

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.

**RESPONDENT'S REPLY**

**TO DIVISION OF ENFORCEMENT'S RESPONSE**

**TO RESPONDENT'S MOTION FOR A PROCEDURE TO DETERMINE THE DATE**

**AND TIME FOR THE PREHEARING CONFERENCE**

American CryptoFed DAO LLC ("American CryptoFed" or "Respondent"), respectfully submits this reply to The Division of Enforcement ("Division")'s response ("Division's

Response”) to Respondent’s Motion for a Procedure to Determine the Date and Time for the Prehearing Conference (“Respondent’s Motion”).

Respondent’s Motion is about Respondent’s right to have an Administrative Law Judge preside over this case, after the Securities and Exchange Commission (“Commission”) made a press release announcement to the world stating “American CryptoFed’s registration of the two tokens is stayed pending a determination by **an administrative law judge** whether to deny or suspend the registration of the tokens.” (Emphasis added, Exhibit 1 to Respondent’s Motion). Respondent’s Motion is simply to ask the Commission to keep its promise in consistent with its November 10th press release. Simply put, Respondent’s Motion affirms the due process for justice and rule of law triggered by the Commission’s promise announced in its press release. The Division should be bound by and comply with the Commission’s official statements to the general public. The Commission should not announce publicly to have an administrative law judge for this case, while allowing the Division to do the opposite. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states.

However, the Division’s Response (p. 2) stated “American CryptoFed does not need an Administrative Law Judge, or the Commission, to tell it the specific date and time at which to conduct the prehearing conference.” This means that the Division completely disregards the Commission’s press release promising an administrative law judge and is trying to deny Respondent’s right to have an administrative law judge. The Division does not even consider a possible scenario that the administrative law judge should schedule the prehearing conference so that he or she can decide whether the prehearing conference will be held with or without his or

her presence, pursuant to *Rule 221 Prehearing conference (b)* stating “*Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate.*”

(Emphasis added).

The fact that the Division completely disregards due process is also reflected in its misleading and superficial response (p.3) “American CryptoFed has not proposed any alternative times. This is because American CryptoFed is seeking to delay the prehearing conference (and this proceeding generally) through their seven **duplicative and meritless** motions for more definite statement.” (Emphasis added). The Division’s Response completely ignores Respondent’s right to petition the administrative law judge to preside over the prehearing conference. It is impossible for Respondent to propose any alternative time until the administrative law judge is appointed as the Commission’s press release announced publicly and makes his or her availability to Respondent. Furthermore, the Division never thinks of the scenario that the administrative law judge may consider respondent’s seven motions for more definite statement, while scheduling the prehearing conference. The fact that the DIVISION OF ENFORCEMENT’S OMNIBUS MEMORANDUM IN OPPOSITION TO RESPONDENT’S MOTIONS FOR A MORE DEFINITE STATEMENT (“Division’s Omnibus Memorandum”) runs a length of 19 pages and cites 15 case laws, 3 statutes and 6 Commission’s Rules of Practice, proves that Respondent’s seven motions for more definite statement cannot be simply mischaracterized as “duplicative and meritless” as the Division asserts.

Furthermore, the Division’s denial of Respondent’s due process right is also clearly reflected in the Division’s Response (p.3-4) stating “if the prehearing conference is not conducted by December 20, 2021, the Division reserves its right under Rule 250 (b) to file a motion for summary disposition, even if the prehearing conference has not yet been held.” By

denying Respondent's right of access to the administrative law judge the Commission promised in the press release announcement to the world, by denying the possibility of the administrative law judge's review and consideration of Respondent's seven motions for more definite statement whose purposes are to specify and clarify facts and applicable laws, by denying the Respondent's right to access to prehearing conference at which witness and discovery of facts will be scheduled, the Division seeks to bury facts to be discovered and presented through due process, while seeking to quickly move towards a false summary disposition by Rule 250 (b), which actually requires "there is no genuine issue with regard to any material fact". The tactics the Division has been deploying are not to pursue justice through facts and rule of law, but to get a speedy persecution irrespective of justice by suppressing due process which is designed for rule of law and discovery of facts. Mr. Keith Paul Bishop, a partner at Allen Matkins Leck Gamble Mallory & Natsis LLP, independent of Respondent, has defined the Division's tactics in handling this American CryptoFed's case as "legerdemain" in his article, published at The National Law Review, entitled "SEC Alleges Form 10 Was Misleading, But Is The SEC's Order Itself Misleading?":

*The SEC's order substitutes "entities" for "persons" and adds the list of potential recipients to the registrant's statement. **By this legerdemain**, the SEC converts a statement that might be true in some cases into a statement that is false in all cases. (Emphasis added, Exhibit N to Respondent's Answer).*

"If Respondent's Motion is a disguised attempt to delay the prehearing conference beyond December 20, 2021, the motion should be denied as American CryptoFed has provided no valid reason for such a delay," the Division's Response concluded (p.4). Apparently, the Division is not aware of the nature of due process, which is to provide necessary time for parties to defend themselves for the sake of justice, not to provide time efficiency for the Division to

prosecute the Commission's Respondents arbitrarily. As a matter of fact, since the Commission announced publicly on November 10, 2021 "American CryptoFed's registration of the two tokens is stayed pending a determination by **an administrative law judge** whether to deny or suspend the registration of the tokens." (Emphasis added, Exhibit 1 to Respondent's Motion), one month has passed. During this period of time, the Division has made no effort to arrange appointment of an administrative law judge with the Commission so that the public commitment of the Commission's press release can be kept. "The Division takes no position on whether the Commission should appoint a hearing officer at this time. Under Rule 110, the Commission has discretion to either appoint a hearing officer or preside over this proceeding itself." the Division's Response stated at footnote (p.2) instead. The Division keeps using the "legerdemain" tactic called out by Mr. Bishop in his article, while completely denying the fact that Commission has previously exercised its discretion on November 10th, 2021 and promised to the entire world that an administrative law judge will preside over this case.

For the reasons set forth above, Respondent respectfully requests a hearing officer, e.g. the administrative law judge be assigned and, for the administrative law judge to decide the date and time for the initial prehearing conference, pursuant to Rule 221 Prehearing conference (b) Procedure stating "*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.*"

Dated: December 12, 2021

Respectfully submitted,

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By /s/ Marian Orr

Marian Orr

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**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 12th day of December 2021, in the manner indicated below:

By Email:

Christopher Bruckmann, Trial Counsel

Division of Enforcement – Trial Unit

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By /s/ Marian Orr

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