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, RULE12b-20 AND SECTION 12 (c) 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 14 and 15 include operative claims of Form 10 and Exchange Act Rule 12b-20. 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, if information provided pursuant to Rule 12b-20 is inconsistent with Form 10 requirements, the Commission will either require an issuer to provide information pursuant to Section 12 (c) or will declare that Form 10 does not apply to the issuer's information.

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

OS Received 12/20/2021

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.

The OIP's Paragraph 15 asserts the following regarding Exchange Act Rule 12b-20:

Exchange Act Rule 12b-20 requires that "in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading."

However, there are scenarios for which information required by Exchange Act Rule 12b-20 is inconsistent with information required by Form 10. One example is information regarding Respondent's tokens called Ducat and Locke. The OIP's Paragraph 7 recognizes the inconsistency stating the following:

The Form 10 stated throughout that the Ducat and Locke tokens were not securities, which was inconsistent with the statement on the cover page identifying the Ducat and Locke tokens as "[s]ecurities to be registered pursuant to Section 12(g) of the [Exchange] Act" and American CryptoFed's use of the Form 10 to register the tokens as securities under Section 12(g) of the Exchange Act.

Below is the relevant text of Exchange Act Section 12 (c). This statute anticipates the necessary actions to be taken by the Commission when facing a scenario as described by the OIP's Paragraph 7 above.

(c) 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 Division of Enforcement ("Division") and Respondent discussed the scenario above and the possibility of Exchange Act Section 12 (c) as a solution via email

commutations, attached as Exhibit 1 through 5. The Division does not foreclose the possibility of exploration stating the following:

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.(Exhibit 4, p.3).

For the reasons set forth above, Respondent respectfully requests that the Commission confirms that as a matter of law, if information provided pursuant to Rule 12b-20 is inconsistent with Form 10 requirements, the Commission will either require an issuer to provide information pursuant to Section 12 (c) or will declare that Form 10 does not apply to the issuer's information.

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

bruckmannc@sec.gov

DocuSigned by:
Marian Orr
AE52AD38E6AC4EC...

By /s/ Marian Orr

Marian Orr

CEO, American CryptoFed DAO LLC

1607 Capitol Ave Ste 327

Cheyenne, WY. 82001

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.**	**EXHIBIT INDEX FOR RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO CONFIRM THE OPERATION OF FORM 10, RULE12b-20 AND SECTION 12 (c) OF SECURITIES EXCHANGE ACT OF 1934.**

Exhibit 1 - November 19, 2021 American CryptoFed Email to Division of Enforcement.

Exhibit 2 – November 22, 2021 Division of Enforcement Letter to American CryptoFed.

Exhibit 3 – November 28, 2021 American CryptoFed Email to Division of Enforcement.

Exhibit 4 - November 29, 2021 Division of Enforcement Letter to American CryptoFed.

Exhibit 5 - December 1, 2021 American CryptoFed Email to Division of Enforcement

OS Received 12/20/2021

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 1

---------- 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

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

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
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 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

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 3

---------- Forwarded message ---------
From: **Marian Orr** <marian.orr@americancryptofed.org>
Date: Sun, Nov 28, 2021 at 10:49 AM
Subject: Re: 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,

Please consider this email as my fourth and the last response to your letter of November 22, 2021. This email focuses on explaining 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, corresponding to your statement below.

"……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."

American CryptoFed appreciates your statement above and would like to make our best efforts to reach a settled resolution with the Division of Enforcement and the Commission for the betterment of human society in general and our country in

particular. It seems inevitable that *SEC v. American CryptoFed* will become a landmark case, because of the attention from the general public and legal professionals tracking the case. Below is quoted from the most recent article which, authored by two attorneys, Daniel L. McAvoy and Stephen A. Rutenberg from Polsinelli, published in the National Law Review, Volume XI, Number 327, on Tuesday, November 23, 2021, and entitled "DAOsing Rods and the Power of Enforcement Prediction", has expressed the expectation of the general public and legal professionals very well. All emphases in bold are added.

- 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.

- 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.**

- 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.

- 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.**

Source URL:
https://www.natlawreview.com/article/daosing-rods-and-power-enforcement-prediction

For the first ever legally recognized DAO in the US and the first ever DAO formally attempting to register digital tokens with the SEC, legal innovations within existing legal framework are inevitable. Fortunately, this mission impossible seems possible, thanks to the flexible architecture of statutes providing a chain of logic as follows.

i. Statute 15 U.S. Code § 78l (b) and (g) do not require information and documents which do not exist and will never exist, even if these information and documents have been specified by the Commission and are included in the instructions to Form 10. We would like to file a motion for a ruling as a matter of law to confirm this point if you do not agree with us.

ii. Statute 5 U.S. Code § 556 (d)

"Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."

The Division of Enforcement has to prove that information and documents requested but missing, do exist and will logically exist in the future, if the Division insists on its allegations that there are material and substantive deficiencies. As Daniel L. McAvoy and Stephen A. Rutenberg, the authors of the article above, emphasize, **"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." American CryptoFed fully agrees with the two authors' opinion and have repeatedly asserted the same points in both the Form 10 filing and the October 12, 2021 point-by-point reply to the Commission's staff's October 8, 2021 letter, to which the Staff of the Commission has not yet been able to respond.

iii. Statute 15 U.S. Code § 78l (c) and (h)

- **(c) 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." (Emphasis added).

- **(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." (Emphasis added).

Instead of simply characterizing the registration filing of innovations as material and substantive deficiencies and denying the filing, the statutes of section (c) and (h) already predict that the information required by section (b) may be

inapplicable in certain scenarios, and **mandate alternative information and/or exemption application.**

We suggest that pursuant to Section (c) and (h) above, American CryptoFed will use the Form 10 to the extent it is applicable, while developing a set of alternative information to provide disclosure relevant to American DAO's operations for the Commission's approval and applying for an exemption of the required information which does not and will never exist. The Commission and American CryptoFed will review the implementation every 6 months for further improvement.

Of course, we are open to your ideas regarding a viable solution.

As usual, please confirm receipt of this email.
I'm looking forward to your response.

Sincerely,

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

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 4

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

> 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

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 5

---------- Forwarded message ---------
From: **Marian Orr** <marian.orr@americancryptofed.org>
Date: Wed, Dec 1, 2021 at 9:32 AM
Subject: Re: In the Matter of American CryptoFed, AP File No. 3-20650
To: Bruckmann, Christopher <bruckmannc@sec.gov>
Cc: Scott Moeller <scott.moeller@americancryptofed.org>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Dear Mr. Bruckmann,

Thank you very much for your letter of November 29, 2021. This email is to respond point-by-point to your letter with headings correlating to the headings in your letter.

First, "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." you stated with regards to Scott Moeller and Xiaomeng Zhou's representation of American CryptoFed. We do not believe you can "reserve the right to do so in the future", while refusing to provide us an explanation and thereby creating unnecessary uncertainties and undue burdens for us. We will file a motion to ask you to provide your reasoning as to why you "are not convinced that Mr. Moeller or Mr. Zhou can represent American CryptoFed in this proceeding.", given that I already explained to you on November 24, 2021, as to why both Mr. Moeller and Mr. Zhou are eligible to represent American CryptoFed pursuant to Rule 102(b).

Second, on November 23, 2021, I explained in my email that i) American CryptoFed DAO Constitution Section 14.6 (p. 12-13), attached to Form 10 filing as Exhibit 1, clearly defines that the Form S-8 will be used for natural persons, satisfying the requirements of the instructions to Form S-8, and ii) distribution to entities will be pursuant to Ducat Economic Zone Plan, attached to the Form 10 filing as Exhibit 2, which defines the eligibility as "municipalities and/or businesses with $5 million USD assets", in compliance with the Commission's "Amendments to Accredited Investor Definition" adopted on August 26, 2020 under the Securities Act of 1933 ("Securities Act").

Upon Form 10 registration becoming effective, American CryptoFed will be able to distribute to an unlimited number of municipalities and/or businesses entities with $5 million USD assets. It is obvious that American CryptoFed does not need any additional form filings other than the Form 10 to achieve mass adoption by municipalities and/or businesses entities with $5 million USD assets.

Can you please explain why American CryptoFed would need to use Form S-8 for mass distribution to municipalities and/or businesses entities with $5 million USD assets? We want to be sure that you interpret our Form 10 filing in good faith. "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.", said Mr. Keith Paul Bishop, partner at Allen Matkins, in his article entitled "SEC Alleges Form 10 Was Misleading, But Is The SEC's Order Itself Misleading?". https://www.natlawreview.com/article/sec-alleges-form-10-was-misleading-sec-s-order-itself-misleading

Otherwise, we will need to file a Motion for More Definite Statement to seek for specification pursuant to Rule 220 (d).

Third, the Supreme Court's ruling in SEC v. Jones, 298 U.S. 1 (1936) you cited, does not support the Commission's Stay Order, because the clock of the registration statement was still running in SEC v. Jones, while the clock of the registration statement of American CryptoFed's Form 10 filing has been stopped by the Stay Order. Unless you can provide better precedent for the claims made, we will file a motion to have the Stay Order lifted.

Fourth, I confirm that we will file our Answer to the OIP by December 6, 2021.

Fifth, the case *Kornman v. SEC* (D.C. Circuit) you cited, failed to even consider **5 U.S. Code § 556** Section (d) below — likely because it was not raised by the parties — and therefore these opinions cannot be regarded as probative into the issue of whether the Statute permits the Commission's administrative summary disposition. Unless you can provide better precedent for the claims made, we will file a motion to confirm that the plain text of **5 U.S. Code § 556** Section (d) below can

only be reasonably interpreted as granting respondents an absolute right to an oral hearing.

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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) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. 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. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. **A party is entitled to present his case or defense by oralor 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.** In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

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Sixth, the rationale for the existence of Statute 15 U.S. Code § 78l (c) and (h) is for the scenarios that Statute 15 U.S. Code § 78l (b) and (g) are not applicable. We will file a motion to confirm that American CryptoFed is entitled to apply for exemptions and alternative information provided by 15 U.S. Code § 78l (c) and (h), unless you can provide a convincing legal argument to prove otherwise. At the same time, we will draft a proposal for you and the Commission to consider. We may enlist a group of legal professionals from various law firms to assist with drafting the

proposal to the Commission, and invite the crypto community to participate in this collaborative effort as well, including the hearing required in section (h).

As usual, please confirm receipt of this email.

Sincerely,

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