

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 FOR EXEMPTION
FROM SECTION 12(g) OF THE SECURITIES
EXCHANGE ACT OF 1934**

On September 16, 2021, American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) filed Form 10 to register two tokens designed to operate in tandem issued under the names Locke and Ducat. 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”). Due to the OIP, Respondent hereby moves the Commission to exempt American CryptoFed from Exchange Act Section 12(g).

1. The Plain Text of Section 12(g) of Exchange Act Allows Both Voluntary Registration in Advance and Requires Mandatory Registration after Fact.

Any issuer can file Form 10 pursuant to Section 12(g) to disclose information voluntarily in advance. These issuers who meet the mandatory disclosure conditions can file Form 10 after the fact, as long as the filing is not later than the 120 days after the last day of

its first fiscal year. No permission in advance is required to issue securities beyond 500 persons who are not accredited investors. The relevant text of Section 12(g) of Exchange Act reads as follows:

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) **within 120 days after the last day of its first fiscal year ended** on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either—

(i) 2,000 persons, or

(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and...

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) 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 subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. **Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph.** The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.(15 U.S. Code § 781) (Emphasis added).

**2. The OIP, If Confirmed by the Commission’s Ruling,
Serves as Evidence of Exemption.**

Respondent filed Form 10 with the Commission voluntarily in advance for token registration even although it was not required to do so. By the OIP (Release No. 93551, Section III, p.4), the Division of Enforcement (“Division”) seeks the following relief:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to deny, or suspend the effective date of the registration of each class of securities that may become registered pursuant to Section 12 of the Exchange Act of the Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

The OIP is only related to the current Respondent’s Form 10 filing which is not required by the statute anyway. The OIP does not prohibit Respondent from issuing restricted,

untradeable and non-transferable tokens, because Section 12 of the Exchange Act allows American CryptoFed to file Form 10 after the fact. Therefore, Respondent has the rights to issue restricted, untradeable, and non-transferable tokens to more than 500 persons, as long as Respondent files the Form 10 “within 120 days after the last day of its first fiscal year ended” on which American CryptoFed has more than 500 non accredited token holders. Given that the Commission’s OIP, if confirmed by the Commission’s ruling, disables Respondent’s capacity to file the Form 10, the OIP will actually serve as evidence exempting Respondent from the mandatory obligation to file Form 10 pursuant to Section 12(g) of Exchange Act, as long as there are no material changes to Respondent’s business model disclosed in the current Form 10 filing, and as long as all tokens remain restricted, untradeable and non-transferable, even if American CryptoFed has more than 500 token holders who are not accredited investors. For the purpose of discussion only, Respondent assumes that American CryptoFed will have more than 500 holders of restricted, untradeable and non-transferable Locke tokens in 12 months. Then, there are two possible scenarios below.

i). If the OIP is not confirmed by the Commission’s ruling, Respondent has to file the Form 10 “within 120 days after the last day of its first fiscal year ended” on which American CryptoFed has more than 500 non accredited token holders, mandated by the Section 12(g) of Exchange Act. The Form 10 filing will be after the fact, not in advance.

ii). If the OIP is confirmed by the Commission’s ruling, Respondent is exempted from filing the Form 10 “within 120 days after the last day of its first fiscal year ended” on which American CryptoFed has more than 500 non accredited token holders, mandated by the Section 12(g) of Exchange Act. The Form 10 filing for disclosure will be impossible, because the OIP already confirmed would prohibit Respondent from filing a similar Form 10.

3. The Commission Has the Burden of Proof.

If the OIP is confirmed, given that the OIP is issued by the Commission, in accordance with 5 U.S. Code § 556 below, the Commission or its Division of Enforcement has the burden of proof to prove i) there are material changes to Respondent's business model disclosed in the current Form 10 filing, and ii) the tokens issued by Respondent are securities, in order to terminate the de facto exemption provided by the confirmed OIP.

5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; **burden of proof**; evidence; record as basis of decision

(d) Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof.** (Emphasis added).

For the reasons set forth above, if the OIP is confirmed by the Commission's ruling, Respondent respectfully requests that the Commission act promptly to exempt Respondent from Section 12 (g) of Exchange Act registration, even if Respondent's token holders exceed 500 persons who are not accredited investors, as long as there are no material changes to Respondent's business model disclosed in the current Form 10 filing and as long as all the tokens remain restricted, untradeable and non-transferable.

Dated: January 4, 2022

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 4th day of January 2022, 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