

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20650

<p>In the Matter of</p> <p>American CryptoFed DAO LLC,</p> <p>Respondent.</p>
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**DIVISION OF ENFORCEMENT’S MOTION FOR A BRIEFING SCHEDULE
AND INCORPORATED MEMORANDUM OF LAW.**

The Division of Enforcement (“Division”) of the U.S. Securities and Exchange Commission (“Commission”) respectfully submits this motion for a briefing schedule in this proceeding.

The Commission issued the Order Instituting Proceedings (“OIP”) in this matter on November 10, 2021. Respondent filed its Answer on December 3, 2021.¹ Respondent has filed fifteen motions in a sixteen-day span from December 3, 2021 to December 19, 2021. This includes seven motions for a more definite statement, three motions to delay a prehearing conference, and three motions purporting to seek confirmation of statutory language. Individually the motions are without merit.² Collectively they are designed to “harass or to cause unnecessary delay or

¹ The Answer was filed after hours on Friday December 3, 2021 and the eFAP system reflects a filing date of December 6, 2021. The difference between those dates is not relevant for this motion.

² The Division will (and/or already has) address the merits of the motions separately.

needless increase in the cost of adjudication” of this proceeding. *See* Rule 153(b)(1)(iii), 17 C.F.R. § 201.153(b)(1)(iii).

During the prehearing conference on December 20, 2021, Respondent indicated an intention to file more motions as this proceeding develops. The Division believes it is appropriate to approach any future motions in a more orderly fashion. Accordingly, the Division proposes the briefing schedule below for motions filed on or after December 21, 2021, other than summary disposition motions for which the Commission separately indicated it would set a briefing schedule when ruling on the motions for a more definite statement. For all the motions filed before today’s date, the Division will respond (or has responded) in the timeframe set forth in Rule 154, 17 C.F.R. § 201.154.

The Division’s proposed briefing schedule is:

- American CryptoFed files any additional motions by January 5, 2022;
- The Division responds to those motions, either seriatim or in an omnibus brief, by January 14, 2022;
- American CryptoFed files any replies by January 21, 2022.

The Division proposed this briefing schedule to American CryptoFed in an email shortly after the prehearing conference on December 20, 2021.³ In response, the Division received the letter attached as Exhibit 1 to this motion. In brief, that letter opposes setting a briefing schedule at this time and anticipates filing yet more motions as soon as the Commission rules on the pending motions. The Division

³ The parties are separately working on a joint prehearing conference statement to be submitted by January 3, 2022 as previously directed by the Commission.

believes that a briefing schedule is appropriate in this matter, and would be amendable to either the schedule set forth above or any other reasonable schedule the Commission determines is appropriate. Should more motions be appropriate after January 21, 2022, the Division (or Respondent) may request additional briefing schedules.

The Commission, which is presently presiding as hearing officer in this proceeding, has authority to set a briefing schedule in order to regulate the conduct of these proceedings. *See* Rule 111(d), 17 C.F.R. § 201.111(d). The Commission has also issued briefing schedules in other cases. *See, e.g., Calmare Therapeutics, Inc.* Exchange Act Release No. 93724, 2021 SEC LEXIS 3620 at *1-2 (December 6, 2021).

Accordingly, the Division respectfully requests that the Commission enter the briefing schedule above.

Dated: December 21, 2021

Respectfully submitted,

/s/ Christopher Bruckmann
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Martin Zerwitz (202) 551-4566
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DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Motion for a Briefing Schedule and Incorporated Memorandum of Law to be served on the following on December 21, 2021, in the manner indicated below:

By Email:

Marian Orr
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December 21, 2021

Via Electronic Email

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

Dear Mr. Bruckmann,

Thank you for the prehearing conference discussion the morning of the 20th, to better clarify our differences and facilitate mutual understanding. Regarding your question below, we believe it's premature to decide the briefing schedule at this time, and should wait for the rulings on our existing motions.

“Since you plan to file additional motions, would you be agreeable to setting a briefing schedule for those motions? We suggest that you could file all your additional motions by January 5, we could file oppositions by January 14, and you could file replies by January 21.”

The Commission stated, “The motions for a more definite statement will be addressed by separate order.” in a note in the Order of Release No. 93806 / December 16, 2021. This order may require the Division of Enforcement (“Division”) to provide more clarity regarding the allegations to which American CryptoFed needs more time to review and submit the Answer.



In addition, we have filed 5 motions pursuant to Rule 250 (a) below. Each motion addresses a landmark issue not only for American CryptoFed, but also for the cryptocurrency industry as a whole, and other industries which are impacted by the SEC's rulings.

Rule 250. Dispositive motions.

(a) Motion for a ruling on the pleadings. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. **The hearing officer shall promptly grant or deny the motion.** (Emphasis added).

According to Rule 250 (a) above, the hearing officer, e.g. the Commission in this case, "shall promptly grant or deny the motions." American CryptoFed expects the Division's responses to all 5 motions this week and will focus on our replies to the Division's responses this week and the following week, so that the Commission can promptly grant or deny the motions. As a result, we should wait for the Commission's rulings regarding these following 5 motions before we can determine whether we need to file additional motions.

i. RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO LIFT THE ORDER THAT STAYS THE EFFECTIVENESS OF RESPONDENT'S FORM 10.

The ruling will decide whether the Commission has authority to include a Stay Order in an order instituting administrative proceedings ("OIP"). The Commission's ruling will have an impact far beyond American CryptoFed and the cryptocurrency industry. It will be worth making our best efforts to seek the ruling from the Commission, and higher appeal court as needed.

ii. RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO CONFIRM THE TEXT OF SECTION 12(j) OF SECURITIES EXCHANGE ACT OF 1934 AND MANDATE PROCEDURE

The ruling will decide whether the Commission has the authority to issue an order without a cross-examination at an oral hearing. Similarly, this ruling will have impacts far beyond American CryptoFed and the cryptocurrency industry, and it will be worth making our best efforts to seek the ruling from the Commission and higher appeal court as needed.



iii. 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.

The ruling will test whether the Commission has the willingness to activate Section 12(h) to accommodate Wyoming DAO which, by design, does not and will not have information required by Form 10. This ruling by the Commission will have an impact far beyond the American CryptoFed, and can establish a new exemption path for the cryptocurrency industry to work with the Commission within the existing legal framework. It will be worth making our best efforts to seek the ruling from the Commission and higher appeals court as needed.

iv. RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO CONFIRM THE OPERATION OF FORM 10, RULE 12b-20 AND SECTION 12 (c) OF SECURITIES EXCHANGE ACT OF 1934.

The ruling will test whether the Commission has the willingness to activate Section 12(c) to accommodate the cryptocurrency industry which has add on elements inconsistent with Form 10. This ruling will impact far beyond American CryptoFed, and will establish a new path for the cryptocurrency industry to work with the Commission within the existing legal framework. It will be worth making our best efforts to seek the ruling from the Commission and higher appeal court as needed.

v. RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO DISMISS THE ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934.

The ruling will decide whether American CryptoFed must file a motion for summary disposition. There are no investors whatsoever, to be protected by the Division or the Commission. We believe there is no factual dispute between the Division and American CryptoFed regarding the fact that American CryptoFed only distributes restricted, untradeable and non-transferable Locke tokens, free of charge, before the SEC declares the Form S-1 as effective. If you believe that we have a factual dispute, please let us know. Otherwise, it is highly



possible for the Commission to grant this motion based on the following facts provided by American CryptoFed DAO's Form 10 registration statement ("Form 10"), American CryptoFed DAO Constitution attached to the Form 10 as Exhibit 1 ("Constitution"), and the American CryptoFed DAO's Ducat Economic Zone attached to the Form 10 as Exhibit 2.

1) For clarity, all Locke and Ducat tokens will remain restricted, untradeable and non-transferable until the effectiveness of the Form S-1 filing is confirmed by the SEC. (Form 10, Preamble, p.6).

2) Refundable auctions will not start until the SEC declares CryptoFed's Form S-1 filing is effective. (Form 10, Section 2.4.1.1.6, p. 22).

3) The initial allocation creates Locke token holders who cannot sell their tokens on compliant crypto exchanges until the SEC declares CryptoFed's Form S-1 is effective and Locke tokens are registered. (Form 10, Section 2.4.1.2, p. 22).

4) Ducat distribution will not start until the SEC declares CryptoFed's Form S-1 is effective and Locke reaches a minimum value of \$0.10 USD on compliant crypto exchanges for a consecutive one-month period. (Form 10, Section 2.4.2, p. 22).

5) Even though CryptoFed defines Locke tokens as utility tokens, the SEC may classify Locke tokens as securities. In that case, the initial allocation of Locke tokens will be treated as an equity incentive, free of charge. This Constitution will serve as the Equity Incentive Plan for CryptoFed to issue non-qualified stock options and incentive stock options (ISO) to service providers defined as directors, employees, and consultants pursuant to related laws and regulations. By holding Locke tokens, the recipients by definition contribute to the CryptoFed monetary system, because the CryptoFed token economy depends on mass adoption to generate a network effect and overcome the hurdles of collective action. All stock options are subject to laws and regulations regarding an equity incentive plan for a private company before CryptoFed's Form 10 filing with SEC becomes effective on or around November 16, 2021. After the Form 10 filing becomes effective, all stock options will be subject to laws and regulations regarding equity incentive plans for a public company. Within one week after the Form 10 filing with SEC becomes effective, CryptoFed will file Form S-8 and thereby extend the equity incentive plan to service providers beyond 500-person threshold limitation of related securities laws. Before the Form 10 filing with SEC becomes effective, the administrator of the Equity Incentive Plan will be designated by MShift and CryptoFed with full discretion permitted by related laws. After the Form 10 filing with SEC becomes effective, the details will be described in CryptoFed's Form S-8 filing. **Until the SEC declares CryptoFed's Form S-1 effective, all**

Marian Orr, CEO

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OS Received 12/21/2021



stock options are restricted and untradeable.” (Constitution, Section 14.6, p.12-13, Emphasis added).

6). “Participating municipalities and/or businesses with \$5 million USD assets will be granted restricted and untradeable Locke governance tokens, free of charge. All granted Locke tokens can only be sold on participating crypto exchanges at a price higher than \$0.10 US dollars per token **after CryptoFed’s Form S-1 filing is declared effective by the SEC.** (Ducat Economic Zone, Section 6, Emphasis added).

In summary, let’s focus on the existing motions and await the Commission’s decisions on these separate motions. Then we can revisit the issue of scheduling as needed.

Thank you.

Sincerely,

DocuSigned by:

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Marian Orr

CEO, American CryptoFed DAO