

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934, Release No. 93551 / November 10, 2021
ADMINISTRATIVE PROCEEDINGS, File No. 3-20650

In the Matter of

American CryptoFed DAO LLC,

Respondent.

**RESPONDENT AMERICAN CRYPTO FED
DAO LLC'S OPPOSITION TO DIVISION OF
ENFORCEMENT'S MOTION FOR LEAVE
TO FILE A MOTION FOR SUMMARY
DISPOSITION**

On Jan. 5, 2024, the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission") filed the Motion for Leave to File a Motion for Summary Disposition ("Motion for Leave"), to which American CryptoFed DAO LLC ("American CryptoFed" or "Respondent") respectfully submits this opposition.

The Division's Motion for Leave not only violates the Commission's Jan. 6, 2022 order (Rel. No. 93922) stating at p.3, "the parties must meet and confer prior to filing any motion," but also violates the Sep.15, 2022 order (Rel. No. 95799) stating at p.5-6 and footnote 21, "In short, we believe briefing on summary disposition would most productively occur after the Commission resolves Respondent's pending motion to lift the OIP's stay of effectiveness of its Form 10 registration statement," "which the Commission intends to resolve as expeditiously as possible". Moreover, the Division's attempt to seek summary judgment in this Exchange Act § 12(j) proceeding violates the U.S. Supreme Court opinion in *Steadman v. SEC*, 450 U.S. 91 (1981) at 97 and its note [14] which states (emphasis added):

The securities laws provide for judicial review of Commission disciplinary proceedings in the federal courts of appeals and specify the scope of such review. Because they do not indicate which standard of proof governs Commission adjudications, however, we turn to § 5 of the **Administrative Procedure Act (APA)**, **5 U. S. C. § 554**, which "applies . . . in every case of adjudication required by statute to be determined **on the record after opportunity for an agency hearing**," except

in instances not relevant here. **Section 5 (b), 5 U. S. C. § 554 (c) (2)**, makes the provisions of § 7, 5 U. S. C. § 566, applicable to adjudicatory proceedings.

Section 5 (b), 5 U. S. C. § 554 (c) (2), provides that "[t]he agency shall give all interested parties opportunity for . . . **hearing** and decision on notice and in accordance with **sections 556** and 557 of this title."

Thus, for a hearing “**on the record**” explicitly required by a statute such as Exchange Act Section 12(j), the Supreme Court in *Steadman v. SEC*, provides a chain of statutes from **5 U. S. C. § 554 (a)** through **5 U. S. C. § 554 (c) (2)** to **5 U. S. C. § 556 (d)** which inevitably leads to **cross-examination** at an oral hearing, thereby prohibiting summary disposition:

A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts (5 U. S. C. § 556(d)).

Furthermore, whether or not American CryptoFed’s tokens are securities remains a major factual dispute to be resolved in an in-person evidentiary public hearing.

Accordingly, American CryptoFed respectfully requests that the Commission deny the Division’s Motion for Leave, so that i) “the Commission resolves Respondent’s pending motion to lift the OIP’s stay of effectiveness of its Form 10 registration statement” (Order Rel. No. 95799 / Sep.15, 2022, p.5-6) promptly and expeditiously, as mandated by the Commission’s Rule of Practice 250 (a), and ii) “a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened...” (Order Instituting Proceedings, Rel. No. 93551 / Nov. 10, 2021, p.5).

Dated: January 7, 2024

Respectfully submitted

/s/ Scott Moeller

/s/ Xiaomeng Zhou


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this, RESPONDENT AMERICAN CRYPTO FED DAO LLC'S OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR LEAVE TO FILE A MOTION FOR SUMMARY DISPOSITION, was filed by eFAP and was served on the following on this 7th day of January, 2024, in the manner indicated below:

By Email:

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By /s/ Scott Moeller



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