

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

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.

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

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 filed 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.

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

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.

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