

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  
OMNIBUS MEMORANDUM IN OPPOSITION TO  
RESPONDENT’S MOTIONS FOR A MORE DEFINITE STATEMENT**

American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”), respectfully submits this reply to The Division of Enforcement (“Division”)’s Omnibus Memorandum (“Omnibus Memorandum”) in Opposition to Respondent’s Motions for A More Definite Statement.

Respondent filed seven separate motions for more definite statements (“Seven Motions”) regarding the allegations in the Order Instituting Proceedings (“OIP”). “OIP must inform the

respondent of the charges in enough detail to allow the respondent to prepare a defense,” the Division cited *Daniel Joseph Touzier* in its Omnibus Memorandum (p.4). However, the OIP allegations failed to do so, in four separate categories: i) Misleading, ii) Missing important information, iii) Contradictions among allegations themselves, and iv) Ambiguous. Here are a few typical examples of each category.

### **Category 1: Misleading Allegations**

The misleading allegations in Paragraph 8 and 9 are so obvious that, Mr. Keith Paul Bishop, a partner at Allen Matkins Leck Gamble Mallory & Natsis LLP, independent of Respondent, defined the Division’s tactics handling this American CryptoFed’s case as “legerdemain” in his analysis, 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.... I believe that the SEC also has an obligation to be accurate in what it alleges and not manipulate the language in a filing to strengthen its case. When the SEC does so, it convicts itself of the very act that it accuses.” (Emphasis added, Exhibit N to Respondent’s Answer).

It is impossible for Respondent to prepare for an effective defense if the misleading allegations are not clarified, because misleading allegations usually are false. Therefore, Respondent filed Motion for More Definite Statement #5.

### **Category 2: Allegations Missing Important Information**

The three key words of the statute “on the record” are missing in the OIP paragraph 11’s citation of Section 12 (j). This omission could either be an unintentional omission or worse, an intentional “legerdemain” as Mr. Bishop defined. Respondent was forced to file Motion for More Definite Statement #6 to ensure that the Division will provide a correct statute citation for

their allegations. The Division’s Omnibus Memorandum (p.5) admitted that missing important information justifies a Motion for a More Definite Statement.

It is highly possible that the Division intentionally removed the key phrase “on the record” from their citation of Section 12(j), because a chain of statutes related to a hearing “on the record” will definitely lead to an oral hearing, making the Division’s summary disposition strategy impossible to be implemented. These statutes below speak for themselves. All emphases in bold are added.

**5 U.S. Code § 554 – Adjudications**

· (a) This section applies, according to the provisions thereof, **in every case of adjudication required by statute to be determined on the record** after opportunity for an agency hearing,.....

· (c) The agency shall give all interested parties opportunity for—  
(2) to the extent that the parties are unable so to determine a controversy by consent, **hearing and decision on notice and in accordance with sections 556** and 557 of this title.

**5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision**

· (a) This section applies, according to the provisions thereof, to **hearings required by section 553 or 554** of this title to be conducted in accordance with this section.

· (d) .....A sanction may not be imposed or rule or order issued except on **consideration of the whole record** or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence....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....

The statutes “5 U.S. Code § 554 (a) and (c)” lead us to “5 U.S. Code § 556 (a) and (d)”, which specifies “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.” It is indisputable that **cross-examination** can only be conducted in an oral hearing, which will derail the Division’s strategy to use summary disposition to prosecute American CryptoFed. It is impossible for Respondent to prepare for an

effective defense strategy if an incomplete statute was cited by the Division to support its allegations.

**Category 3: Contradictions among the Allegations Themselves**

The Division's allegations, as well as the statutes, Rules and Regulations used to support the Division's allegations contradict themselves. Paragraphs 14 and 15 of OIP state that Form 10 is the only Form available for Respondent to register its tokens and requires Respondent to provide additional materially important information regarding its Tokens. Respondent did provide important and objective material information that the Locke and Ducat tokens are not securities, but Paragraph 7 of the OIP alleges that Respondent is inconsistent. The Division must clarify whether Respondent should provide this materially important information even if the information does not have a good fit with Form 10. The Motion for More Definite Statement No.3 asks the Division to remove these contradictions among the allegations so that Respondent can prepare for an effective and consistent defense, because contradictory allegations will only result in contradictory defense. Unfortunately, the Division insists on the contradiction in "Response to Motion #3: Claiming That the Tokens Both Are and Are Not Securities Is Inherently Deceptive."

As a matter of fact, the Division's Omnibus Memorandum creates more contradictions than clarifications. For example, "Response to Motion #1: The Division Seeks to Protect All Potential Investors in American CryptoFed" contradicts "Response to Motion #2: the Allegations of the OIP Relate to American CryptoFed As It Presently Exists." (Omnibus Memorandum, p. 8 and p. 10). "American CryptoFed As It Presently Exists" does not correspond to future "Potential Investors". If the Division's allegations relate to "American CryptoFed As It Presently Exists", the Division should consider the investors as they "Presently Exists", which by any stretch of

definition could only be those people and entities who will receive restricted Locke Tokens free of charge as disclosed by Respondent's Form 10 and its Exhibit 1 and 2 (American CryptoFed DAO Constitution and Ducat Economic Zone). There is no possible damage for people to receive Locke tokens, free of charge. "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," the Division's Omnibus Memorandum states (Response to motion #1, p.9). However, no proceeds exist, when "the Allegations of the OIP Relate to American CryptoFed As It Presently Exists". All Locke tokens will only be distributed free of charge under Form 10, before the Form S-1 is declared effective by the Commission.

If the Division's allegations are intended to be related to future "Potential Investors", the Division should then consider the corresponding American CryptoFed's future organization as a decentralized autonomous organization (DAO) and future operations, described in Form 10 and American CryptoFed DAO Constitution filed together with Form 10 as Exhibit 1. Then, the inherent contradictions in the Division's allegations will only go deeper. "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." the Division's Omnibus Memorandum states (Response to Motion #4, p. 14). An auditor cannot audit future financials which do not exist. For discussion of future "Potential Investors", the only way to measure the impact of American CryptoFed's operation as a decentralized autonomous organization (DAO) is through logical reasoning, which Respondent has provided in Motion for More Definite Statement #.2: a third party's expert article stating "...but the DAO itself in almost all circumstances would not be able to produce financial statements prepared in accordance with generally accepted accounting principles. If the DAO does not have a definable business and

truly is decentralized, then there may not be a management structure for which information can be provided.” (Exhibit O to the Answer). Unfortunately, the Division insists on maintaining the contradictory claims in “Response to Motion #2: the Allegations of the OIP Relate to American CryptoFed As It Presently Exists.”

Therefore, the contradictions among different allegations not only lead to contradictive answers, but also require information which does not exist, as demonstrated above regarding the audited financials. The Division has an obligation to remove these contradictions among their various allegations to maintain the integrity of an inherently consistent OIP, so that Respondent can prepare for consistent defenses against these allegations. If the Division cannot provide a set of OIP allegations without contradictions among themselves, it is highly possible that these allegations are false. Therefore, Motion for More Definite Statement #7 requests the Division to incorporate Exchange Act Section 12 (c) and (h) into Paragraph 18 of the OIP for a scenario that Section 12 (g) alone is unable to handle.

#### **Category 4: Ambiguous Allegations**

“Response to Motion #1: The Division Seeks to Protect All Potential Investors in American CryptoFed” Omnibus Memorandum states (p.8). The “facts” the Division alleges have not happened yet. There is no adversary in this case. By definition, under Form 10, all Locke tokens will be restricted. No Locke tokens will be allowed to be traded. All Locke tokens will be distributed free of charge. No proceeds will exist, and no proceeds will be received by American CryptoFed. The Division needs to specify with logical reasoning who can possibly be damaged and how after Respondent’s Form 10 goes effective. The Division has to prove that it has a standing to initiate the OIP, by effectively demonstrating that there are real potential investors to be protected. Otherwise, Respondent does not know how to prepare for an effective defense.

Respondent appreciates that the Division's Omnibus Memorandum (p.10-11) makes the time span of all its allegations clear as follows:

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

... 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. These are admissions that American CryptoFed is not presently operating as a decentralized autonomous organization.

Given that "the Allegations of the OIP Relate to American CryptoFed As It Presently Exists" before "CryptoFed's S-1 registration statement is declared effective", Respondent can conclude that there is absolutely no damage to any one whatsoever. Before "CryptoFed's S-1 registration statement is declared effective", by design, Respondent only distributes Locke tokens, free of charge. Please see American CryptoFed DAO Constitution (Exhibit B to the Answer, Section 14.6, p. 12-13) and Ducat Economic Zone (Exhibit L, Section 6). Therefore, there is no investor for the Commission to protect. The Division should immediately withdraw this OIP due to lack of standing.

**Conclusion**

Almost all of the OIP's allegations belong to one or multiple categories above, thus requiring the seven separate Motions for More Definite Statements for specifications and clarifications. "But American CryptoFed did not attempt either of those approaches here, nor did it engage in further discussions with Corporation Finance staff. Rather, it unilaterally decided what information it would provide and which requirements of Form 10 it would ignore" the Division's Omnibus Memorandum states. The facts do not support the Division's statement. At Motion for More

Definite Statement #4, Respondent documented the facts of communications with staff of both Divisions of Corporation Finance and Enforcement as follows.

On October 12, 2021, Respondent replied point-by-point, to an October 8, 2021 letter of the Commission's staff and pointed out that the staff "failed to identify and specify one single item of important information, which does exist, but we did not disclose." (Exhibit G, p. 7). The staff of the Commission was unable to respond to Respondent's rebuttal, although Respondent repeatedly asked the staff to do so in Respondent's letters to the Commission on October 29, 2021, October 30, 2021 and November 3, 2021 respectively (Exhibit H, I and J).

Respondent has repeatedly asked for a response from the Commission's staff for clarification and specification without success. In order to clearly organize the ambiguous and contradictive allegations, Respondent had to group the allegations into the seven separate motions so that the Commission can easily identify their categories and issue orders granting these motions. Respondent could misunderstand that each allegation is allowed to have one motion. Respondent apologizes if only one motion is allowed for all allegations of OIP. "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." the Division's Omnibus Memorandum stated. This statement is not true. In addition to duplicative cover and signature pages, Respondent could cut off a few more pages of Motion #4 to reduce the total pages of a Motion for a More Definite Statement to the 15-page limit, because the majority of Motion #4 contains contents copied and pasted from Exhibit G to the Answer, to prove that the Commission's staff failed to respond Respondent's repeated requests for written and clear communication as explained above.

For the reasons set forth above, Respondent respectfully requests the Commission grant Respondent's seven motions for more definite statements.



Dated: December 13, 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 13th day of December 2021, in the manner indicated below:

By Email:

Christopher Bruckmann, Trial Counsel

Division of Enforcement – Trial Unit

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