filing were identical, American CryptoFed's response focused primarily on the Form 10 filing. However, the conclusion derived below should apply equally to the Form S-1 filing.

Ms. Purnell failed to identify and specify one single item of important information, which does exist, but we did not disclose. Ms. Purnell concluded our Form 10 filing has "deficiencies" by asking us to provide information which does not exist. We believe that Ms. Purnell emphasizes form rather than substance.

On October 29, October 30 and November 3, 2021, three consecutive letters, were addressed and sent to Ms. Deborah Tarasevich, Assistant Director of the Division of Enforcement's Cyber Unit (all cc'd to individuals within the Division of Enforcement and Ms. Purnell). In each of these letters, American CryptoFed requested a written response to our October 12, 2021 Letter. Ms. Tarasevich never responded to our requests. Furthermore, in our August 4, 2022 letter to Mr. Justin Dobbie, as Acting Office Chief of the Division of Corporation Finance, we also requested him to respond to this October 12, 2021 Letter. Mr. Dobbie also failed to respond. Given that Ms. Erin Purnell's two October 8, 2021 Letters are the sole comments received from the Division of Corporation Finance for "apparent flaw in American CryptoFed's Form S-1", given that American CryptoFed's October 12, 2021 Letter already addressed point-by-point all the issues explicitly raised by Ms. Erin Purnell's October 8, 2021 Letters, given that both the Division of Corporation Finance and the Division of Enforcement have still chosen not to rebut or respond to American CryptoFed's October 12, 2021 Letter, despite tireless and repeated requests for response from both Divisions by American CryptoFed over the past 12 months, it is reasonable for American CryptoFed to conclude that the Division of Corporation Finance and the Division of Enforcement no longer have additional comments for the "apparent flaw in American CryptoFed's Form S-1", and thereby both Divisions no longer need the Form S-1 delaying amendment in order to provide further comments for such "apparent flaw".

The purpose of the Form S-1's delaying amendment is for American CryptoFed to intentionally accommodate the comments and inputs from the Division of Corporation Finance so that the Commission does not need to issue a Refusal Order pursuant to Section 8(b). These comments and inputs received should comply with the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc* below:

> 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. *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (emphasis added).

Given that the plain text of Section 8(b) of the Securities Act cited above also states "**When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later",** this Section 8(b) of the Securities Act actually mandates the Commission to include in the Refusal Order the "precision and guidance" required by the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012). Such precision and guidance is necessary in order for American CryptoFed to be able to amend the Form S-1 registration statement so that any Refusal Order can be timely lifted.

Given that both the Division of Corporation Finance and the Division of Enforcement have never provided American CryptoFed with the necessary "precision and guidance" for which American CryptoFed has repeatedly requested, as evidenced by letters sent to Mr. Justin Dobbie's attention as Acting Office Chief of the Division of Corporation Finance on July 22, 2022 (two letters), July 31, 2022, August 4, 2022, August 17, 2022, August 28, 2022 and October 16, 2022, all cc'd to individuals within the Division of Enforcement; given that Ms. Erin Purnell's two October 8, 2021 Letters are the sole comments provided to American CryptoFed for the "apparent flaw in American CryptoFed's Form S-1" , given that American CryptoFed's October 12, 2021 Letter sent in response to Ms. Purnell had already addressed point-by-point all the issues raised by Ms. Erin Purnell's October 8, 2021 Letters within four business days; given

that both the Division of Corporation Finance and the Division of Enforcement have consistently chosen not to rebut or respond to American CryptoFed's October 12, 2021 Letter, despite tireless and repeated requests for response from both Divisions by American CryptoFed over the past 12 months; and given that both Divisions no longer have additional comments for our Form S-1 and thereby no longer need the Form S-1 delaying amendment to deliver further comments related to any "apparent flaw in American CryptoFed's Form S-1"; Mr. Bruckmann, if the Division of Corporation Finance and the Division of Enforcement intend to move to request that the Commission institute a Refusal Order proceeding under Section 8(b) of the Securities Act, both the Divisions and the Commission will thereby knowingly and willfully not only violate the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) cited above, but also knowingly and willfully abuse Section 8(b) of the Securities Act also cited above by acting unlawfully in order to delay or stop or obstruct American CryptoFed's legitimate disclosure.

To demonstrate that the Division of Corporation Finance and the Division of Enforcement are operating in good faith, **on or before October 31th, 2022**, i) please respond to American CryptoFed's October 12, 2021 Letter, sent to Chairman Gensler, all Commissioners and Ms. Purnell of the Division of Corporation Finance, in which American CryptoFed already addressed, point-by-point, any "apparent flaw in American CryptoFed's Form S-1", and ii) please provide American CryptoFed with the necessary "precision and guidance" as mandated by **both** the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) cited above **and** the Section 8(b) of the Securities Act stating "**When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later**." If you refuse to respond to these two requests, it is reasonable for American CryptoFed to conclude that your intent is to continue to use Section 8(b)/8(d) of the Securities Act as an excuse to unlawfully delay or stop or obstruct American CryptoFed's legitimate disclosure, and thereby that the Commission, the Division of Corporation Finance and the Division of Enforcement should not have any legal and factual basis to issue any order to stop the process of rendering American CryptoFed's Form S-1 Registration Statement automatically effective in 20 days by operation of Section 8(a) of the Securities Act, when the delaying amendment is removed.

V.
Chairman Gary Gensler's Policy Statement and Testimony in the US Congress

In your October 25, 2022 Email, you did not respond to the following questions and requests posted in our October 23, Letter, and thereby we have no choice but to conclude that the staff of the Division of Corporation Finance and/or the Division of Enforcement have not abided by Chairman Gensler's instructions to the staff, which he testified in the US Senate under oath on September 15, 2022, as well as his public policy announcement in his Yahoo Finance interview on July 14, 2022.

Mr. Bruckmann, are you aware of a single case in which the staff of the Division of Corporation Finance and/or the Division of Enforcement, has been "flexible in applying existing disclosure requirements" and as such, has already worked directly with American CryptoFed to get Ducat and Locke tokens registered? Please provide American CryptoFed with a simple Yes or No answer, on or before October 26th, 2022. If you are unable to provide a Yes answer, that will prove that the staff of Division of Corporation Finance and/or the Division of Enforcement does not abide by Chairman Gensler's instructions to staff which he testified before the US Senate under oath, and thereby you or other designated staff of Division of Corporation Finance and/or the Division of Enforcement are obligated to, on or before October 26th, 2022, provide American CryptoFed with a proposal as to how to abide by the Chairman Gensler's instructions.

Mr. Bruckmann, in order to get Ducat and Locke tokens registered, are you aware of a single case in which the staff of the Division of Corporation Finance and/or the Division of Enforcement, has ever been "tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token". Please provide American CryptoFed with a simple Yes or No answer, on or before October 26th, 2022. If you are unable to provide a Yes answer, that will prove that the staff of Division of Corporation Finance and/or the Division of Enforcement does not actually abide by Chairman Gensler's public policy statement on the SEC's actions which he announced through public media, and thereby you or other staff of Division of Corporation Finance and/or the Division of Enforcement are obligated to, on or before October 26th, 2022, provide American CryptoFed with a proposal as to how to abide by Chairman Gensler's public policy statement.

VI.
Conclusion

Mr. Bruckmann, the deadline of October 26, 2022 has passed. As of today, we can confirm the following regarding your point-by-point responses to these open requests and questions which were outlined in Section I, II, III, IV and V of our October 23, Letter.

i. Regarding **Section I: Examination on American CryptoFed's Assertion of No Assets and No Liabilities**, you refused to start the examination process of American CryptoFed's claim by failing to provide American CryptoFed with the question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP).

ii. Regarding **Section II: Unlawful 8 (e) Order**, you are required to provide American CryptoFed with legal explanations, **on or before October 31th, 2022**, i) as to why Section 8(d) and Section 8(e) of Securities Act could be applied to American CryptoFed's Form S-1 registration statement which has not yet become effective, for the Commission to be able to justify the issuance of the non-public 8 (e) Order and the subsequent subpoena for documents and testimony, and ii) as to why the 8 (e) Order does not violate the Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*. 567 U.S. 239, 253 (2012): **"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"**.

iii. Regarding **Section: III Whether the Ducat and Locke Tokens Are Securities Will Be Moot,** you did not oppose American CryptoFed' position that once American CryptoFed's Form S-1 becomes effective after the removal of the delaying amendment, the issue as to whether the Ducat and Locke tokens are securities will be moot.

iv. Regarding **Section IV: The Mandate of Section (b) of the Securities Act,** on or before October 31th, 2022, i) please respond to American CryptoFed's October 12, 2021 Letter, sent to Chairman Gensler, all Commissioners and Ms. Purnell of the Division of Corporation Finance, in which American CryptoFed had already addressed point-by-point, any "apparent flaw in American CryptoFed's Form S-1", and ii) please provide American CryptoFed with the necessary "precision and guidance" as mandated by **both** the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012) cited above **and** the Section 8(b) of the Securities Act stating "**When such statement has been amended in**

accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later."

v. Regarding **Section V: Chairman Gary Gensler's Policy Statement and Testimony in the US Congress,** we conclude that the staff of the Division of Corporation Finance and/or the Division of Enforcement has not abided by Chairman Gensler's instructions to the staff, to which the Chairman testified in the US Senate under oath on September 15, 2022, as well as his public policy announcement in his Yahoo Finance interview on July 14, 2022.

Out of Section I, II, III, IV and V, of our October 23, Letter we are now able to reach a conclusion on **Section I, III and V**. American CryptoFed is planning to file the "Amendment No.1 to Form S-1" to remove the delaying amendment, right after we receive your response to this letter regarding the remaining **Sections II and IV.** 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. We are close to that critical moment.

American CryptoFed is the first historic case to test whether Chairman Gensler's public statements in the Yahoo Finance interview and his testimony given under oath in the US Senate are true, or false and misleading. Our personal experiences as a registrant and documented evidence in this process shows that the actions of the staff of Division of Corporation Finance and/or the Division of Enforcement are in direct opposition to Chairman Gensler's public statements and sworn testimony. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", despite no further legal arguments and legitimate comments and questions from the staff of both Divisions, is unable to complete its Form S-1 registration statement, all the pending litigation actions that the SEC has brought against entities and individuals in crypto industry under the basis of "Unregistered Securities" could be proved unlawful, pursuant to "the **void for vagueness doctrine**" upheld by the Supreme Court in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) cited above. It will be evident to all that there is no practical path to complete these registrations with the

SEC, whatsoever. Given that the SEC has no necessary "precision and guidance" to complete registration statements, the SEC has no legal basis to bring any legal actions against any entity and against any individual with allegations of "Unregistered Securities", when the actual pathway to registration with the SEC did not ever and does not currently exist.

A different paragraph of the same Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) was cited below in the March 11, 2022 order in *SEC v. Ripple Labs*, issued by Judge Analisa Torres of the Southern District of New York, United States District Court, who allowed Ripple Labs' Fair Notice affirmative defense (emphasis added, p. 6-7)[1]. Judge Analisa Torres emphasized that "the **void for vagueness doctrine**" is really a Constitutional issue of "**the Due Process Clause of the Fifth Amendment".**

"**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**." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). This clarity requirement is "essential to the protections provided by **the Due Process Clause of the Fifth Amendment**," **and requires the invalidation of laws that are "impermissibly vague."** *Id.* Laws fail to comport with due process when they "fail[] to provide **a person of ordinary intelligence** fair notice of what is prohibited," or **when they are so standardless that they authorize or encourage "seriously discriminatory enforcement."** *Id.* (citation omitted).

We are in a historical moment to test whether the staff of Division of Corporation Finance and/or the Division of Enforcement willfully and knowingly violate **"the Due Process Clause of the Fifth Amendment"** by twisting facts, misinterpreting and abusing the statutes of the Securities Act, and declining to abide by Chairman Gensler's instructions and public policy statements. Therefore, this letter and your response to it, together with our October 23, 2022 Letter, may be attached as a supporting document to our "Amendment No.1 to Form S-1" as needed.

Mr. Bruckmann, I look forward to your response.

[1] https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf

Sincerely,

/s/ Scott Moeller	/s/ Xiaomeng Zhou
DocuSigned by: Scott Moeller A82E97EDD0C44FD...	DocuSigned by: Xiaomeng Zhou 6F7F189BD770455...
Name: Scott Moeller Title: Organizer/President	Name: Xiaomeng Zhou Title: Organizer/COO

---------- Forwarded message ---------
From: Bruckmann, Christopher <bruckmannc@sec.gov>
Date: Tue, Oct 25, 2022 at 9:50 AM
Subject: RE: American CryptoFed DAO LLC's Fair Notice Affirmative Defense Form 10 File No.: 000-56339 and Form S-1 File No.: 333-259603
To: Scott Moeller <scott.moeller@americancryptofed.org>
Cc: Carney, Christopher <CarneyC@sec.gov>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>, Lucas, John <LucasJ@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Dobbie, Justin <DobbieJ@sec.gov>

Mr. Moeller,

You have asked for a question and document list related to American CryptoFed's claim that it does not have assets or liabilities. American CryptoFed's claim that it does not have assets or liabilities is not the only issue in the Section 8(e) examination. Nor is that claim the only apparent flaw in American CryptoFed's Form S-1. Additionally, it is not for American CrpytoFed to dictate to the staff how to conduct the Section 8(e) examination. That said, to the extent you desire a "Question and Document List," the questions are the questions posed to Mr. Moeller in his July 7, 2022 testimony which he either declined to answer or answered in a non-responsive manner, and the documents are the documents called for by our June 15, 2022 subpoena.

Regards,
Chris Bruckmann

EXHIBIT 4

American CryptoFed

November 1, 2022
Via Electronic Email

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

CC:
Christopher Carney, Division of Enforcement, CarneyC@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: American CryptoFed DAO LLC's Fair Notice Affirmative Defense
Form S-1 File No.: 333-259603

Dear Mr. Bruckmann

Thank you for your email dated October 31, 2022 ("October 31, 2022 Email"), attached at the bottom of this letter underneath our signatures, for ease of reference. Your October 31, 2022 Email did not directly respond to any specific request made or answer any question that was outlined in our letter dated October 27, 2022 ("October 27, 2022 Letter"). Let us review your October 31, 2022 Email against our October 27, 2022 Letter point-by-point which demonstrates you still lack operating in good faith.

I.
Examination on American CryptoFed's Assertion of No Assets and No Liabilities

In your October 31, 2022 Email, regarding American CryptoFed's Assertion of No Assets and No Liabilities, you stated the following (Emphasis added):

As we have repeatedly noted, **many of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities**. Your continued refusal to

provide responsive answers to our questions and American CryptoFed's continued refusal to provide any documents in response to the subpoena demonstrates that American CryptoFed is not interested in providing the staff with the very information you claim to want to provide.

However, in your October 31, 2022 Email you failed to specify which questions "**go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**. To show that you are operating in good faith, Mr. Bruckmann, out of the total 39 subpoena questions (15 subpoena questions dated June 15, 2022 and 24 subpoena questions dated August 4, 2022), **on or before November 3rd, 2022,** can you select the top three "**of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**?

American CryptoFed should have answered completely and clearly, either through American CryptoFed's Form 10/S-1 filings or by our responses to your subpoenas, these questions which "**go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities".** However, given that your October 31, 2022 Email is the first time you specified **"many of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**, to avoid any misunderstandings and to further demonstrate American CryptoFed's good faith, before removing the Form S-1 delaying amendment, American CryptoFed would like to provide you with an additional opportunity to specify and present what exactly the top three questions are which "**go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities**".

II.
Unlawful 8 (e) Order
&
IV.
The Mandate of Section (b) of the Securities Act

We would like to combine Section **II. Unlawful 8 (e) Order** and Section **IV. The Mandate of Section (b) of the Securities Act** outlined in the October 27 Letter together, in this letter in order to effectively confirm your legal position regarding the operational relationship

evident among Section 8(a), (b), (d) and (e) of Securities Act. In your October 31, 2022 Email, you stated the following:

> The Commission staff does not agree that Securities Act Sections 8(d) and 8(e) do not apply to American CryptoFed's Form S-1 registration statement or that the Commission's Section 8(e) order of examination and the subpoenas issued thereunder are unlawful. Further, the staff need not follow American CryptoFed's instructions as to how the staff should conduct the Section 8(e) examination……
>
> Your insistence that such requests be issued under a Section 8(b) order, rather than Section 8(e) is without legal support, and is not a basis for failing to cooperate with the Section 8(e) examination.

Our understanding of your legal position is that, you claim it is lawful for the Division of Corporation Finance and Division of Enforcement to skip the process mandated by Section 8(a) & 8(b), and directly jump to the examination proceedings of Section 8(d) & 8(e), even under these conditions:

i) that American CryptoFed's Form S-1 registration statement already includes a Delaying Amendment to intentionally incorporate the comments from the staff of Division of Corporation Finance;

ii) that American CryptoFed's Form S-1 registration statement has not yet become effective;

iii) that the plain text of the Section 8(a) of the Securities Act makes it crystal clear that "the effective date of a registration statement **shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine**…";

iv) that the plain text of the Section 8(b) of the Securities Act makes it crystal clear that "…the Commission may … **issue an order prior to the effective date of registration refusing** to permit such statement to become effective….";

v) that the plain text of the Section 8(d) of the Securities Act makes it crystal clear that "…the Commission may... **issue a stop order suspending the effectiveness of the registration statement**";

vi) that the plain text of the Section 8(e) of the Securities Act makes it crystal clear that "The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue **under subsection (d).**"

Is our understanding of your legal position correct?

Please provide us with a simple Yes or No answer, **on or before November 3rd, 2022.** You are welcome to support your position with relevant case law and additional explanations.

To avoid any misunderstanding and further demonstrate American CryptoFed is operating in good faith, before removing the Form S-1 Delaying Amendment, American CryptoFed would like to provide you with an additional opportunity to confirm whether our understanding of your legal position is correct.

As early as 1935, the U.S. Court of Appeals for the Second Circuit provided a clear interpretation (quoted below) as to when subsections (b), (d) and (e) of Section 8 should apply.

> The orders of the commission referred to are to be found in sections 8(b), 8(d) and 8(e), 15 USCA § 77h, subds. (b, d, e), all preceding section 9, which provides for a review of the orders. **Section 8(b) authorized an order refusing to permit a registration statement to become effective** until it has been amended as required in the order. **Sections 8(d) and 8(e) provide for the entry of a stop order suspending the effectiveness of the registration statement** at any time. *Jones v. Securities and Exchange Commission,* 79 F.2d 617 (2d Cir. 1935). (Emphasis added).

The interpretation above supports American CryptoFed's legal position, not yours. Your legal position has completely and unlawfully transformed the SEC from a Disclosure Agency to an Investigative Agency. Instead of facilitating American CryptoFed to complete its Form S-1 registration statements, by providing the necessary "precision and guidance" as mandated by **both** the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) stating *"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"*, **and** Section 8(b) of the Securities Act stating *"When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later",* instead, you have enforced a

secret investigation on alleged future violations with the non-public Section 8(e) Order, issued less than two months after American CryptoFed in good faith filed its Form S-1 registration statement for compliance and disclosure purposes. This secret investigative order was not revealed to American CryptoFed for close to seven months. For about a year, you have been investigating future violations by American CryptoFed which have not yet happened and will never happen.

VI.
Conclusion

Mr. Bruckmann, the deadline of October 31, 2022 has now passed. As of today, we can confirm the following regarding your point-by-point responses to the specific requests and questions which were outlined in Section I, II, III, IV and V of our October 23, Letter.

i. Regarding **Section I: Examination on American CryptoFed's Assertion of No Assets and No Liabilities**, as a show of good faith, we ask you to **on or before November 3rd, 2022,** select the top three "**of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"** as suggested by your October 31, 2022 Email.

ii. Regarding **Section II: Unlawful 8 (e) Order** and **Section IV: The Mandate of Section (b) of the Securities Act,** please confirm, **on or before November 3rd, 2022,** whether your legal position is as American CryptoFed posits**,** which, if so, has completely and unlawfully transformed the SEC's mission as a Disclosure Agency to an Investigative Agency acting "in an arbitrary or discriminatory way" which the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) mandates to eliminate.

iii. Regarding **Section: III Whether the Ducat and Locke Tokens Are Securities Will Be Moot,** you did not oppose American CryptoFed's position that once American CryptoFed's Form S-1 becomes effective after the removal of the Delaying Amendment, the issue as to whether the Ducat and Locke tokens are securities will be moot.

iv. Regarding **Section V: Chairman Gary Gensler's Policy Statement and Testimony in the US Congress,** you did not oppose American CryptoFed's conclusion that the staff of the Division of Corporation Finance and/or the Division of Enforcement has not abided by Chairman Gensler's instructions to the staff, to which the Chairman testified in the US Senate under oath on September 15, 2022, as well as documented in his public policy announcement in his Yahoo Finance interview on July 14, 2022. (**"Thus, I've asked the SEC staff to work directly with entrepreneurs to get their tokens registered and regulated, where appropriate, as securities. Given the nature of crypto investments, I recognize that it may be appropriate to be flexible in applying existing disclosure requirements"[1], "even tailoring what the disclosures might be."[2]).**

As of today, out of Sections I, II, III, IV and V, specified originally in our October 23, Letter we now can reach conclusions for **Sections III and V**. American CryptoFed is planning to file the "Amendment No.1 to Form S-1" to remove the Delaying Amendment, after we receive your responses (or non-responses) to this letter regarding the remaining **Sections I, II and IV** first specified in the October 23, Letter**.**

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 (or refuse to provide legal arguments), to further justify the need of the Delaying Amendment, will we remove the Delaying Amendment. We are close to that critical moment. American CryptoFed follows the Division of Corporation Finance's Filing Review Process[3] instruction below to complete the filing review.

Closing a Filing Review

When a company has resolved all Division comments on a Securities Act registration statement, the company may request that the Commission declare the registration statement effective so that it can proceed with the transaction. When taking that action, the Division, through authority delegated from the Commission, gives public notice on the SEC's EDGAR

[1] https://www.sec.gov/news/testimony/gensler-testimony-housing-urban-affairs-091522
[2] https://finance.yahoo.com/video/sec-chair-investors-know-someone-153326153.html
[3] https://www.sec.gov/divisions/corpfin/cffilingreview

system that the registration statement is effective. When a company has resolved all Division comments on an Exchange Act registration statement, a periodic or current report, or a preliminary proxy statement, the Division provides the company with a letter to confirm that its review of the filing is complete.

To increase the transparency of the review process, the Division makes its comment letters and company responses to those comment letters public on the SEC's EDGAR system no sooner than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective.

The Division of Corporation Finance's Filing Review Process published in the SEC website does not assign any legitimate roles to the Division of Enforcement. From the Securities Act's perspective, the Filing Review Process should be completely governed by Section 8(a) and 8(b), not by Section 8(d) and 8(e). However, under the watch and encouragement of Mr. Justin Dobbie, Acting Office Chief of the Office of Finance, Division of Corporation Finance, the Division of Enforcement has been able to unlawfully hijack the entire Filing Review Process and has completely destroyed the integrity of the Division of Corporation Finance's Filing Review Process. It is hopeless to expect Mr. Dobbie to abide now by the well established Filing Review Process in order to "declare the registration statement effective." Thanks to the spirit of disclosure of the Securities Act and the original intent of the US Congress as shown in the law, American CryptoFed can remove the Delaying Amendment itself, rendering the Form S-1 registration statement automatically effective in 20 days by operation of Section 8(a) of the Securities Act.

American CryptoFed is the first historic case to test whether Chairman Gensler's public statements in the Yahoo Finance interview and his testimony given under oath in the US Senate are true, or false and misleading. Our personal experiences as a registrant and the documented evidence in this process show that the actions of the staff of Division of Corporation Finance and/or the Division of Enforcement are in direct opposition to Chairman Gensler's public statements and sworn testimony. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", despite a lack of further legal arguments and legitimate comments and questions from the staff of both Divisions, is unable to complete its Form S-1 registration statement, all the pending litigation actions that the SEC has brought against entities and individuals in crypto industry under the basis of "Unregistered Securities" could be proved unlawful, pursuant to "the **void for vagueness doctrine**" upheld by the Supreme Court in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) cited below.

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. *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (emphasis added).

It will be evident to all that there is no practical path to complete these registrations with the SEC, whatsoever. Given that the SEC has no necessary "precision and guidance" to complete registration statements, the SEC has no legal basis to bring any legal actions against any entity and against any individual with allegations of "Unregistered Securities", when the actual pathway to registration with the SEC did not ever and does not currently exist.

A different paragraph of the same Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) was cited below in the March 11, 2022 order in *SEC v. Ripple Labs,* issued by Judge Analisa Torres of the Southern District of New York, United States District Court, who allowed Ripple Labs' Fair Notice affirmative defense (emphasis added, p. 6-7)[4]. Judge Analisa Torres emphasized that "the **void for vagueness doctrine**" is really a Constitutional issue of "**the Due Process Clause of the Fifth Amendment".**

"**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**." *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012). This clarity requirement is "essential to the protections provided by **the Due Process Clause of the Fifth Amendment**," **and requires the invalidation of laws that are "impermissibly vague."** *Id*. Laws fail to comport with due process when they "fail[] to provide **a person of ordinary intelligence** fair notice of what is prohibited," or **when they are so standardless that they authorize or encourage "seriously discriminatory enforcement."** *Id*. (citation omitted).

We are in a historic moment to test whether the staff of Division of Corporation Finance and/or the Division of Enforcement willfully and knowingly chose to violate **"the Due Process Clause of the Fifth Amendment"** by twisting facts, misinterpreting and abusing the statutes of the Securities Act, and declining to abide by Chairman Gensler's instructions and public policy

[4] https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf

statements. Therefore, this letter and your response to it, together with our October 23, 2022 Letter, October 27, 2022 Letter, may be attached as a supporting document to our "Amendment No.1 to Form S-1" to remove the Delaying Amendment, as needed.

Mr. Bruckmann, I look forward to your response.

Sincerely,

/s/ Scott Moeller DocuSigned by: Scott Moeller A82E97EDD0C44FD... Name: Scott Moeller Title: Organizer/President	/s/ Xiaomeng Zhou DocuSigned by: Xiaomeng Zhou 6F7F189BD770455... Name: Xiaomeng Zhou Title: Organizer/COO

---------- Forwarded message ---------
From: **Bruckmann, Christopher** <bruckmannc@sec.gov>
Date: Mon, Oct 31, 2022 at 5:46 AM
Subject: RE: American CryptoFed DAO LLC's Fair Notice Affirmative Defense Form 10 File No.: 000-56339 and Form S-1 File No.: 333-259603
To: Scott Moeller <scott.moeller@americancryptofed.org>
Cc: Carney, Christopher <CarneyC@sec.gov>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>, Lucas, John <LucasJ@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Dobbie, Justin <DobbieJ@sec.gov>

Mr. Moeller,

The Commission staff does not agree that Securities Act Sections 8(d) and 8(e) do not apply to American CryptoFed's Form S-1 registration statement or that the Commission's Section 8(e) order of examination and the subpoenas issued thereunder are unlawful. Further, the staff need not follow American CryptoFed's instructions as to how the staff should conduct the Section 8(e) examination. As we have repeatedly noted, many of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities. Your continued refusal to

provide responsive answers to our questions and American CryptoFed's continued refusal to provide any documents in response to the subpoena demonstrates that American CryptoFed is not interested in providing the staff with the very information you claim to want to provide. Your insistence that such requests be issued under a Section 8(b) order, rather than Section 8(e) is without legal support, and is not a basis for failing to cooperate with the Section 8(e) examination.

We disagree with the remaining factual and legal contentions in your letter. As we have repeatedly explained, we are not required to preview our legal theories to you upon demand, and decline to do so at this time.

Regards,

Chris Bruckmann

EXHIBIT 5

American CryptoFed

May 30, 2022
Via Electronic Email

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

Cc:
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov

Re: In the Matter of American CryptoFed, AP File No. 3-20650:
Cease and Desist Order Request

Dear Mr. Bruckmann,

While waiting for the Securities and Exchange Commission ("SEC", "Commission") to rule on the three pending motions below, American CryptoFed DAO LLC ("American CryptoFed") will proceed with implementing its business plan as described in the Form 10 and the Form S1 filed with the SEC on September 16 and 17, 2021 respectively. Starting from Q3 2022, we will distribute to contributors, in paper contracts, free of charge, Locke governance tokens which are restricted, untradeable and non-transferable. Starting from Q3, 2022 through December 31, 2022, we will conduct Locke token refundable auctions. The winning bidders are required to demonstrate the funds are available in their designated wallets without actually moving funds. They will receive NFT certificates which are not allowed to trade. The NFT certificates will lose eligibility to exchange for fungible Locke tokens, if they are transferred out of the original designated wallets. The holders of NFT certificates may exchange them for fungible and tradable Locke tokens on or after January 1, 2023, transferring the bidding tokens (proceeds) to a CryptoFed trustee or trustless account. The proceeds will be used in accordance with the following description in the Form 10 filing.

"Proceeds from these token sales are reserved in order to allow purchasers to request full refunds at the original purchase prices via smart contracts. Purchasers refund rights expire if: a) Locke's price surpasses five (5) times the original purchase price, or b) the original Locke tokens are sold, or c) Three (3) years pass from the original time of purchase, whichever comes first. After refund rights expire, the corresponding proceeds will be transferred to CryptoFed's USD-

pegged stablecoin reserve for Locke buyback. No proceeds can be used for other purposes" (Section 2.4.1.1.6. Page 22).

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. Even after the Locke refundable auction starts in Q3 2022, the Division will still have at least 3 months until December 31, 2022 to send American CryptoFed the Cease-and-Desist Order, before the Locke tokens are allowed to trade.

1. **Motion to Lift the Stay Order:**
   RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO LIFT THE ORDER THAT STAYS THE EFFECTIVENESS OF RESPONDENT'S FORM 10.

On November 10, 2021, the SEC issued an order instituting administrative proceedings ("OIP") against American CryptoFed pursuant to Section 12(j) of the Securities Exchange Act of 1934. The OIP's Section IV included an order stating, "IT IS FURTHER ORDERED that the institution of these proceedings stays the effectiveness of the Respondent's Form 10 filed on September 16, 2021" ("Stay Order").

The motion filed on December 15, 2021 requests the Commission to lift the Stay Order. The Stay Order is unlawful because it prohibits American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934, if the SEC perceives Locke token and Ducat token are securities. When and only when the SEC had made decision that Locke token and Ducat token are not securities and are outside the SEC's jurisdiction, could the Stay Order be lawful. Otherwise, The OIP and the Stay Order are equivalent to an order which exempts American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934.

2. **Exemption Motion:**
   RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION FOR EXEMPTION FROM SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934.

This "Exemption Motion" filed on January 4, 2022, requests the Commission to confirm the fact that the OIP and its Stay Order are equivalent to an order which exempts American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934. However, in the Division's Opposition, the Division made the following serious allegations.

"Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, the Division asserts that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 ("Securities Act"), and notes that willful violations of the Securities Act can result in criminal penalties. See Securities Act Section 24, 15 U.S.C. §77x." (p.2)

"Finally, the Motion appears to suggest that American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act by asserting that "Respondent has the rights [sic] to issue restricted, untradeable, and non- transferable tokens to more than 500 persons" as long as Respondent subsequently files a Form 10." (p.8).

Without the opportunity to see how the Division applies the Howey Test to Locke and Ducat, American CryptoFed had to apply a preliminary defense in its reply to Division's Opposition, explaining why an investment contract does not exist in the case of Locke and Ducat.

3. **Motion for Leave to File A Motion:**
   RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION FOR LEAVE TO FILE A MOTION.

Facing serious allegations without legal justifications from Division, American CryptoFed repeatedly asked the Division to provide American CryptoFed with a Howey Test analysis to prove that Locke token and Ducat token are securities. However, the Division refused to do so. On January 23, 2022, American CryptoFed had no choice but to file this "Motion for Leave to File A Motion". The purpose is to compel the Division to provide a Howey Test Analysis or other legal justifications to prove that Locke token and Ducat token are securities.

4. **Conclusion: Execution of American CryptoFed Business Plan**

Through the Form 10 filed on September 16, 2021 and the Form S1 filed on September 17, 2021 with the SEC, by motions, numerous emails and letters, American CryptoFed has done its best to comply with the securities related laws and regulations and will continue doing so. Upon the receipt of the Commission's order instituting administrative proceedings ("OIP") on November 10, 2021, American CryptoFed filed its answer timely on December 6, 2021. 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. The Locke token distribution to the contributors will be granted in paper contracts, free of charge. Locke token refundable auction will be conducted without moving funds. If the Division sends a Cease-and-Desist Order with a Howey Test analysis justification, all transactions can be reversed easily and timely without causing any damages to anyone. American CryptoFed is entitled to see the Division's Howey Test analysis so that we can make an effective defense and rebut the possible Cease-and-Desist Order, if any. The Fifth Amendment of the U.S. Constitution guarantees due process when someone is denied "life, liberty, or property."

Through the Form 10 filing, the Form S1 filing, answers, responses, replies, motions, letters, emails, conference calls, and other numerous communications with both the Division and the Commission, American CryptoFed consistently and repeatedly explained as to why Locke and Ducat are NOT securities. American CryptoFed had to apply a preliminary defense in its reply to the Division's Opposition to American CryptoFed's Exemption Motion, explaining why an investment contract does not exist in the case of Locke and Ducat. The quote below is from an article authored by two attorneys, Daniel L. McAvoy and Stephen A. Rutenberg of Polsinelli PC, which was published in the National Law Review, Volume XI, Number 327, Tuesday, November 23, 2021 and was entitled "DAOsing Rods and the Power of Enforcement Prediction".

https://www.natlawreview.com/article/daosing-rods-and-power-enforcement-prediction

The two authors' opinion echoes American CryptoFed's view in analyzing the SEC's action against American CryptoFed and can serve as a perfect conclusion to this request letter.

"On November 10, 2021 the US Securities and Exchange Commission (the SEC) announced that it had halted **the first ever attempt to register digital tokens issued by a decentralized autonomous organization (DAO) under the US federal securities laws**. American CryptoFed **– also the first DAO to take advantage of Wyoming's new "DAO Law"** that attempts to give DAOs legal status – filed Form 10 and subsequently filed a Form S-1 in an effort to register its digitals assets in the form of two coins designed to operate in tandem issued under the names Locke and Ducat.

In the SEC's announcement, they alleged that the registration statement filed by American CryptoFed contained a number of deficiencies, including purportedly misleading statements such as claims that the tokens were not intended to be securities and may be distributed on the form of registration statement used for registration of securities under an employee benefit plan. Perhaps just as importantly, the registration statement failed to provide substantive information about the issuer as is required to be disclosed in the form, such as information regarding its business, management, and financial condition. **One telling example of the deficient information concerns the issuer's ownership structure, which a pure DAO would be unable to produce by its very nature of being a DAO.**

A DAO is an organization encoded as a transparent computer program, controlled by the organization members and not by a central corporate entity, often through a governance token utilized on a blockchain….

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. If the DAO does not have a definable business and truly is decentralized, then there may not be a management structure for which information can be provided.** Further, depending on the circumstances, the financial condition of a DAO may be of limited relevance to holders of the tokens, particularly if there truly is a level of decentralization that would allow the project to move forward even if the 'entity' sponsoring the token were to collapse (or the financial statements of the issuer could be looking at the wrong thing if the treasury of the DAO is not housed in that entity). **Simply put, this action implies that it will be difficult if not impossible for a true DAO to register its tokens under the current regulatory framework, even if it sets itself up in a way to attempt robust compliance.**" (All emphases in bold are added.)

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO