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 AMERICAN CRYPTOFED DAO LLC'S MOTION TO CONFIRM THE OPERATION OF FORM 10, SECTION 12(g), 12 (b) AND 12 (h) OF SECURITIES EXCHANGE ACT OF 1934.**

On November 10, 2021, the Securities and Exchange Commission ("Commission" or "SEC") issued an order instituting administrative proceedings ("OIP") against American CryptoFed DAO LLC ("American CryptoFed" or "Respondent") pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"). The OIP's Paragraphs 12, 13 and 14 include operative claims of Exchange Act Section 12 (g), 12(b) and Form 10 used to register a class of securities pursuant to the Section 12(b) or (g). Pursuant to *Rule 250 (a) Motion for a ruling on the pleadings*, Respondent hereby moves the Commission to confirm that as a matter of law, i) an issuer does not need to provide information required by Exchange Act Section 12 (g), 12(b) and Form 10, if the information does not and will not exist, but ii) can apply for exemption pursuant to Exchange Act Section 12 (h).

The OIP's Paragraph 12 asserts the following regarding Section 12(g):

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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).

The OIP's Paragraph 13 asserts the following regarding Section 12(b):

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 . . . ".

The OIP's Paragraph 14 asserts the following regarding Form 10:

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.

However, there are scenarios for which information required by Exchange Act Section 12 (g), 12(b) and Form 10, does not and will not exist. The following example is an quote from a recent article, attached as Exhibit 1, authored by two attorneys, Daniel L. McAvoy and Stephen A. Rutenberg of Polsinelli PC, and published in the National Law Review, Volume XI, Number 327, November 23, 2021, entitled "DAOsing Rods and the Power of Enforcement Prediction". The two authors' opinion echoes Respondent's view regarding the OIP's Paragraphs 5, 6, 16 and 17 after they independently analyzed the American CryptoFed's case. All emphases in bold are added.

"A DAO is an organization encoded as a transparent computer program, controlled by the organization members and **not by a central corporate entity, often through a governance token utilized on a blockchain.**" (Exhibit 1, p.1)

"This highlights several issues with being able to register DAO-issued tokens under the current regulatory framework. The SEC disclosure forms rightly require financial statements and business information regarding the issuer. That said, a DAO is not

really an entity. There often is a supporting entity in place alongside a DAO, and in some instances an organization that isn't really decentralized may be mislabeled as a DAO, 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.** Further, depending on the circumstances, the financial condition of a DAO may be of limited relevance to holders of the tokens, particularly if there truly is a level of decentralization that would allow the project to move forward even if the 'entity' sponsoring the token were to collapse (or the financial statements of the issuer could be looking at the wrong thing if the treasury of the DAO is not housed in that entity). **Simply put, this action implies that it will be difficult if not impossible for a true DAO to register its tokens under the current regulatory framework, even if it sets itself up in a way to attempt robust compliance.**" (Exhibit 1, p.1-2)

"**Maybe the SEC should also consider a framework under which a DAO or a supporting organization of a DAO can register securities,** particularly as the discussion regarding regulation of stablecoins and DeFi starts to heat up." (Exhibit 1, p.3).

Below is the relevant text of Exchange Act Section 12 (h). This statute anticipates the necessary actions to be taken by the Commission when facing a scenario as described by the two authors above.

(h) Exemption by rules and regulations from certain provisions of section
The Commission may by rules and regulations, or **upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 78m, 78n, or 78o(d) of this title or may exempt from section 78p of this title any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof,** upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. **The Commission may, for the purposes of any of the above-mentioned sections or subsections of this chapter, classify issuers and prescribe requirements appropriate for each such class.** (15 U.S.C. § 78l(h))

The Division of Enforcement ("Division") and Respondent raised the scenario above and the possibility of Exchange Act Section 12 (h) as a solution via an email communication, attached as Exhibit 2, but this overture by Respondent did not lead to any results.

For the reasons set forth above, Respondent respectfully requests that the Commission confirms that as a matter of law, i) an issuer does not need to provide information required by Exchange Act Section 12 (g), 12(b) and Form 10, if the information does not and will not exist, but ii) can apply for exemption pursuant to Exchange Act Section 12 (h).

Dated: December 18, 2021

Respectfully submitted,

DocuSigned by:
Marian Orr
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 18th 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

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DocuSigned by:
Marian Orr
AE52AD38E6AC4EC...

By /s/ Marian Orr

Marian Orr

CEO, American CryptoFed DAO LLC

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Cheyenne, WY. 82001

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Release No. 93551 / November 10, 2021

ADMINISTRATIVE PROCEEDING

File No. 3-20650

In the Matter of **American CryptoFed DAO LLC,** **Respondent.**	**EXHIBIT INDEX FOR RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO CONFIRM THE OPERATION OF FORM 10, SECTION 12(g), 12 (b) AND 12 (h) OF SECURITIES EXCHANGE ACT OF 1934.**

Exhibit 1 – DAOsing Rods and the Power of Enforcement Prediction: Thoughts on Recent SEC statements and Action on Enforcement Related to Decentralized Autonomous Organizations (DAO), by Daniel L. McAvoy and Stephen A. Rutenberg, The National Law Review, Volume XI, Number 327, November 23, 2021.

Exhibit 2 – November 19, 2021 American CryptoFed Email to Division of Enforcement.

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RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 1

OS Received 12/20/2021

Published on *The National Law Review* (http://www.natlawreview.com)

DAOsing Rods and the Power of Enforcement Prediction

Article By:
Daniel L. McAvoy
Stephen A. Rutenberg

Thoughts on Recent SEC statements and Action on Enforcement Related to Decentralized Autonomous Organizations (DAO)

On November 10, 2021 the US Securities and Exchange Commission (the SEC) announced that it had halted the first ever attempt to register digital tokens issued by a decentralized autonomous organization (DAO) under the US federal securities laws. American CryptoFed – also the first DAO to take advantage of Wyoming's new "DAO Law" that attempts to give DAOs legal status – filed Form 10 and subsequently filed a Form S-1 in an effort to register its digitals assets in the form of two coins designed to operate in tandem issued under the names Locke and Ducat.

A DAO is an organization encoded as a transparent computer program, controlled by the organization members and not by a central corporate entity, often through a governance token utilized on a blockchain.

In the SEC's announcement, they alleged that the registration statement filed by American CryptoFed contained a number of deficiencies, including purportedly misleading statements such as claims that the tokens were not intended to be securities and may be distributed on the form of registration statement used for registration of securities under an employee benefit plan. Perhaps just as importantly, the registration statement failed to provide substantive information about the issuer as is required to be disclosed in the form, such as information regarding its business, management, and financial condition. One telling example of the deficient information concerns the issuer's ownership structure, which a pure DAO would be unable to produce by its very nature of being a DAO.

This highlights several issues with being able to register DAO-issued tokens under the current regulatory framework. The SEC disclosure forms rightly require financial statements and business information regarding the issuer. That said, a DAO is not really an entity. There often is a supporting entity in place alongside a DAO, and in some instances an organization that isn't really decentralized may be mislabeled as a DAO, 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. Further, depending on the circumstances, the financial condition of a DAO may be of limited relevance to holders of the tokens, particularly if there truly is a level of decentralization that would allow the project to move forward even if the 'entity' sponsoring the token were to collapse (or the financial statements of the issuer could be looking at the wrong thing if the treasury of the DAO is not housed in that entity). Simply put, this action implies that

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it will be difficult if not impossible for true a DAO to register its tokens under the current regulatory framework, even if it sets itself up in a way to attempt robust compliance.

Avoiding the Line and Counsel?

Any spurt of innovation, particularly the one we are experiencing now with decentralized finance and DAOs, will test the boundaries of existing regulation and hopefully lead to regulatory flexibility and updated regulations. For this reason, a recent statement by SEC Chair Gensler could use additional clarification. On November 4,, 2021, a few days before the American CryptoFed halt, at the first SEC Enforcement Forum since he became Chair, Gensler laid out a number of enforcement directives of the SEC, putting an emphasis on a the economic reality of a transaction regardless of what form it is in. In particular, he emphasized that terms such as "decentralized finance" (DeFi), "currency," or "peer-to-peer lending" should not be taken at face value without looking at what the transaction is really doing.

While it is important to understand the spirit of the law and never act fraudulently regardless of the law, the role of legal counsel is to help clients work within the law, even if it is near the boundary of the law. Gensler's statement - "if you're asking a lawyer, accountant, or adviser if something is over the line, maybe it's time to step back from the line" – has the potential to deter entrepreneurs from seeking counsel and encourage haphazard action. While a measure of caution is not undue, it does have the potential to stifle innovation. This is after all a new frontier of finance where advances are made in the margins often by those who get there first. Consulting with responsible counsel is something that any innovator should be encouraged to do. Seemingly discouraging innovators from seeking counsel, and asking those who are trying to be responsible and comply with the law to not even attempt to do so, would only increase the prevalence of bad actors, exposing all parties - including investors - to the very risks that regulators are trying to avoid.

Rulemaking Under Any Other Name...

A few days after Chair Gensler's statement, Gurbir Gruwal, the new Director of the Division of Enforcement gave prepared remarks discussing the role of that Division. The remarks were largely a defense against the assertion that, with respect to the crypto industry, the SEC has been "regulating by enforcement" rather than creating new regulation. Mr. Gruwal gave three examples to show how the Division's Cyber Unit's enforcement of digital assets actions are enforcing existing laws and not creating new law. The first example he gave was the Kik ICO, followed by a recent Ponzi scheme that claimed to use DeFi but did not actually support a DeFi network and, last, the BitConnect project that also was long thought to be a Ponzi scheme. While there was not complete consensus within the digital asset legal community about how Kik's KIN token would be treated for federal securities law purposes, the latter two were blatant frauds of what would have obviously been securities, had they existed at all. Selecting those straightforward examples out of hundreds does not mean that there haven't been other enforcement actions in areas where the law was quite unsettled.

While the Division of Enforcement is doing a lot of great work, the speech shows that there is a fundamental misunderstanding of the industry's frustration over "rulemaking by enforcement."

Rather than coming out with new regulations that provide somewhat bright lines, one must wade through a gallimaufry of enforcement actions, press releases, risk alerts, and speeches to determine the current state of the law. Even then, there is a wide gulf between what the SEC has endorsed and publicly warned against with any level of specificity. In the nearly 10 months since the current administration

took office, there have only been a small handful of new proposed rules and only in the last week have any new substantive regulations been approved. "Rulemaking by enforcement" is really shorthand for the lack of clear, concise guidance needed for those who *want* to comply with the law to *actually* comply with the law. This particularly rings true for aspects of many blockchain technologies that are fundamentally incompatible with existing regulations, even if they are compatible with the spirit of the law. The SEC Staff has announced that it will try to tackle this problem with respect to the Advisers Act "Custody Rule" by modernizing it, but it does not appear that any other meaningful regulation relating to digital assets or decentralized finance is on the horizon.

Maybe the SEC should also consider a framework under which a DAO or a supporting organization of a DAO can register securities, particularly as the discussion regarding regulation of stablecoins and DeFi starts to heat up.

The prepared remarks close out as follows:

"*This is not "regulation by enforcement."*

This is not "regulation by enforcement."

This is not "regulation by enforcement."

There. I have said it thrice and what I tell you three times is true."

This is (not) regulation by speechmaking at its finest.

National Law Review, Volume XI, Number 327
Source URL: https://www.natlawreview.com/article/daosing-rods-and-power-enforcement-prediction

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 2

OS Received 12/20/2021

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

From: **Marian Orr** <marian.orr@americancryptofed.org>

Date: Fri, Nov 19, 2021 at 7:17 AM

Subject: Prehearing Conference - In the Matter of American CryptoFed DAO LLC, AP File No. 3-20650

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

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

Dear Mr. Bruckmann,

On November 10, 2021, the Securities and Exchange Commission ("Commission") issued an order instituting administrative proceedings ("OIP") against American CryptoFed DAO LLC ("American CryptoFed" or "Respondent") pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act").

The OIP states: "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**." (Emphases added).

In order to prepare for the prehearing conference and make efforts to explore the possibility of reaching agreements, we would like to establish a legal framework for our prehearing discussion. The legal and factual framework must enable the Commission and Respondent to search for a viable path for the Commission to adapt the Form 10 filing requirements designed for centralized

for-profit organizations, for American CryptoFed designed for a decentralized autonomous organization without profit generating mechanism pursuant to Wyoming Decentralized Autonomous Organization Supplement ("Wyoming DAO Law"), the text of which can be found in the following link below.
https://wyoleg.gov/2021/Enroll/SF0038.pdf

As we explained in our October 12, 2021 reply to Ms. Erin Purnell's October 8, 2021 letter, "Ms. Purnell failed to identify and specify one single item of important information, which does exist, but we did not disclose" (p.7), and "From the perspective of disclosing all existing material and substantial information, CryptoFed has met the disclosure requirements" (p. 8). You can find our October 12, 2021 letter at the following link on our website.
https://www.americancryptofed.org/sec-discourse

In search of a pragmatic legal path to close the gap between the Commission and Respondent, we suggest that the Commission and American CryptoFed collaboratively review Section (c) and (h) of the Exchange Act which should provide sufficient authority for the Commission to accommodate decentralized autonomous organizations, such as the American CryptoFed, established pursuant to Wyoming DAO Law. Section (c) enables the Commission to accept alternative information in lieu of information considered inapplicable, while Section (h) enables Respondent to apply for exemption subject to the Commission's approval by order.

The relevant text of Section 12 (c) reads as follows:
"Additional or alternative information

If in the judgment of the Commission any information required under subsection (b) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers." (15 U.S.C. § 78l(c))

The relevant text of Section 12 (h) reads as follows:
"Exemption by rules and regulations from certain provisions of section

The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 78m, 78n, or 78o(d) of this title or may exempt from section 78p of this title any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this chapter, classify issuers and prescribe requirements appropriate for each such class." (15 U.S.C. § 78l(h))

Please confirm receipt of this email. Additionally, we would appreciate it if you could let us know by November 23, 2021 whether you agree to explore a viable solution pursuant to Section (c) and (h) of the Exchange Act. Of course, we are open to new ideas you may suggest.

Sincerely,

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