

**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**

<p><b>In the Matter of</b> <b>American CryptoFed DAO LLC,</b> <b>Respondent.</b></p>
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**RESPONDENT’S REPLY TO DIVISION OF ENFORCEMENT’S OMNIBUS  
OPPOSITION TO RESPONDENT’S MOTION TO CONFIRM THE OPERATION OF  
FORM 10, SECTION 12(g), 12 (b) AND 12 (h) OF [THE] SECURITIES EXCHANGE  
ACT OF 1934 AND MOTION TO CONFIRM THE OPERATION OF FORM 10,  
RULE12b-20 AND SECTION 12(c) OF [THE] SECURITIES EXCHANGE ACT OF 1934.**

American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”), respectfully submits this reply to the Division of Enforcement (“Division”)’s Omnibus Opposition (“Omnibus Opposition”) to Respondent’s Motion to Confirm the Operation of Form 10, Section 12(g), 12(b) and 12 (h) of the Securities Exchange Act of 1934 (“Motion for Exemption”) and Motion to Confirm the Operation of Form 10, Rule 12b-20 and Section 12(c) of the Securities Exchange Act of 1934 (“Motion for Add-on”).

**Interrelationship among Subsections of Section 12**  
**REGISTRATION REQUIREMENTS FOR SECURITIES**

In the Securities Exchange Act of 1934 (“Exchange Act”), there are 40 Sections and 367 pages in total, according to SECURITIES EXCHANGE ACT OF 1934, as published by the U.S.

Government Publishing Office (GPO) at G:\COMP\SEC\SECURITIES EXCHANGE ACT OF 1934.XML. Section 12, coded in 15 U.S. Code § 78l, is from page 111 through 123, under the title REGISTRATION REQUIREMENTS FOR SECURITIES, with subsections (a) through (l). All these subsections are logically and operationally related to each other with certain conditional triggers without contradiction. The mechanism to avoid contradiction and maintain consistency among these subsections has been built in advance which are subsections (c) and (h). The Division is fully aware and understands these logical interrelationships among these subsections, because the allegations written in the OIP's Paragraphs 12 and 13 as shown below take advantage of the interrelationship linking subsection (g) and subsection (b) logically together.

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). (OIP's Paragraph 12).

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 . . . ". (OIP's Paragraph 13).

The Division not only takes full advantage of the interrelationship between subsections (g) and (b) of Section 12, but also the logical interrelationships among subsections (g) and (b) of Section 12, Form 10, Regulation S-K, Regulation S-X and Exchange Act Rule 12b-20 in its allegations written in the OIP's Paragraphs 14 and 15 stating the following:

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. (OIP's Paragraph 14).

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." (OIP's Paragraph 15).

The Division must rely on the logical interrelationship of the subsections (b) and (g) of Section 12, Form 10 and Exchange Act Rule 12b-20 to outline its allegations. Similarly, Respondent must rely on the logical interrelationship inherent in the subsections of (b), (c), (g) and (h) of Section 12, Form 10 and Exchange Act Rule 12b-20 to outline its defense.

**The Role of Subsection (c) and (h) under Section 12**  
**REGISTRATION REQUIREMENTS FOR SECURITIES**

Under the title of REGISTRATION REQUIREMENTS FOR SECURITIES of Section 12, in addition to subsections (b) and (g) on which the Division relies to outline its allegations, there are two important subsections (c) and (h) which are the built-in mechanism designed by the US Congress to avoid contradictive operations among all subsections and maintain the consistency and integrity for the entire Section 12 entitled REGISTRATION REQUIREMENTS FOR SECURITIES.

**A. Section (h).** When information required by subsections (b) and (g), does not and will never exist, subsection (h) authorizes the Commission to exempt the information from subsections (g) by rules and regulations or orders. This exemption will enable Form 10 to accommodate the new scenario and maintain the functions of Form 10 which "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." (OIP's Paragraph 14).

Respondent filed the Motion for Exemption to request the Commission to exercise its discretion authorized by subsection (h). The information to be exempted has already been well

defined by the Division's allegations of deficiencies. The Commission can simply issue an order similar to a draft language below:

“IT IS ORDERED that if information required by subsections (b) and (g), does not and will never exist, the information may be exempted from Form 10, by an issuer's application pursuant to Section 12(h).”

If the Commission denies Respondent's Motion for Exemption, the legal effect is that the Commission elects to voluntarily and actually abandons its jurisdiction over the Respondent's tokens described in its Form 10 which “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.” (OIP's Paragraph 14). It will be unreasonable for the Commission to argue in the future that Respondent has not sought to and actively registered with the Commission, unless the Commission can identify the specified information and proves its existence, which the Respondent has requested to exempt from Form 10 pursuant to subsection (h) through this Motion for Exemption.

**B. Section (c).** When information required by Exchange Act Rule 12b-20 is inconsistent with information required by Form 10, subsection (c) authorizes the Commission to allow the information to be added “as it may deem applicable to such class of issuers.” (15 U.S.C. § 78l(c)). This addition will enable Form 10 to accommodate the new scenario and maintain the functions of Form 10 which “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.”

Respondent filed the Motion for Add-on to request the Commission to exercise its discretion authorized by the subsection (c). The information to be added is already well defined

by the Division's allegations of OIP's Paragraph 7. The Commission can simply issue an order similar to the draft language below:

“IT IS ORDERED that if information required by Exchange Act Rule 12b-20 is inconsistent with information required by Form 10, the information may be added to Form 10, pursuant to Section 12(c).”

If the Commission denies Respondent's Motion for Add-on, the legal effect is that the Commission voluntarily and actually abandons its jurisdiction over the Respondent's tokens described in its Form 10 which “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.” (OIP's Paragraph 14). It is unreasonable for the Commission to argue in the future that Respondent has not chosen to come to and has registered with the Commission the specified information, which Respondent has requested to add on pursuant to subsection (c) through this Motion for Add-on.

**C. Flexibility Provided by Section (c) and (h).** The US Congress anticipated future complexities and has designed Section (c) and (h) to exempt information from or add information to Form 10 which “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.” (OIP's Paragraph 14). The Division, whether unintentionally or by intent has clearly failed to understand these important functions of Section (c) and (h) for the entire Section 12 entitled REGISTRATION REQUIREMENTS FOR SECURITIES. With Section (c) and (h), Section 12 is able to expand the scope of the Exchange Act far beyond the narrow scope understood by the Division in order to embrace future innovations. The intent of the US Congress and the spirit of the statute of Exchange Act is to maintain flexibility for facilitating innovation, and to provide transparency and disclosure. This spirit is explicitly expressed through the subsections (c) and (h)

which are so powerful that they can handle not only information exemptions but also information added-on .

For the reasons set forth above, Respondent respectfully requests that the Commission confirms that as a matter of law:

A. i) an issuer does not need to provide information required by Exchange Act Section 12 (b), 12(g) and Form 10, if the information does not and will not exist, but ii) the issuer can apply for exemption pursuant to Exchange Act Section 12 (h).

B. 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 23, 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 23st day of December 2021, in the manner indicated below:

By Email:

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