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 OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS

American CryptoFed DAO LLC ("American CryptoFed" or "Respondent"), respectfully submits this reply to the Division of Enforcement ("Division")'s Opposition ("Opposition") to Respondent's Motion ("Motion") to Dismiss the Order Instituting Administrative Proceedings ("OIP").

For the purposes of Respondent's Motion and this Reply only, Respondent agrees to the Division's "Legal Standard for a Ruling on the Pleadings." (Opposition p.2), while assuming the "factual allegations of the OIP as true and drawing all reasonable inferences in the Division's favor" (Opposition p.2-3). Respondent also agrees with the Division's summary of Respondent's position as follows:

Respondent asserts that it is entitled to a ruling on the pleadings because "there are no existing and potential investors to be protected." As Respondent explains it, after Respondent's

OS Received 12/27/2021

September 16, 2021 Form 10 becomes effective, and before the Commission declares Respondent's Form S-1 effective, the only distributions that will take place of Locke tokens will be for free, and those tokens will be restricted, untradeable tokens with no possible secondary market. Therefore, according to Respondent, no investors can be harmed and the Commission must dismiss this proceeding. (Opposition p.2)

There is no dispute regarding the time span of the OIP's allegations which is **"after Respondent's September 16, 2021 Form 10 becomes effective, and before the Commission declares Respondent's Form S-1 effective,"** ("Form 10 Phase") as summarized by the Division above. Any potential and possible events and scenarios after the Commission declares Respondent's Form S-1 effective ("Form S-1 Phase") are not relevant to the OIP's allegations. The only dispute is whether there are any investors who can be harmed in the Form 10 Phase due to the distribution of Locke tokens. The Division argues, "It is simply not true that there is no risk of harm to investors," by analyzing Respondent's Form 10, the American CryptoFed DAO's Constitution, and other documents provided by Respondent. Therefore, in this reply, Respondent solely focuses on rebutting the Division's argument, by proving that no investors can be harmed whatsoever, by analyzing the same set of documents.

The Division's False Argument No.1

Division's Opposition states at p.9-10 the following:

Respondent cites to Section 14.6 of the American CryptoFed DAO's Constitution to support this assertion, but that Section only discusses the ***initial*** distribution of Locke tokens being "free of charge." The American CryptoFed Constitution does not prevent ***subsequent*** distributions of Locke tokens via sales before the Form S-1 is declared effective. In addition, **Respondent's Form 10 in Section 2.4.1.1.1. contemplates an "Initial Locke Allocation" that would reserve 10% of the maximum authorized number of Locke tokens for "refundable auctions on crypto exchanges for price discovery."** Therefore, despite Respondent's claims in the Motion, and certainly taken in the light most favorable to the Division, **the Form 10 and its attachments do not contain absolute assurances that Respondent will not sell Locke tokens before the Form S-1 becomes effective.** (Emphasis added).

The Division's statement above is false. Included in "the Form 10 and its attachments" are Respondent's Form 10 (Exhibit A to Respondent's Answer, "Form 10"), American

CryptoFed DAO Constitution (Exhibit B to Respondent's Answer, Exhibit 1 to the Form 10, "Constitution") and Ducat Economic Zone Plan (Exhibit L to Respondent's Answer, Exhibit 2 to the Form 10, "Ducat Economic Zone"), which not only "contain absolute assurances that Respondent will not sell Locke tokens before the Form S-1 becomes effective," but also requires the selling price to be equal to or higher than $0.10 USD after Form S-1 becomes effective. Nowhere is the concept of ***subsequent*** distributions of Locke tokens discussed in Form 10, Constitution and Ducat Economic Zone. The Division should not fabricate the concept "the ***subsequent*** distributions of Locke tokens via sales before the Form S-1 is declared effective" which do not exist. From Respondent's perspective, there is no need for "***subsequent*** distributions of Locke tokens before the Form S-1 is declared effective."

A. Form 10 contains clear statements in both its preamble and subsequent sections:

If the SEC does not agree with CryptoFed's position and characterizes Locke and Ducat tokens as securities, CryptoFed should be able to grant these tokens to service providers, **free of charge**, under an equity incentive plan for the CryptoFed community, pursuant to the American CryptoFed DAO Constitution ("Constitution") attached as Exhibit 1, as long as these tokens are restricted, untradeable and non-transferable…**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.5-6).

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).

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).

Refundable auctions, as part of the initial allocation, will not start until the SEC declares CryptoFed's Form S-1 filing effective. Ducat distribution will not start until the market price of Locke tokens reach $0.10 USD per token on compliant exchanges via the secondary market after the refundable auctions. (Form 10: Section 6, p. 32)

B. Ducat Economic Zone Plan contains a clear statement for distribution of Locke Token to entities:

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 Plan, Section 6, Emphasis added).

C. Constitution contains clear statement for distribution of Locke Token to natural persons:

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

The Division's False Argument No.2

Division's Opposition states at p.4-5 the following:

Here, even assuming as true Respondent's claim that no investor will purchase any Locke tokens until after the Commission deems American CryptoFed's Form S-1 effective, Respondent clearly plans to begin selling Locke tokens at some point, or else Locke tokens would never increase in value. **If American CryptoFed's Form 10 is allowed to become effective as presently written, any future purchasers of Locke tokens will be harmed because they will be purchasing tokens on the basis of a materially deficient and misleading registration statement.** (Emphasis added).

The Division's statement above is false. The Division should not confuse the period in which the Form 10 is solely and automatically effective, with the phase when Form S-1 is deemed effective by the Commission. The Form 10 Phase is independent of and prior to the Form S-1 Phase. The OIP's allegations are solely for the Form 10 Phase which is the period of

time **"after Respondent's September 16, 2021 Form 10 becomes effective, and before the Commission declares Respondent's Form S-1 effective,"** summarized by the Division (Opposition, p.2). Locke token sales after Respondent's Form S-1 becomes effective, should not be relevant to the OIP's allegations during the Form 10 Phase. If the Division is "assuming as true Respondent's claim that no investor will purchase any Locke tokens until after the Commission deems American CryptoFed's Form S-1 effective", then all the OIP's allegations should be dismissed, because no investors can be harmed and there are no investors that need to be protected by the Commission in the Form 10 Phase. During the Form 10 Phase, there are no sales, no pricing and no value for Locke Token, whatsoever, because price discovery will not start until Form S-1 becomes effective, as explicitly stated in Form 10 Section 2.4.1.1.6, p. 22 below:

> For price discovery purposes, CryptoFed may conduct refundable auctions from time to time via compliant crypto exchanges. Refundable auctions will not start until the SEC declares CryptoFed's Form S-1 filing is effective.

The Division's False Argument No.3

Division's Opposition states at p.6 the following:

> If Respondent's Form 10 becomes effective, American CryptoFed clearly intends to begin "mass distribution" of its tokens. This will cause harm through a potential violation of Securities Act Section 5, 18 U.S.C. §77e, by American CryptoFed and the individuals assisting it in an unregistered securities offering…
>
> But contrary to American CryptoFed's assertions, this distribution is not a valid use of Form S-8. Among other problems, American CryptoFed only classifies these token recipients as contractors or advisors because they are providing the "service" of receiving the tokens in the mass distribution.

The Division's statement above is false. Locke tokens are governance tokens. Locke token holders provides the most important and unique services to decentralize American CryptoFed's decision making process, which is the only way to ensure that American CryptoFed

OS Received 12/27/2021

will be transformed to a decentralized autonomous organization (DAO). These critical services are clearly described in both American CryptoFed's Form 10 registration and Constitution.

Locke tokens make CryptoFed's network rules under which Ducat operates. Locke tokens participate in network rulemaking and decision making based on the CryptoFed Constitution. (Form 10 Section 2.2.2, p.10).

Locke – A governance token with a maximum authorized finite number of 10 trillion. **Locke is used to stabilize Ducat and for Locke holders to participate in network rulemaking and decision making.** Under no circumstances, should the maximum authorized finite number of 10 trillion be changed. A unanimous consent of all outstanding Locke token votes is required to make changes to this section. (Constitution, Section 3.2, p.2).

Locke tokens can amend this Constitution by a simple majority through a valid vote, except for those sections of the Constitution which require a special majority or unanimous consent (Constitution, Section 17.4, p.15)

Locke tokens have rights to publish proposals as well as to campaign support for, or opposition to proposals for voting. Once a proposal is supported by more than 10% of the total Locke tokens outstanding, the proposal will be voted on and recorded on the CryptoFed Blockchain within 30 days (Constitution, Section 17.5, p.15-16).

Without mass distribution to recipients, it would be impossible to establish a decentralized autonomous organization as defined by the Constitution below:

CryptoFed is a token-based organization with the goal to reach the decentralized and functional network maturity outlined in the Token Safe Harbor Proposal 2.0, independent of its approval, in less than three years beginning from the effective date of this Constitution. (Constitution, Section 4.2, p.3).(Emphasis added).

There is no hierarchy, such as an executive branch, a board of directors, or an advisory board, at CryptoFed. CryptoFed will be decentralized to the extent that a CEO is no longer needed within three years. For the time being, the current CEO is a symbolic position to communicate with regulators together with MShift because regulators, such as the SEC, or other agencies, may require contact people and the founding company to be responsible for document filing. (Constitution, Section 4.4, p.3-4).(Emphasis added).

Respondent incorporates into its Constitution the criteria and principles of decentralized and functional network maturity published by Commissioner Hester Peirce in her Token Safe Harbor Proposal 2.0. Respondent seeks to implement the criteria and principles outlined in the Safe Harbor Proposal 2.0 independent of its approval by the Commission. To the extent the services provided by the recipients of Locke Token is to meet these criteria and principles, their

services are mission critical. There will be no capital raising during the Form 10 phase whatsoever. Thus, the recipients of Locke token during the Form 10 Phase meet the Form S-8 requirement cited by the Division in *SEC v. iBIZ Tech. Corp* below (Opposition p.7):

Companies can use Form S-8 only to issue stock as compensation for consultants for bona fide services not connected with capital raising.

The Division's False Argument No.4

Division's Opposition states at p.8 the following:

"Another harm that may result if Respondent's Form 10 becomes effective is that token recipients will be deceived about their ability to resell the tokens legally."

The Division's statement above is false. Locke token holders have no means to resell the Locke tokens without American CryptoFed's permission, due to the nature of the holding Locke in a proprietary token wallet or paper certificates as defined by the Constitution below:

To participate in the CryptoFed economy, all individuals and business entities are required to open accounts at CryptoFed participating banks, compliant crypto exchanges or organizations complying with KYC, AML and money transmitter regulations. These banks, exchanges and organizations will issue CryptoFed co-branded wallets with their name and CryptoFed to individuals and entities for the purposes of holding and transacting in Ducat and Locke. (Constitution, Section 5.1, p.5).

"Purchases, holding and sales of Locke and Ducat tokens must be done through CryptoFed co-branded wallets or whitelisted wallets compliant with KYC and AML, with exception of the paper certificates for initial allocation of Locke tokens." (Constitution, Section 15.1, p.13).

The Division's False Argument No.5

Division's Opposition states at p.8-9 the following:

"If Respondent's materially deficient and misleading Form 10 becomes effective, there will be a harm to **the Commission's ability to regulate a well-ordered marketplace**, which in turn harms all investors." (Emphasis added).

The Division's statement above is false. The plain text of Section 12 (j) of Exchange Act includes a prerequisite phrase "as it deems necessary or appropriate for the protection of

investors." For sake of the Rule of Law, **"the Commission's ability to regulate a well-ordered marketplace"** desired by Division above must comply with this prerequisite first. If this prerequisite cannot be met, no regulations should be needed. When there are no investors, and when there is no investment, rather than mischaracterizing Respondent's Form 10 as "materially deficient and misleading", the Commission can simply activate exemptions authorized by Section 12 (h) of Exchange Act:

> **(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… (15 U.S. Code § 78l(h)). (Emphasis added).

Furthermore, the interest of investors is not always consistent with **"the Commission's ability to regulate a well-ordered marketplace."** It could be true that **"the Commission's ability to regulate a well-ordered marketplace"** may actually reduce the choices of investors and thereby harm their interest. When there are no investors to be protected, as in this case of American CryptoFed, it is highly possible that the framework of the Commission's regulations should be modified, including but not limited to, the activation of Section 12 (h) of Exchange Act for exemptions. The Division's logic in their argument is to build and maintain **"the Commission's ability to regulate a well-ordered marketplace"** first, even without investors to be protected, and then search for investors later to justify the **"the Commission's ability to regulate a well-ordered marketplace".** Although there is no problem (investor) to be solved (protected), the Division wants to build and maintain a solution (the Commission's ability to regulate) to search for problems (investors to be protected). However, the plain text of Section 12 (j) of Exchange Act mandates the opposite via the prerequisite phrase "as it deems necessary or

appropriate for the protection of investors." The investors to be protected must be identified and specified first.

For the reasons set forth above, Respondent respectfully requests that that the Commission act promptly to dismiss the OIP in its entirety, as a matter of law.

Dated: December 26, 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 26th 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