

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.

MOTION FOR A CONFIRMATION THAT  
THE PREHEARING CONFERENCE MUST  
BE CONDUCTED BEFORE A MOTION  
FOR SUMMARY DISPOSITION IS  
ALLOWED - NO.3

American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) hereby moves for a confirmation that the prehearing conference required by the Order Instituting Administrative Proceedings and Notice of Hearing Pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“OIP”), must be conducted pursuant to *Rule 221 Prehearing conference (d)* before a motion for summary disposition is allowed. Rule 221 (d) states as follows:

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

However, the Division of Enforcement (“Division”) stated in their email, attached as Exhibit 1, “we reserve the right to move for Summary Disposition pursuant to Rule 250 at any time after that, even it means filing such a motion before the prehearing conference.” (Exhibit 1, Date: Tue, Dec 7, 2021, at 3:20 PM). On the following day, December 8, 2021, the Division further emphasized “We can therefore move for summary disposition at any time” (Exhibit 1, Date: Wed, Dec 8, 2021 at 2:38 PM).

Respondent’s position is that Rule 250 prohibits the Division from moving for Summary Disposition, before our seven Motions for More Definite Statement filed together with the Answer to the OIP on December 6, 2021 (“Seven Motions”), are decided by the Securities and Exchange Commission (“Commission”), and the prehearing conference is held, because the relevant section of Rule 250 reads as follows.

*...any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to **Rule 323 show that there is no genuine issue with regard to any material fact** and that the movant is entitled to summary disposition as a matter of law.* (Emphasis added).

Whether there is “genuine issue with regard to any material fact” depends on, i) the Commission’s decisions on the Seven Motions, because the purposes of the Seven Motions are to specify and clarify the facts and applicable laws, and ii) the events during and after the prehearing conference, because the Rule 221 Prehearing conference (c) prescribes the “*Subjects to be discussed*”, including but not limited to, “*Simplification and clarification of the issues;*”

“Exchange of witness and exhibit lists and copies of exhibits;” “Timing of expert witness disclosures and reports, if any;” “*Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;*” “*Settlement of any or all issues;*” “*Amendments to the order instituting proceedings or answers thereto;*” etc..

Therefore, the Division shows no interest in specifying, clarifying and identifying facts and applicable laws. As a result, the Division is trying to circumvent not only *Rule 220 Answer to allegations (d) Motion for more definite statement* and *Rule 221 Prehearing conference (d) Required prehearing conference*, both of which have been designed to specify, clarify and identify the facts and applicable laws, but also *Rule 250 Dispositive motions (b) Motion for summary disposition in 30- and 75-day proceedings* which requires the condition that “*there is no genuine issue with regard to any material fact,*”

For the reasons set forth above, Respondent respectfully requests that the prehearing conference must be conducted before a motion for summary disposition is allowed.

Dated: December 9, 2021

Respectfully submitted,

DocuSigned by:  
  
AE52AD38E6AC4EC...  
By /s/ Marian Orr

Marian Orr

CEO, American CryptoFed DAO LLC

1607 Capitol Ave Ste 327

Cheyenne, WY. 82001

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this Motion was filed by eFAP and was served on the following on this 9th day of December 2021, 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](mailto:bruckmannc@sec.gov)

DocuSigned by:  
*Marian Orr*  
AE52AD38E6AC4EC...  
By /s/ Marian Orr

Marian Orr

CEO, American CryptoFed DAO LLC

1607 Capitol Ave Ste 327

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**INDEX OF EXHIBIT**

**AMERICAN CRYPTO FED DAO LLC'S MOTION FOR A CONFIRMATION**

**THAT THE PREHEARING CONFERENCE MUST BE CONDUCTED**

**BEFORE A MOTION FOR SUMMARY DISPOSITION IS ALLOWED - NO.3**

Exhibit 1 - Email Communications Between Division of Enforcement and Respondent.

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

From: Bruckmann, Christopher <bruckmannc@sec.gov>

Date: Tue, Dec 7, 2021 at 3:20 PM

Subject: RE: In the Matter of American CryptoFed, AP File No. 3-20650

To: Marian Orr <marian.orr@americancryptofed.org>

Cc: Xiaomeng Zhou <zhouxm@americancryptofed.org>, Scott Moeller <scott.moeller@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Ms. Orr,

We would like to conduct the Prehearing Conference next week and keep this proceeding moving forward. The specific dates and times we are available next week are listed below. The requirement to conduct the prehearing conference with 14 days of service of the Answer was included in a Commission Order. At present, we do not know when the Commission will rule on your seven Motions for More Definite Statement. Additionally, if the Commission denies your Motions, it does not have to include any new deadlines in that ruling. So, if you want to postpone the prehearing conference until after the deadline set by the Commission, you should file a motion asking for additional time to conduct the prehearing conference. We would likely oppose that motion. Additionally, if we do not hold the prehearing conference by December 20, we reserve the right to move for Summary Disposition pursuant to Rule 250 at any time after that, even it means filing such a motion before the prehearing conference.

We think the best course of action is to conduct the prehearing conference next week. If the Commission later grants some or all of your Motions for More Definite Statement, we can request that the Commission set a schedule for an additional prehearing conference, if needed. Rule 221(d) states in part that “at least one prehearing conference should be held” which clearly allows for additional conferences in some circumstances.

We are available to conduct the prehearing conference:

Monday, December 13 between Noon and 3pm ET;  
Tuesday, December 14 between noon and 3pm ET;  
Wednesday, December 15 between 11am and 4pm ET;  
Thursday, December 16 between 10am and 1pm ET; or  
Friday, December 17 between 1pm and 4pm ET

Please let us know if you are willing to conduct the prehearing conference at one of those times.

Thank you,

Chris Bruckmann

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

From: Marian Orr <marian.orr@americancryptofed.org>  
Date: Wed, Dec 8, 2021 at 8:59 AM  
Subject: Re: In the Matter of American CryptoFed, AP File No. 3-20650  
To: Bruckmann, Christopher <bruckmannc@sec.gov>  
Cc: Xiaomeng Zhou <zhouxm@americancryptofed.org>, Scott Moeller  
<scott.moeller@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker,  
Michael <BakerMic@sec.gov>

Dear Mr. Bruckmann,

Thank you for your email regarding your proposed timing for the prehearing conference.

However, we do not think it is appropriate to have the prehearing conference before our seven Motions of More Definite Statement are considered. Let us follow the guidance of Rule 221, Prehearing conference to set up our time for the prehearing conference, because of the dependencies and sequences prescribed by Rules 220, 221 and 250.

1. Rule 221 (b) Procedure.

On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference.

In accordance with the rule, American CryptoFed should listen to the hearing officer's direction for "an initial, final or other prehearing conference." This means even if we must hold the prehearing conference within 14 days of the service of the Answer ordered by the OIP, we still need to follow the hearing officer's direction to decide a specific time.

2. Rule 221 (c) Subjects to be discussed.

- (1) Simplification and clarification of the issues;
- (4) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (9) Settlement of any or all issues;
- (11) Amendments to the order instituting proceedings or answers thereto;

All these items mandated by the above rule should be discussed after our seven Motions for More Definite Statement are decided, because our motions were filed pursuant Rule 220 (d) stating "A respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined." The items to be discussed in the prehearing conference have dependencies on the Commission's orders to our seven Motions for More Definite Statement.

3. Rule 250. Dispositive motions.

You stated, "Additionally, if we do not hold the prehearing conference by December 20, we reserve the right to move for Summary Disposition pursuant to Rule 250 at any time after that, even if it means filing such a motion before the prehearing conference."

We believe Rule 250 prohibits the Division of Enforcement from moving for Summary Disposition before our seven Motions for More Definite Statement are decided and the prehearing conference is held, because the relevant section of Rule 250 reads as follows.



...any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.

Whether there is “genuine issue with regard to any material fact” partially depends on these decisions of our seven Motions for More Definite Statement, because the purposes of these seven motions are to specify and clarify the facts and applicable laws.

Therefore, we need to respect the process prescribed by the Commission’s rules. First, let us find out who our hearing officer is, while giving the Commission one week or so to decide our seven Motions of More Definite Statement. The Commission just received our seven motions two days ago. We are also seriously considering your suggestion to file a motion to remove the uncertainties surrounding the timing of the prehearing conference.

If you already know a hearing officer has been assigned to our case, can you inform us, so we may first consult with him or her?

Thank you.

Sincerely,

Marian Orr  
CEO, American CryptoFed DAO

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

From: Bruckmann, Christopher <bruckmannc@sec.gov>  
Date: Wed, Dec 8, 2021 at 2:38 PM  
Subject: RE: In the Matter of American CryptoFed, AP File No. 3-20650  
To: Marian Orr <marian.orr@americancryptofed.org>

Cc: Xiaomeng Zhou <zhouxm@americancryptofed.org>, Scott Moeller <scott.moeller@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Ms. Orr,

Rule 110 explains that “All proceedings shall be presided over by the Commission or, if the Commission so orders, by a hearing officer.” Here, the Order Instituting Proceedings states:

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 Order Instituting Proceedings also states:

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.

We believe the Commission expects both parties to reasonable confer and agree on a time for the prehearing conference. We have provided you with numerous time slots when we are available.

To date, you have not provided us with any availability. We again request that you either let us know when you are available for the prehearing conference or file a motion with the Commission seeking to postpone the prehearing conference. Again, we would likely oppose that motion.

While we understand your position regarding the subjects to be discussed at the prehearing conference, we do not agree that this means holding a prehearing conference at this time would be a futile endeavor.

Finally, regarding a motion for summary disposition, Rule 250(b) states that “In any proceeding under the 30- or 75-day timeframe designated pursuant to § 201.360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to § 201.230, any party may make a motion for summary disposition on one or more claims or defenses . . .” We have provided the required documents under Rule 230 and you have filed your Answer. We can therefore move for summary disposition at any time.

Thank you,

Chris Bruckmann