UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20650

In the Matter of

American CryptoFed DAO LLC,

Respondent.

DIVISION OF ENFORCEMENT'S OMNIBUS MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTIONS FOR A MORE DEFINITE STATEMENT

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OS Received 12/10/2021

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PRELIMINARY STATEMENT

The Division of Enforcement ("Division") of the U.S. Securities and Exchange Commission ("Commission") respectfully submits this omnibus memorandum in opposition to American CryptoFed DAO LLC's ("Respondent" or "American CryptoFed") seven separate motions for more definite statements (the "Motions") regarding the allegations in the Order Instituting Proceedings ("OIP").[1]

The Motions are duplicative and difficult to understand. They cite no case law or Commission rulings. They provide no actual basis for why a more definite statement is required. The Commission should deny them all because the OIP provides a more than sufficient basis for American CryptoFed to prepare a defense. Indeed, the Motions are less a complaint that the OIP lacks specificity and more a complaint that American CryptoFed does not think that it should have to comply with existing law. But motions for a more definite statement are not an appropriate way for American CryptoFed to attempt to re-write the federal securities laws.

BACKGROUND

On September 16, 2021, American CryptoFed filed a Form 10 seeking to register two tokens (Ducat and Locke) as securities pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"). Between October 4 and October

[1] The Motions appear to make claims about how American CryptoFed will operate in the future. Those statements may be material to potential investors. Accordingly, the Division requests that the Office of the Secretary post these filings, and all other filings in this proceeding that are not under seal, on the Commission's website for this proceeding at https://www.sec.gov/litigation/apdocuments/ap-3-20650.xml. That way, if the Commission determines not to revoke or deny Respondent's Form 10, these statements are easily available to potential investors.

29, 2021 staff in the Division and the Division of Corporation Finance ("Corporation Finance") communicated to American CryptoFed that its Form 10 was deficient. Staff explained that the Form 10 failed to comply with the federal securities laws because it omitted numerous required items, such as audited financial statements, and further contained materially misleading statements. The staff detailed the deficiencies in writing.[2] And the staff urged American CryptoFed to consider withdrawing the Form 10 due these deficiencies.[3] American CryptoFed refused.

On November 10, 2021, the Commission issued the OIP in this matter, *In the Matter of American CryptoFed DAO LLC,* AP File No. 3-20650. In the OIP, the Commission stayed the automatic effectiveness of American CryptoFed's Form 10 pending the outcome of this proceeding.[4] Counsel for the Division emailed a copy of the OIP to American CryptoFed on November 10, 2021, but the OIP was not officially served by U.S. Mail until November 22, 2021. On Friday, November 12, 2021, American CryptoFed requested that the Division make the investigative file available pursuant to Rule 230. The Division produced the non-privileged portions of the investigative file on November 15, 2021, well before the time required.

Between November 18 and November 28, 2021, American CryptoFed sent numerous emails to Division staff asking them to clarify, expand upon, or explain various matters, including many of the matters referred to in the Motions. The Division, in keeping with the Commission's desire for "greater openness toward

[2] *See, e.g.,* Exhibit F to the Motions (Oct. 8 Letter from Corporation Finance to American CryptoFed).

[3] *See, e.g.,* Letter from Deborah Tarasevich to American CryptoFed dated October 28 (Exhibit 1).

[4] OIP, Section IV.

providing more information to respondents as they prepare their defense," provided detailed responses in letters dated November 22 and 29, 2021.[5] *See Raymond J. Lucia Co., Inc. et al*, AP Rulings Release No. 6735, 2020 SEC LEXIS 3364 at n.2 (Feb. 24 2020). Thus, the allegations in the OIP have been explained in detail to American CryptoFed (a) during the investigation, (b) in the OIP, and (c) in subsequent correspondence. Despite this, American CryptoFed filed the Motions.

ARGUMENT

I) American CryptoFed Has Not Met Its Burden to Show Any Basis for a More Definite Statement.

The Commission and its Administrative Law Judges have addressed motions for a more definite statement in multiple prior proceedings. The Commission grants these motions when an OIP fails to provide sufficient information to a respondent such that they can prepare their defense. Here, American CryptoFed cannot meet that standard. Indeed, many of the matters about which American CryptoFed complains in the Motions are simply not appropriately resolved by a motion for a more definite statement.

A) The Law Regarding Motions for a More Definite Statement.

1) American CryptoFed Has the Burden to Show That the OIP Did Not Provide It with Fair Notice or Sufficient Information.

As the Commission has noted, "motions for more definite statement are governed by Rule of Practice 220(d), which requires a movant to state the respects in which, and the reasons why, each matter of fact or law to be considered or

[5] The Division's November 22 and 29 letters are attached as Exhibits 2 and 3.

determined should be required to be made more definite." *David F. Bandimere, et al.*, AP Rulings Release No. 6500, 2019 SEC LEXIS 491 at *2 (Mar. 15, 2019) (quoting Rule 220(d)) (cleaned up). Put another way, a motion for a more definite statement is not an opportunity for a respondent to propound interrogatories upon the Division or the Commission. Rather, such motions are for situations where a lack of clarity or specificity in the OIP renders it defective or unfair.

Thus, in considering such a motion, the Commission also looks to Rule 200, which requires that an OIP set forth factual and legal bases "in such detail as will permit a specific response thereto." In denying a motion for a more definite statement in *Daniel Joseph Touzier*, the Commission explained that this means that the "OIP must inform the respondent of the charges in enough detail to allow the respondent to prepare a defense, but it need not disclose to the respondent the evidence upon which the Division intends to rely." *Daniel Joseph Touizer*, Exchange Act Release No. 86420, 2019 SEC LEXIS 1796 at *4 (July 19, 2019) (citing *Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005)); *see also Timbervest, LLC, et al.,* Investment Advisers Act of 1940 Release No. 4197, 2015 SEC LEXIS 3854 at *75 (Sept. 17, 2015) (finding that "the limited function of an OIP is to provide notice of *what* violations of the securities laws are alleged; it need not detail *how* the Division ultimately will try to prove them.") (emphasis in original).

2) The Commission Has Historically Only Required More Definite Statements When Important Information Is Missing.

Where the Commission has required the Division to provide additional information in response to a motion for more definite statement, it is often information such as the identities of persons referred to in the OIP or the time period applicable to certain allegations in the OIP. In contrast, the Commission has denied broad requests that the Division explain its plans to prosecute its case. *See Raymond J. Lucia Co., Inc. et al.*, AP Rulings Release No. 6735, 2020 SEC LEXIS 3364, Feb. 24 2020 at *4 (Where "the crux of its case is the alleged misrepresentations in the slideshow . . . the Division . . . should advise Respondents of the dates . . . the slideshow was used. The motion for a more definite statement is otherwise denied.") (footnotes omitted); *Bandimere*, 2019 SEC LEXIS 491 at *10-11 (requiring Division to identify certain investors and state when Respondent learned of red flags, but denying request to learn Division's legal theory); *Laurence I. Balter d/b/a Oracle Investment Research*, AP Rulings Release No. 4534, 2017 SEC LEXIS 185 at *2 (Jan. 19, 2017) (requiring the Division to provide a finalized list of trades and transactions at issue and denying remainder of the motion); *W. Pac. Capital Mgmt.*, AP Rulings Release No. 691, 2012 SEC LEXIS 434, *9 (Feb. 7, 2012) (requiring the Division to identify which clients failed to receive a disclosure and denying the remainder of the motion).

B) The OIP Contains Detailed and Specific Allegations.

1) The OIP Listed the Missing and Materially Misleading Information.

Here, the OIP recites the specific facts giving rise to this Section 12(j) proceeding. The crux of this case is that American CryptoFed did not include certain required information in the Form 10 and included other information that was materially misleading. The OIP recites exactly what types of information are missing and exactly what provisions of law require the information.[6] For example in paragraph 6, the OIP alleges that the Form 10 failed to contain "audited financial statements as required by Rule 3 or Rule 8 of Regulation S-X."[7] The OIP also sets forth the materially misleading statements and explains why they are misleading. American CryptoFed is obviously on notice regarding the allegations in the OIP—one of the Motions goes through a point-by-point analysis of those allegations.[8]

The Commission has denied motions for a more definite statement involving similarly specific OIPs. *See Touizer*, 2019 SEC LEXIS 1796 at *2 (denying motion for more definite statement where OIP "sets forth eight specific admissions"); *Miguel A. Ferrer*, AP Rulings Release No. 706, 2012 SEC LEXIS 1843 at *13 (June 13, 2012) (denying motion for more definite statement because "[t]he OIP is clear, unambiguous and detailed"); *Marc Sherman*, AP Ruling Release No. 2106, 2014

[6] *See* OIP at ¶6.

[7] *Id.*

[8] *See* Motion #4 at 2 to 7. (Motion #4 refers to Respondent American CryptoFed DAO LLC's Motion for More Definite Statement #4. Respondent's other motions are referred to similarly.)

SEC LEXIS 4694 at *3 (Dec. 5, 2014) (denying motion where OIP contained "a number of specific allegations relating to" the respondents).

The OIP includes specific allegations and does not have any of the categorical, ambiguous, or undefined assertions that have led to the Commission requiring a more definite statement in other proceedings. The Motions fail to cite any authority that supports the claim that more is required. Nor do they explain with any clarity what specific information is missing or that the Division should be compelled to provide.

2) By Providing Additional Voluntary Disclosures, the Division Has More Than Met Its Burden.

Over time, the Commission has expressed a preference for greater disclosure in administrative proceedings. *See Lucia*, 2020 SEC LEXIS 3364, at n.2 (clarifying that *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959) was no longer to be relied on for the proposition that mid-hearing continuances could be used if a respondent needed more time to prepare).

Accordingly, here, the Division both voluntarily disclosed its investigative file under Rule 230 earlier than required and provided detailed responses to inquiries from American CryptoFed in two lengthy letters dated November 22 and 29. The letters respond, point by point, to numerous questions from American CryptoFed with detailed information and citations to specific cases and relevant portions of the Form 10. Combined with the other disclosures described above, this has provided American CryptoFed with more than sufficient information to prepare its defense. *See OptionsXpress, Inc.*, AP Rulings Release No. 710, 2012 SEC LEXIS 2231 at *5-6

(July 11, 2012) (denying motion for a more definite statement in part due to Division's compliance with Rule 230 and additional disclosures).

Considering all the information the Division has already provided, even the preference for greater disclosure expressed in *Lucia* does not require the Division to provide additional information in response to American CryptoFed's seven separate motions. The OIP here was specific and detailed, and the matters about which American CryptoFed seeks more information have either already been answered or are simply not appropriate for a motion for a more definite statement.

C) None of the Motions Sets Forth an Appropriate Claim for a More Definite Statement.

Although the Motions are duplicative and confusing, the Division has undertaken its best effort to ascertain what each motion seeks and respond accordingly. Below, we address each motion in order.[9]

1) Response to Motion #1: The Division Seeks to Protect All Potential Investors in American CryptoFed.

Motion #1 appears to be a request for the identities of the investors the Commission is acting to protect. The motion refers to the introductory statement in the opening paragraph of the OIP that the Commission "deems it necessary and appropriate for the protection of investors" to institute this administrative proceeding.[10] A response to this spurious question is not needed for American CryptoFed to be able to answer the allegations in the OIP. And, although the

[9] To the extent that this Omnibus Opposition does not respond to each and every extraneous factual allegation in the Motions, it should not be misconstrued as admitting any of those statements.

[10] OIP, Section I.

Division cannot speak for the Commission, the Division's understanding of the OIP is that the Commission is seeking to protect any and all potential investors in the two tokens. That is certainly the Division's goal and is consistent with the Commission's approach in prior cases under Section 12(j). *See Gateway International Holdings, Inc.*, Exchange Act Release No. 53907, 2006 SEC LEXIS 1288 at *31 (May 31, 2006) ("In evaluating what is necessary or appropriate to protect investors, regard must be had not only for existing stockholders of the issuer, but also for potential investors.") (quotation omitted).

American CryptoFed claims that the Commission cannot be acting to protect investors by potentially denying them the opportunity to invest in Ducat or Locke tokens, because these tokens are allegedly risk-free, categorically claiming that "no one could possibly and logically be damaged, whatsoever."[11] The Division need not accept American CryptoFed's unverified assertion that all future proceeds from the sale and distribution of the tokens will be preserved and that no one can incur losses. It is the Division's unfortunate experience that when people solicit investors with promises that an investment is completely risk-free, that promise does not always hold true. Rather, the Division has ample experience bringing enforcement actions where the investments had been promoted as risk free. *See, e.g.,*, *Ralph Willard Savoie*, Exchange Act Release No. 83615, 2018 SEC LEXIS 1678 (July 10, 2018) (sanctioning respondent who solicited investments that he had described as a "sure thing" but which were actually a fraud); *Allen R. Asker*, Initial Decision No.

[11] Motion #1 at 2.

26, 1992 SEC LEXIS 529 (Feb. 14, 1992) (finding respondent committed fraud in investment he had described as "risk free"). Such risks are heightened where, as here, critical required information such as audited financial statements are not being provided to potential investors.

Accordingly, the Division should not have to provide any further information in response to Motion #1.

2) Response to Motion #2: the Allegations of the OIP Relate to American CryptoFed As It Presently Exists.

Motion #2 purports to seek additional information about American CryptoFed's own corporate history and structure, but actually is just an assertion that American CryptoFed cannot be the successor to American CryptoFed, Inc., because as a decentralized autonomous organization, it does not operate like a traditional company.

The allegation in the OIP that American CryptoFed DAO LLC "is the successor entity to American CryptoFed, Inc." concerns the Respondent as it presently exists. American CryptoFed may have the letters "DAO" in its name and a certificate recognizing it as a "decentralized autonomous organization limited liability company" from the State of Wyoming. But American CryptoFed is **not** presently operating as a decentralized autonomous organization. Rather, at present, American CryptoFed is completely under the control of mSHIFT Inc. and Marian Orr. American CryptoFed admits it is not presently decentralized, stating that (1) "CryptoFed **will be** decentralized to the extent that a CEO is no longer needed within three years," and (2) MShift's powers and rights over CryptoFed "**will**

completely and irreversibly **become delegated**" only after CryptoFed's S-1 registration statement is declared effective.[12] These are admissions that American CryptoFed is not presently operating as a decentralized autonomous organization.

Finally, to the extent that American CryptoFed is confused by the statement that American CryptoFed DAO LLC "is the successor entity to American CryptoFed, Inc.," the Division points out that American CryptoFed's own website makes the essentially similar claim that "American CryptoFed DAO was established by mSHIFT Inc. on July 1st, 2021, a natural evolution from American CryptoFed Inc."[13]

To the extent that American CryptoFed now denies the above statements, it could have done so in its Answer. Such denials cannot be the basis for relief now, as the "existence of a dispute of fact is not grounds for a more definite statement." *W. Pac. Capital*, 2012 SEC LEXIS 434 at *9. Thus, Motion #2 should be denied.

3) Response to Motion #3: Claiming That the Tokens Both Are and Are Not Securities Is Inherently Deceptive.

Motion #3 highlights American CryptoFed's materially misleading statements in the Form 10, claiming that the tokens both are and are not securities. The motion then appears to solicit legal advice from the Division regarding those misleading statements.

The statements in the Form 10 that the tokens both are and are not securities are inherently deceptive. Investors deserve an accurate—and consistent—

[12] Motion #2 at 3 (quoting American CryptoFed Constitution) (emphasis added).

[13] *See* Exhibit 4 (screenshot of American CryptoFed Website).

description from American CryptoFed regarding whether the tokens are or are not securities. Instead, in Motion #3, American CryptoFed doubles-down on its misstatements, claiming: "Respondent had no choice but to add the information to the Form 10 filing that the Ducat and Locke tokens are not securities, in order to provide comprehensive information . . .."[14] This is not true. American CryptoFed did have a choice. But American CryptoFed is trying to have its cake and eat it too.

In an effort to cloak itself in a veneer of legitimacy, American CryptoFed seeks to claim that its tokens have been registered with the Commission, while at the same time denying that its tokens are securities and disclosing only the information that it has unilaterally decided to provide. If the tokens are securities,[15] then any forms American CryptoFed files with the Commission as part of an effort to register and distribute the tokens must contain all information required by the Commission. And if the tokens are not securities, then American CryptoFed cannot and should not be permitted to use the Commission's forms to disclose information to the public or to validate a mass distribution of the tokens.

American CryptoFed claims that it seeks to register its tokens with the Commission in order to provide the maximum disclosure possible to the public for the sake of transparency. The Division is not stopping American CryptoFed from disclosing information to the public. But if American CryptoFed uses the Commission's forms and EDGAR filing system to make such disclosures, it must

[14] Motion #3 at 2.

[15] The Division is not conceding that the tokens are not securities.

acknowledge that its tokens are securities and comply with the Commission's rules and regulations regarding the information that must be disclosed in those forms.

After reiterating the materially misleading statements, Motion #3 then appears to solicit advice from the Division concerning what form American CryptoFed should use to register the tokens and how it should describe those tokens to investors. The Division cannot, and will not, provide legal advice to American CryptoFed. The Division has made its position clear that it is American CryptoFed's responsibility to provide a clear, accurate, and consistent description of whether the tokens are securities. Accordingly, the Division should not have to provide any further information in response to Motion #3.

4) Response to Motion #4: An Issuer Cannot Unilaterally Decide Not to Provide Information Based on an Unverified Claim That the Information Does Not Exist.

Motion #4 appears to be an assertion that the Division must choose which of two scenarios apply to American CryptoFed's Form 10: "The first scenario is that the statutes cited by the Division in Paragraphs 12, 13, 16 and 17 do not require information to be provided which does not exist and will never exist. The second scenario is that the statutes cited in Paragraphs 12, 13, 16 and 17 do require information which does not exist and will never exist."[16]

This is a false choice. The Division does not concede American CryptoFed's **unverified** claim that this information "does not exist and will never exist." One of the missing pieces of information—audited financials—by its very nature requires

[16] Motion #4 at 2.

verification by a third party. It is inappropriate for an issuer, without even engaging an auditor, to declare audited financials cannot exist or that other financial information about the company does not exist. This is especially the case because of the critical role that audited financials play for potential investors, something that the Commission has repeatedly recognized. *See, e.g., Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 SEC LEXIS 2024 at *21-22, *42 (June 29, 2012) (revoking registration under Section 12(j) in part because filings were materially deficient due to lack of audited financials and noting at that Respondent's "unwillingness or inability to retain an auditor is particularly troubling").

The Division's position is that the information required to be included in Form 10 must be included in Form 10. If American CryptoFed believes that some of that required information is inapplicable, American CryptoFed could have, under Section 12(c), petitioned the Commission for permission to provide alternative information instead. Then, the Commission, in its judgment, could have decided whether to permit alternative information, as the Commission has done on at least one occasion in the past. *See Application of the Nasdaq Stock Market, Inc. and the NASDAQ Stock Market LLC For Section 12(b) Registration On Behalf Of Certain Issuers*, Exchange Act Release No. 54240, 2006 SEC LEXIS 1742 at *10-13 (July 31, 2006) (considering multiple factors before deciding "in the judgment of the Commission" that the application was "a unique situation meriting the application of Section 12(c)" and granting registration).

Permission to use alternative information in place of the required information must come from the Commission. Not only has American CryptoFed not received this permission, it has not even sought this permission. Notably, in the November 29 letter, the Division responded to American CryptoFed's prior assertions regarding Section 12(c) as follows:

> To the extent you are proposing a path forward in this specific instance by requesting Commission authorization under Exchange Act Section 12(c) to accept alternative information in lieu of the requirements of Exchange Act Section12(b), please provide a detailed explanation regarding what alternative information American CryptoFed would provide in response to each of the categories of missing information specified in the OIP and why that information is "of comparable character" to the required information. We do not believe that Section 12(c) "mandates" the acceptance of alternative information, but will evaluate any specific proposed alternative information in good faith and determine whether to oppose or concur with your request.[17]

To date, American CryptoFed neither responded to the Division by detailing what alternative information it proposes to provide, nor petitioned the Commission under Section 12(c) for permission to provide alternative information.

Alternatively, before filing the Form 10, pursuant to Rule 192, American CryptoFed could have petitioned the Commission to adopt a new rule to set forth the type of information that American CryptoFed believes it should be required to disclose in order to register its tokens under the Exchange Act.[18]

But American CryptoFed did not attempt either of those approaches here, nor did it engage in further discussions with Corporation Finance staff. Rather, it

[17] Exhibit 3 at 3.

[18] The Division takes no position on the merits of any such hypothetical petition; we are merely pointing out a mechanism that exists in the Commission's Rules of Practice.

unilaterally decided what information it would provide and which requirements of Form 10 it would ignore. Because this is plainly impermissible, the Commission should deny Motion #4.

5) Response to Motion #5: The Division Has Already Explained That the OIP Alleges a Plan to Distribute to Both Persons and Entities.

Motion #5 appears to be a request that the Division clarify whether it is alleging that American CryptoFed will engage in a distribution to more than 500 persons or more than 500 entities. This request is based on a misunderstanding by American CryptoFed of the OIP, which the Division has already clarified in the November 29 letter, quoted at length below:

> We believe you misunderstand the Order Instituting Proceedings ("OIP"). The relevant portion of paragraph 8 of the OIP states that
>
> > American CryptoFed asserted that upon effectiveness of the Form 10, it will use Form S-8 . . . to distribute Locke tokens to more than 500 entities, such as municipalities, merchants, banks, and "crypto exchanges," and non-employee individual contributors.
>
> We believe this paragraph makes clear, as written, that the allegation is that American CryptoFed plans to use the Form S-8 to distribute Locke tokens to more than 500 entities ***and*** non-employee individual contributors. This point is made even more clear by the first sentence of paragraph 9 of the OIP, which begins with "*[t]he individuals and entities* to whom American CryptoFed planned to distribute Locke tokens are not employees of American CryptoFed, . . ." (emphasis added). The bases for these allegations include the statements in the Form 10 that
>
> > CryptoFed will grant restricted, untradeable and nontransferable Locke tokens to municipalities, merchants, banks, crypto exchanges and individual contributors to execute the Ducat Economic Zone plan attached as Exhibit 2. In anticipation of mass distribution which will quickly surpass the 500-person threshold

> under Exchange Act Section 12(g)3, CryptoFed elects to proactively file this Form 10 to subject itself to the periodic reporting requirements and then file Form S-8 upon the effectiveness of Form 10 in 60 days.
>
> We contend that the preceding quote outlines a plan to engage in a mass distribution to both entities and individual contributors, and that the allegation in paragraph 8 of the OIP correctly alleges that American CryptoFed intends to use the Form S-8 to engage in that distribution.[19]

Nothing more is required.

6) Response to Motion #6: A Motion for a More Definite Statement Cannot Be Used to Lift a Stay.

It is unclear what Motion #6 is seeking. American CryptoFed discusses the stay issued by the Commission, but complaints about a stay are not a proper basis for a motion for a more definite statement. *See OptionsXpress, Inc.*, AP Rulings Release No. 710, 2012 SEC LEXIS 2231 at *5-6 (denying motion for a more definite statement which "consists mainly of legal arguments which are not a proper basis for this type of motion."). To the extent that American CryptoFed wishes to challenge the stay issued by the Commission in Section IV of the OIP, American CryptoFed can file a motion that seeks this relief, "stat[ing] with particularity the grounds therefor, . . . and . . . accompanied by a written brief of the points and authorities relied upon." *See* Rule 154(a).

7) Motion #7 Is Duplicative.

Motion #7 is entirely duplicative of claims in Motions #1-6 and should be denied for the reasons set forth above.

[19] Exhibit 3 at 1-2 (emphasis in letter).

II) American CryptoFed's Seven Motions Are Really Just One Motion That Violates the Length Limit of Rule 154(c).

Rule 220(d) provides in part that "[a] respondent may file with an answer **a** motion for a more definite statement of specified matters of fact or law . . ." *Id.* (emphasis added). The Rule permits one motion, not seven. And in reality, American CryptoFed's seven motions are really just one motion for a more definite statement about the same OIP, filed at the same time, citing the same series of exhibits, but broken into seven parts. Combined, the Motions are more than 30 pages long, and even when excluding duplicative cover and signature pages are at least 20 pages long. The Motions contain no information as to their word count, individually or in total. By inappropriately breaking the single motion into seven separate motions, American CryptoFed has done an end-run around the length limit in Rule 154(c) and created needless confusion in the record. Accordingly, the Division could ask the Commission to strike the Motions in their entirety. For now, however, the Division asks that the Commission issue an order admonishing American CryptoFed not to utilize similar machinations in the future.

OS Received 12/10/2021

CONCLUSION

For the reasons set forth above, the Commission should deny all seven of Respondent's Motions for More Definite Statement.

Dated: December 10, 2021

Respectfully submitted,

/s/ Christopher Bruckmann

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OS Received 12/10/2021

CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Omnibus Memorandum in Opposition to Respondent's Motions for a More Definite Statement to be served on the following on December 10, 2021, in the manner indicated below:

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/s/ Christopher Bruckmann
Christopher Bruckmann

CERTIFICATE AS TO LENGTH

Although this Opposition is longer than 15 pages, it complies with SEC Rule of Practice 154 because, exclusive of table of contents, table of authorities, and the supporting exhibits, it contains 4,947 words, as indicated by the Microsoft Word.

/s/ Christopher Bruckmann
Christopher Bruckmann

Exhibit 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF ENFORCEMENT

Deborah A. Tarasevich
Assistant Director, Cyber Unit
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October 28, 2021

VIA E-MAIL
Ms. Marian Orr
Chief Executive Officer
American CryptoFed DAO LLC
1607 Capitol Avenue Suite 327
Cheyenne, WY 82001

Re: In the Matter of American CryptoFed, MHO-14399

Dear Ms. Orr:

We write to follow up on our call this morning. We are writing you directly because, as you have told us, American CryptoFed DAO LLC ("American CryptoFed" or "the Company") is not represented by counsel.

The staff in the SEC's Division of Enforcement, have opened a non-public inquiry relating to American CryptoFed's Form 10 and Form S-1 registration statements, and amendments, which were filed on September 16 and 17, 2021, respectively.

We understand that American CryptoFed wishes to avail itself of the SEC registration process to register two digital assets – the Ducat and Locke tokens. The Company's filings relating to the registration of these digital assets, however, as you know, were materially deficient. In addition, we have concerns that the Form 10 contains materially misleading statements or omissions. As you also know, the Company's Form 10 is scheduled to become effective on November 15, 2021, unless the Company withdraws it. We have read the Company's filings and subsequent correspondence purporting to respond to the identified deficiencies. Because the Company's Form 10 still contains material deficiencies, and due to the upcoming effective date, we would like the Company to confirm by Monday, November 1, 2021, whether it will be withdrawing the Form 10. If the Company elects to withdraw the Form 10, we request that the Company do so by no later than November 3, 2021. If the Company does not

withdraw the Form 10, we will seek authorization from the Commission to bring an enforcement action to prevent the deficient Form 10 from becoming effective.

As we discussed, enclosed is the Form 1662 which advises of the rights and responsibilities of persons who are requested to provide information voluntarily, and the principal and routine uses the information.

We look forward to hearing from you. If we do not receive a timely response to this letter, we will assume that you do not intend to withdraw your Form 10.

Please do not hesitate to contact me at (202) 551-4726 if you have any questions.

Sincerely,

Deborah A. Tarasevich
Assistant Director, Cyber Unit
Division of Enforcement

cc: Scott Moeller
Xiaomeng Zhou

Exhibit 2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

November 22, 2021

BY EMAIL

Marian Orr
CEO, American CryptoFed DAO
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Cheyenne, WY 82001
Marian.Orr@americancryptofed.org

Re: *In the Matter of American CryptoFed DAO LLC*
AP File No. 3-20650

Dear Ms. Orr:

I write to respond to several issues that you have raised in recent e-mails regarding the above-captioned administrative proceeding that has been instituted by the Securities and Exchange Commission ("SEC" or "Commission") against American CryptoFed DAO LLC ("American CryptoFed").

First, in this administrative proceeding, I only represent the SEC's Division of Enforcement (the "Division"), and not the Commission as a whole or the individual Commissioners. In SEC administrative proceedings such as this one, the Commission acts as the final decision-maker, and neither I, nor any other member of the Division can speak for, bind, or alter the orders of the Commission in this matter. Thus, American CryptoFed may make any request to change a Commission order by filing a motion with the Commission, as set forth in Rule 154 of the SEC's Rules of Practice. We appreciate the opportunity to discuss such issues with you before you file a motion, as there are times when we might agree not to oppose a motion by American CryptoFed (as was the case when American CryptoFed asked for additional time to file an Answer to the Order Instituting Proceedings and the Division agreed not to oppose that motion).

Second, we are seeking clarification regarding the Notices of Appearance that American CryptoFed filed on November 14, 2021 and sent to us by e-mail that same day. Rule 102(b) provides in part that "a bona fide

officer of a corporation, trust or association may represent the corporation, trust or association." We do not contest Ms. Orr's ability to represent American CryptoFed in the proceeding as its Chief Executive Officer. It is, however, unclear whether Scott Moeller and Xiaomeng Zhou, each of whom are simply listed as an "Organizer" of American CryptoFed, qualify as a bona fide officer of American CryptoFed. We request that you describe how each of them meet the definition of "officer" in 17 CFR § 240.3b-2, or are otherwise able to represent American CryptoFed in the proceeding.

Third, we are responding to your e-mail dated November 18, 2021 requesting that the Commission immediately withdraw the portion of the Order Instituting Proceedings that stayed the automatic effectiveness of American CryptoFed's Form 10 registration statement. As discussed above, the Division of Enforcement does not have the authority to withdraw an order of the Commission in this proceeding, or any portion of it. If American CryptoFed wishes to seek relief from the stay, it may file a motion under Rule 154. The Division would likely oppose any such motion. The Division's position is that the Commission has not imposed a sanction in this matter. The Order Instituting Proceedings makes clear that the Commission has not denied the registration statement, suspended it, or revoked it; rather it states that the Commission has instituted proceedings to determine "whether it is necessary and appropriate for the protection of investors to deny, or suspend the effective date of the" securities registered by the Form 10. Additionally, as stated in the Order Instituting Proceedings, "the institution of these proceedings *stays* the effectiveness of the Respondent's Form 10" (emphasis added). The Division notes that this stay is consistent with the Supreme Court's ruling in *SEC v. Jones*, 298 U.S. 1 (1936) regarding the legal effect of the SEC instituting proceedings to review a registration statement. There, the Supreme Court noted that a Commission order instituting proceedings to review a registration statement *automatically* stayed that registration statement from becoming effective, even without an order from the Commission specifying that such a stay was being put in place: "When proceedings were instituted by the commission and the registrant was notified and called upon to show cause why a stop order should not be issued, the practical effect was to suspend, pending the inquiry, all action of the registrant under his statement." *Id.* at 18. Additionally, it is unclear from your November 18 e-mail whether American CryptoFed is only seeking to have the stay lifted, or whether in the alternative it is seeking an expedited hearing. While we do not agree with your characterization that a hearing "on the record" must be an oral hearing, we have no objection to asking the Commission to take this matter under consideration on an expedited basis. Indeed, upon your request, the Division produced the investigative file more quickly than required by Rule 230 and even before American CryptoFed had been officially served with the Order

Instituting Proceedings. Accordingly, if American CryptoFed wishes to seek expedited consideration of this matter, please let us know.

Fourth, we are responding to your e-mail dated November 19, 2021 regarding a prehearing conference in this matter. We appreciate your efforts to reach out and prepare for this conference in advance, and are willing to conduct the prehearing conference promptly after American CryptoFed files its Answer to the Order Instituting Proceedings. As indicated above, the Division cannot bind the Commission in this matter, and several of the issues you raised in your e-mail appear, at least as we presently understand them, to be efforts to bind the Commission, both in this matter and more broadly. We are not foreclosing any avenues of discussion for the prehearing conference, rather we are simply trying to be clear about our role and authority in this matter. We think, therefore, that a more fruitful topic for discussion at the prehearing conference would be whether there are any amendments American CryptoFed could make to its Form 10 such that the parties could agree to recommend to the Commission that it accept a settled resolution and/or dismiss these proceedings, which may include allowing a revised, and legally compliant, American CryptoFed registration statement to become effective. As part of those discussions, we are willing to listen and consider any suggestions you have for resolving this matter.

Finally, if American CryptoFed does wish to expedite these proceedings (which is one of the intended purposes of a prehearing conference under Rule 221) we suggest that discussing several of the topics listed in Rule 221 may help achieve that goal, including exchanging witness lists and copies of exhibits; stipulations; the schedule for exchanging prehearing motions or briefs; and summary disposition of any or all issues. We are happy to discuss any of those topics at the prehearing conference after you file your Answer, or in advance of the prehearing conference if you feel that would also be productive.

Please feel free to contact us to further discuss any of these issues.

Regards,

/s/ Christopher M. Bruckmann
Christopher M. Bruckmann

Exhibit 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

November 29, 2021

BY EMAIL

Marian Orr
CEO, American CryptoFed DAO
1607 Capitol Ave, Ste 327
Cheyenne, WY 82001
Marian.Orr@americancryptofed.org

Re: *In the Matter of American CryptoFed DAO LLC*
AP File No. 3-20650

Dear Ms. Orr:

I write to respond to the issues raised in your recent emails regarding the above-captioned administrative proceeding instituted by the Securities and Exchange Commission ("Commission") against American CryptoFed DAO LLC ("American CryptoFed").

First, in your November 25, 2021 email, you asked for additional information regarding our position that we are not convinced that Mr. Moeller or Mr. Zhou can represent American CryptoFed in this proceeding. As we previously indicated, we are not seeking anything further with respect to this at this time, but we reserve the right to do so in the future. If we seek relief with respect to this in the future, we will explain our reasoning in more detail at that time.

Second, in your November 25, 2021 email you asked "can you let us know where in any of our disclosures to the Commission has American CryptoFed stated it will use Form S-8 'to distribute Locke tokens to more than 500 entities', which the OIP alleges in Paragraph 8." We believe you misunderstand the Order Instituting Proceedings ("OIP"). The relevant portion of paragraph 8 of the OIP states that

> American CryptoFed asserted that upon effectiveness of the Form 10, it will use Form S-8 . . . to distribute Locke tokens to more

OS Received 12/10/2021

> than 500 entities, such as municipalities, merchants, banks, and "crypto exchanges," and non-employee individual contributors.

We believe this paragraph makes clear, as written, that the allegation is that American CryptoFed plans to use the Form S-8 to distribute Locke tokens to more than 500 entities ***and*** non-employee individual contributors. This point is made even more clear by the first sentence of paragraph 9 of the OIP, which begins with "*[t]he individuals and entities* to whom American CryptoFed planned to distribute Locke tokens are not employees of American CryptoFed, . . ." (emphasis added). The bases for these allegations include the statements in the Form 10 that

> CryptoFed will grant restricted, untradeable and non-transferable Locke tokens to municipalities, merchants, banks, crypto exchanges and individual contributors to execute the Ducat Economic Zone plan attached as Exhibit 2. In anticipation of mass distribution which will quickly surpass the 500-person threshold under Exchange Act Section 12(g)3, CryptoFed elects to proactively file this Form 10 to subject itself to the periodic reporting requirements and then file Form S-8 upon the effectiveness of Form 10 in 60 days.

We contend that the preceding quote outlines a plan to engage in a mass distribution to both entities and individual contributors, and that the allegation in paragraph 8 of the OIP correctly alleges that American CryptoFed intends to use the Form S-8 to engage in that distribution.

Third, in your November 26, 2021 email, you laid out your position with respect to the Commission's Order staying the effectiveness of American CryptoFed's Form 10. We disagree with multiple aspects of your position, including that staying the effectiveness of a registration statement is the same as staying a court proceeding, and that any statements in our November 22, 2021 letter are false. Rather, we contend that there is a distinction between denying, suspending or revoking a registration statement, and staying the automatic effectiveness of a registration statement. The former are potential sanctions at the end of a proceeding, whereas the latter is a temporary measure during the proceeding. We also do not agree with your characterizations of the statements in our November 22, 2021 letter as "admissions" that there should not be a stay order. If you file a motion to lift the stay, we will likely oppose that motion for the reasons set forth in our November 22, 2021 letter.

Fourth, in your November 26, 2021 email you replied to our earlier inquiry about whether you were seeking to expedite these proceedings by

stating that "it would be inappropriate to ask 'the Commission to take this matter under consideration on an expedited basis.'" We had extended the offer to expedite the proceedings because we believed it might have been something you wished to do. We appreciate your clarification that you do not wish to expedite these proceedings. We may nonetheless choose to seek an expedited resolution to this matter and can discuss that with you at the prehearing conference after you file your Answer to the Order Instituting Proceedings. By our calculations, your Answer is due on Monday, December 6, 2021. We ask that you confirm that you plan to file your Answer by that date.

Fifth, in your November 27, 2021 email, you stated your reasons why you believe a hearing "on the record" must be an oral hearing. While an oral hearing is sometimes appropriate, we disagree that every proceeding must include an oral hearing. For example, Commission Rule of Practice 250 provides for resolving some cases via a motion for summary disposition, a practice which has been upheld by the D.C. Circuit in *Kornman v. SEC*, 592 F.3d 173, 181 (D.C. Cir. 2010).

Sixth, in your November 28, 2021 email, you set forth "American CryptoFed's methodology as to how we can collaboratively explore a settled resolution within the Commission's existing regulatory structure to accommodate cryptocurrency innovations." To the extent that this email proposes changes to existing Commission Rules and Regulations, I remind you that in this proceeding, I represent the Division of Enforcement, and not the Commission or the individuals Commissioners. If you have changes to Commission Rules or Regulations that you would like to propose, you are free to propose that the Commission enact new rules or regulations. To the extent you are proposing a path forward in this specific instance by requesting Commission authorization under Exchange Act Section 12(c) to accept alternative information in lieu of the requirements of Exchange Act Section 12(b), please provide a detailed explanation regarding what alternative information American CryptoFed would provide in response to each of the categories of missing information specified in the OIP and why that information is "of comparable character" to the required information. We do not believe that Section 12(c) "mandates" the acceptance of alternative information, but will evaluate any specific proposed alternative information in good faith and determine whether to oppose or concur with your request.

Please feel free to contact us to further discuss any of these issues.

Regards,

/s/ Christopher M. Bruckmann
Christopher M. Bruckmann

Exhibit 4

americancryptofed.org/history

THE BEGINNINGS

The American CryptoFed DAO was established by mSHIFT Inc. on July 1st 2021, a natural evolution from American CryptoFed Inc.

mSHIFT, founded in 1999 by Scott Moeller, pioneered mobile banking in the United States, and has a long history of working with community financial institutions and local merchants

mSHIFT.
Relevant. Mobile. Solutions.

English

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