

**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 CRYPTO FED**

**DAO LLC'S MOTION FOR LEAVE TO FILE**

**A MOTION**

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 pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”). In the Division of Enforcement (“Division”)’s Opposition (“Opposition”) to Respondent’s Motion for Exemption from Section 12(g) of the Exchange Act, the Division made the following serious allegations.

Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, **the Division asserts** that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 (“Securities Act”), and notes that willful violations of the Securities Act can result in **criminal penalties**. See Securities Act Section 24, 15 U.S.C. §77x. (p.2)

Finally, **the Motion appears to suggest that American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act** by asserting that “Respondent has the rights [sic] to issue restricted, untradeable, and non-transferable tokens to more than 500 persons” as long as Respondent subsequently files a Form 10. (p.8).

Given that the Division made these serious allegations, in accordance with 5 U.S. Code § 556 plain text below, the Division has the burden of proof to prove that Locke token and Ducat token are securities.

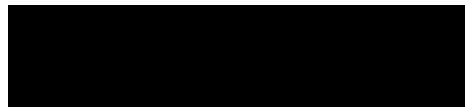
(d)Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. (Emphasis added).

However, the Division has repeatedly refused to provide any proof or justification of the allegations through email communications (**Exhibit 1 through 5**) as well as during the Commission mandated meet and confer on January 20, 2022. A major factual dispute between the Division and Respondent remains whether or not Locke token and Ducat token of American CryptoFed are securities. It is important for Respondent to know the Division's proof so that Respondent can prepare for effective defense prior to summary disposition.

For the reasons set forth above, Respondent respectfully requests that the Commission grant Respondent's leave to file a motion to compel the Division to provide Howey Test Analysis or other legal justification to prove Locke token and Ducat token are securities.

Dated: January 23, 2022

Respectfully submitted,

A solid black rectangular box redacting the signature of Scott Moeller.

By /s/ Scott Moeller

Scott Moeller

President, 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 23th 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](mailto:bruckmannc@sec.gov)

By /s/ Scott Moeller



President, American CryptoFed DAO LLC  
1607 Capitol Ave Ste 327  
Cheyenne, WY. 82001

**RESPONDENT**

**AMERICAN CRYPTO FED DAO LLC**

**EXHIBIT 1**



January 9, 2022

Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit  
Division of Enforcement, U.S. Securities and Exchange Commission  
100 F Street, N.E., Washington, D.C. 20549-5949  
Phone 202-551-5986, Email: bruckmannc@sec.gov

Cc:

Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov

Michael Baker, Division of Enforcement, BakerMic@sec.gov

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

Dear Mr. Bruckmann,

I'm writing you this email because in the Division of Enforcement (“Division”)’s Opposition (“Opposition”) to Respondent’s Motion for Exemption (“Motion for Exemption”) from Section 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”), you made the following serious allegations in p. 2 and p.8 (Emphasis added).

Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, the Division asserts that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 (“Securities Act”), and notes that willful violations of the Securities Act can result in **criminal penalties**. See Securities Act Section 24, 15 U.S.C. §77x. (p.2)

Finally, the Motion appears to suggest that American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act by asserting that “Respondent has the rights [sic] to issue restricted, untradeable, and non-transferable tokens to more than 500 persons” as long as Respondent subsequently files a Form 10. (p.8).

American CryptoFed believes that before making allegations impugning



its planned future distribution of tokens free of charge as criminal activity, you must have performed a substantial analysis by the Howey Test to prove that American CryptoFed's Locke and Ducat tokens are securities. In the Form 10 filing and other communications, American CryptoFed consistently and repeatedly stated that Locke and Ducat are NOT securities. American CryptoFed is entitled to see your analysis so that we can make an effective defense.

Without the opportunity to see how the Division applies the Howey Test to Locke and Ducat, American CryptoFed had to apply a preliminary defense in its reply to Division's Opposition to Respondent's Motion for Exemption from Section 12(g) of the Securities Exchange Act of 1934. For your convenience, I've included the relevant portion below.

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**2.1. The violation of Section 5 of the Securities Act Is Impossible, Because There Is No Token Sale before the Securities and Exchange Commission ("Commission" or "SEC") Declares Respondent's Form S-1 Effective.**

In its Omnibus Memorandum in Opposition to Respondent's Motions for a More Definite Statement ("Omnibus Memorandum"), the Division makes the time span of all of its allegations clear, as follows (p.10-11):

2) Response to Motion #2: the Allegations of the OIP Relate to American CryptoFed As It Presently Exists.

... American CryptoFed admits it is not presently decentralized, stating that (1) "CryptoFed will be decentralized to the extent that a CEO is no longer needed within three years," and (2) MShift's powers and rights over CryptoFed "will completely and irreversibly become delegated" only after CryptoFed's S-1 registration statement is declared effective. These are admissions that American CryptoFed is not presently operating as a decentralized autonomous organization.

Given that "the Allegations of the OIP Relate to American CryptoFed As It Presently Exists" before "CryptoFed's S-1 registration statement is declared effective", Respondent can



confirm that all tokens will be distributed, *free of charge*, and there is absolutely no sale of any tokens whatsoever for the time period, before “CryptoFed’s S-1 registration statement is declared effective”. Also, all Locke tokens will be restricted through a proprietary wallet. No Locke tokens will be allowed to be traded in a secondary market. All detailed descriptions can be found in the Form 10 filing attached as Exhibit A to the Answer, Preamble, p.5-6, Section 2.4.1.2, p. 22, Section 2.4.1.1.6, p. 22, and Section 6, p. 32; American CryptoFed DAO’s Constitution attached as Exhibit 1 to the Form 10 or Exhibit B to the Answer, Section 14.6, p. 12-13, Section 15.1, p. 13; and Ducat Economic Zone attached as Exhibit 2 to the Form 10 or Exhibit L to the Answer, Section 6).

**2.2. The violation of Section 5 of the Securities Act Is Impossible, Because the Division Never Proves that Respondent’s Tokens Are Securities, and Because American CryptoFed, Locke Token and Ducat Token Do Not Meet the Definition of “Investment Contract” in SEC v. W.J. Howey Co., 328 U.S. 293 (1946).**

Respondent filed Form 10 to register two tokens designed to operate in tandem issued under the names Locke and Ducat, while clearly stating in the registration statement that the two tokens are not securities:

**CryptoFed is registering Locke and Ducat tokens with the SEC as utility tokens, not as securities, for the purpose of disclosure.** Form 10 allows CryptoFed to voluntarily become a reporting company for ongoing disclosure purposes and becomes effective sixty (60) days after the initial filing date regardless of whether there are outstanding SEC comments. **Filing Form 10 does not mean CryptoFed concedes that Locke and Ducat tokens are securities.** Section 2.9 of Item 1: Business entitled “2.9. Locke and Ducat as Utility Tokens” explains why the Locke and Ducat tokens are utility tokens, not securities. (Emphasis added, Exhibit A to the Answer to OIP, p.5).

The reason that Respondent was forced to file the Form 10 was due to the Commission’s inclusive definition of securities as expressed by the Commission’s Chairman Gary Gensler in his Remarks Before the Aspen Security Forum, on August 3, 2021, and published on the SEC website, attached as Exhibit 1. Chairman Gensler stated the following:



We already live in an age of digital public monies — the dollar, euro, sterling, yen, yuan. If that wasn't obvious before the pandemic, it has become eminently clear over the last year that we increasingly transact online.

Such public fiat monies fulfill the three functions of money: a store of value, unit of account, and medium of exchange.

**No single crypto asset, though, broadly fulfills all the functions of money.** (Emphasis added, p.2).

The implication drawn from Chairman Gensler's perspective, is that all crypto assets can be classified as securities, not as money (currency). Under Chairman Gensler's leadership, it is highly possible that American CryptoFed would be prosecuted by the Commission if Respondent did not file a registration statement with the Commission, giving the Commission actual notice of the American CryptoFed's monetary system, and the Locke and Ducat tokens. In its October 12, 2021 rebuttal reply to the October 8, 2021 letter of Division of Finance's staff (Exhibit G to the Answer to OIP, p.3), Respondent cited Chairman Gensler's quote above, sent to all Commissioners and emphasized:

If Ms. Purnell was guided by Chairman Gensler's statement "No single crypto asset, though, broadly fulfills all the functions of money", we understand why she would have concluded that our Form 10 and Form S-1 filing has "deficiencies".

However, if Ms. Purnell compares our Form 10 and Form S-1 filing to the "digital public monies — the dollar, euro, sterling, yen, yuan" Chairman Gensler listed above, the "deficiencies" she referred to, would disappear immediately. This is because the "deficiencies" she referred to were the lack of attributes inherent to securities. These are attributes that the two tokens (Locke and Ducat) of a decentralized blockchain-based CryptoFed monetary system will never have.

The Supreme Court provides the criteria below to determine whether a transaction qualifies as an "investment contract," and therefore would be considered a security and thus subject to disclosure and registration requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934:

This definition was uniformly applied by state courts to a variety of situations where individuals were led to **invest money in a common enterprise** with the expectation that they would earn a profit solely through the efforts of the promoter or of some one other than themselves. *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 298. (Emphasis added)

Marian Orr, CEO

1607 Capitol Ave., Suite 327, Cheyenne, WY 82001

Phone: (307) 206 - 4210 | Email: marian.orr@americancryptofed.org

OS Received 01/24/2022





### A. No money is invested in American CryptoFed.

American CryptoFed discloses and explains in Section 2.5 of the Form 10 filing (Exhibit A to the Answer to OIP, p.23 – 24 shown below), why American CryptoFed will not receive money by investment, because all funds will be preserved for the purpose of refunding or redemption. No money belongs and goes to American CryptoFed:

#### 2.5.1. Locke Token Proceeds in USD-Pegged Stablecoins

CryptoFed grants a percentage of Locke tokens, free of charge, to individuals or entities. For price discovery purposes, CryptoFed may conduct refundable Locke token auctions, but all the proceeds from those auctions must be preserved and used for refunding. After the refund right of purchasers expire, the corresponding funds must be used to buy back Locke tokens on compliant exchanges, which is another method of refunding the proceeds back to the Locke token holders. **As a result, CryptoFed cannot book any funds gained from Locke auctions as revenue.**

#### 2.5.2. Ducat Token Proceeds in USD-Pegged Stablecoins

CryptoFed sells Ducat to individuals or entities, but the proceeds must be preserved for redemption purposes. Ducat purchasers use Ducat to buy goods and services at merchants who in turn will convert the Ducat back to USD on compliant exchanges for redemption. In addition, CryptoFed pays Ducat tokens, free of charge, to individuals or entities as rewards, interest, and compensation. For each Ducat sold, CryptoFed will provide 10 % – 20% additional Ducat as rewards, interest, and compensation. CryptoFed must buy back Ducat tokens on compliant exchanges to maintain the Target Equilibrium Exchange Rate between Ducat and USD. CryptoFed uses Locke tokens to conduct the Ducat buyback via open market operations. In order to enable Locke to buy back Ducat on an ongoing basis, the USD proceeds from the Ducat sales must be used to constantly buy back Locke on compliant exchanges. **As a result, CryptoFed cannot book any funds gained from Ducat sales as revenue.** Below is the redemption flow.  
 Purchaser => Ducat => Merchant => Ducat => Exchange => USD => Merchant  
 CryptoFed => USD-pegged stablecoin proceeds => Locke buyback => Ducat buyback

The Section 15.4 and 15.5 of the American CryptoFed DAO Constitution shown below also clearly defines that all proceeds from Locke token auctions and Ducat token sales must be preserved for the purposes of refunding or redemption. (Exhibit B to the Answer to OIP, p.13-14).

15.4 For price discovery purposes, CryptoFed may conduct refundable auctions from time to time via compliant crypto exchanges. Proceeds from these token sales must be used for refunding purposes and must be reserved in order to allow purchasers to request full refunds at the original purchase prices via smart contracts. Purchaser refund rights expire if: a) Locke's price surpasses 5 times the original purchase price, or b) the original Locke tokens are sold, or c)

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3 years passes from the original date of purchase, whichever comes first. After refund rights expire, the corresponding proceeds will be transferred to CryptoFed's USD-pegged stablecoin reserve for Locke buyback.

15.5 All proceeds either from Locke auctions after refund rights have expired or from Ducat sales, will be held in CryptoFed's USD-pegged stablecoin reserves for Locke buyback. No proceeds can be used for other purposes. Locke token buyback is not only an alternative method to refund Locke token holders for their token purchases, but also an effective tool for Ducat redemption. Ducat holders buy goods and services at merchants which in turn will convert the Ducat back to USD on compliant exchanges. CryptoFed must buy back those Ducat tokens on compliant exchanges to maintain the Target Equilibrium Exchange Rate between Ducat and USD. CryptoFed uses Locke tokens to conduct the Ducat buyback via open market operations. In order to enable Locke to buy back Ducat on an ongoing basis, the USD proceeds from the Ducat sales must be used to constantly buy back Locke on compliant exchanges. Below is the redemption flow.

Ducat Purchaser/ Holder => Ducat => Merchant => Ducat => Exchange => USD => Merchant  
CryptoFed => USD-pegged stablecoin proceeds => Locke buyback => Ducat buyback

## **B. American CryptoFed Does Not Generate Revenue**

All proceeds from Locke auction and Ducat sales must be preserved for the purposes of refunding or redemption. Thus, these proceeds cannot be booked as revenue in accordance with generally accepted accounting principles. In addition, American CryptoFed DAO Constitution does not allow any transaction fees whatsoever.

### **1. Mission**

To create and maintain a monetary system with zero inflation, zero deflation and zero transaction costs. Under no circumstances, should inflation or deflation in the Ducat economy be allowed. **Under no circumstances, should American CryptoFed DAO LLC (CryptoFed) charge any transaction fees in any form.** A unanimous consent of all outstanding Locke token votes is required to make changes to this section. (Exhibit B to the Answer to OIP, p.2).

Zero transaction fee is also disclosed in the Form 10 filing below.

### **2.5.3. Transaction Fees**

CryptoFed does not charge any transaction fees. (Exhibit A to the Answer to OIP, p.24).

## **C. No "Investment Contract" in American CryptoFed Exists**

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All proceeds from Locke auction sales and Ducat sales must be preserved for the purposes of refunding or redemption. As a result, these proceeds do not belong to American CryptoFed. American CryptoFed DAO Constitution prohibits American CryptoFed from using the proceeds for other purposes, such as revenue (profit) creation. By design, American CryptoFed will not have mechanisms to generate revenue (profit) and to own the proceeds from Locke token auction and Ducat sales. Instead, American CryptoFed is designed for a giveaway business model, which is the opposite of the “investment contract” definition in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). American CryptoFed discloses this giveaway business model in Section 2.5 of Form 10 filing as follows:

CryptoFed does not have revenue, nor does it possess any USD fiat bank accounts. CryptoFed’s mission is to maintain zero inflation and deflation of Ducat with zero transaction costs by adjusting the money supply of its two native tokens, Locke and Ducat, through a **giveaway business model**. There is no revenue earning function or operation incorporated into CryptoFed. All functions, mechanisms and operations are designed to achieve CryptoFed’s **giveaway business model** effectively and automatically. There is no way for CryptoFed to earn any revenue in fiat, including USD. Given that CryptoFed has no revenue forever, the only way it can survive is to ensure that it does not have any costs either. Fortunately, CryptoFed’s zero cost operations can be achieved by using its own native tokens, just as the Bitcoin Blockchain and Ethereum Blockchain have both demonstrated by incentivizing their miners with their own native tokens of BTC and ETH. (Emphasis added, Exhibit A to the Answer to OIP, p.23).

#### **D. The Division Has the Burden of Proof**

The order instituting administrative proceedings (“OIP”) against American CryptoFed simply presumes that Locke and Ducat tokens are securities, based on the fact that Respondent sought to register them with the Commission without substantive analysis. On December 22, 2021, the Division further asserted in the Division’s Memorandum in Opposition to American CryptoFed DAO LLC’s Respondent’s Motion to Lift the Order That Stays the Effectiveness of Respondent’s Form 10, that “The Division is not conceding that the tokens are not securities.” (“Opposition Memorandum”, Note 32, p.19). Again, the Division failed to provide any



substantive analysis in support of its position. In accordance with 5 U.S. Code § 556 plain text below, the Division has the burden of proof that Locke token and Ducat token are securities:

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).

The Supreme Court ruling in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) stated the following:

The term "investment contract" is undefined by the Securities Act or by relevant legislative reports. But the term was common in many state "blue sky" laws in existence prior to the adoption of the federal statute and, although the term was also undefined by the state laws, it had been broadly construed by state courts so as to afford the investing public a full measure of protection. **Form was disregarded for substance and emphasis was placed upon economic reality.** An investment contract thus came to mean a contract or scheme for "the placing of capital or laying out of money in a way intended to secure income or profit from its employment." *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 56, 177 N.W. 937, 938. This definition was uniformly applied by state courts to a variety of situations where individuals were led **to invest money in a common enterprise** with the expectation that they would earn a profit solely through the efforts of the promoter or of some one other than themselves. *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 298. (Emphasis added)

The Division is aware of the Supreme Court ruling above, because on April 3, 2019, the SEC published on its website, [Framework for "Investment Contract" Analysis of Digital Assets] ("Framework for Analysis"), attached as Exhibit 2, states the following at Note 6:

Whether a contract, scheme, or transaction is an investment contract is a matter of federal, not state, law and does not turn on whether there is a formal contract between parties. Rather, under the **Howey test**, "form [is] disregarded for substance and the emphasis [is] on economic reality." *Howey*, 328 U.S. at 298. The Supreme Court has further explained that that the term security "embodies a flexible rather than a static principle" in order to meet the "variable schemes devised by those who seek the use of the money of others on the promise of profits." *Id.* at 299. (Emphasis added).

Respondent cited the Framework for Analysis not only in its October 12, 2021 rebuttal reply to the October 8, 2021 letter of Division of Finance's staff (Exhibit G to the Answer to OIP, p.7), but also in its Form 10 filing (Exhibit A to the Answer to OIP, p.28) and Amendment No. 1

Marian Orr, CEO

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OS Received 01/24/2022



to Form 10 (Exhibit E to the Answer to OIP, p.4). However, the Division has not provided a substantive analysis to meet the requirement outlined by the Supreme Court's ruling in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946): **"Form was disregarded for substance and emphasis was placed upon economic reality."** Repeatedly, American CryptoFed has welcome the Division or the Commission to provide analysis to prove that Locke token and Ducat token are securities. Here, Respondent invites the Division one more time to provide its analysis. Given that the Division has had the opportunity, but is unable or elects to abandon its obligation, to provide proof that Locke token and Ducat token are securities, Locke token and Ducat token should not be classified as securities as the Division asserts.

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Please confirm your receipt of this email.

I look forward to receiving your substantial analysis of the Howey Test on American CryptoFed and its two tokens of Locke and Ducat by January 16, 2022.

Thank you.

Sincerely,



Marian Orr  
CEO, American CryptoFed DAO

**RESPONDENT**

**AMERICAN CRYPTO FED DAO LLC**

**EXHIBIT 2**





January 13, 2022

Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit  
Division of Enforcement, U.S. Securities and Exchange Commission  
100 F Street, N.E., Washington, D.C. 20549-5949  
Phone 202-551-5986, Email: bruckmannc@sec.gov

Cc:

Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov

Michael Baker, Division of Enforcement, BakerMic@sec.gov

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

Dear Mr. Bruckmann,

In your response to Marian Orr, in a letter dated January 9, 2022, you said the following:

Regarding your request for a “Howey Test Analysis,” the Division of Enforcement does not issue advisory legal opinions, nor can we provide legal advice to respondents in Commission proceedings.

It’s critical that our request for the Division’s Howey Test Analysis is clearly understood. We are not asking you to provide us with any legal opinion or advice. However, I am asking you to substantiate the serious allegations below which you made in the Division of Enforcement’s Opposition to Respondent’s Motion for Exemption from Section 12(g) of the Securities Exchange Act of 1934 in p. 2 and p.8 (Emphasis added).

Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, the Division asserts that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 (“Securities Act”), and notes that willful violations of the Securities Act can result in **criminal penalties**. See Securities Act Section 24, 15 U.S.C. §77x. (p.2)



Finally, the Motion appears to suggest that **American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act** by asserting that “Respondent has the rights [sic] to issue restricted, untradeable, and non-transferable tokens to more than 500 persons” as long as Respondent subsequently files a Form 10. (p.8).

Your allegations above are related to a future Form 10 registration by American CryptoFed after implementing a mass distribution plan, which is not the current OIP. American CryptoFed does not believe you could make such serious criminal allegations without first performing a substantial analysis by the Howey Test to support your allegations. American CryptoFed is entitled to receive a copy of your analysis to prepare an effective defense.

Please confirm your receipt of this email.

I look forward to receiving your substantial analysis of the Howey Test as it applies to the American CryptoFed and its two tokens of Locke and Ducat by January 19, 2022.

Thank you.

Sincerely,



Scott Moeller  
American CryptoFed DAO



**RESPONDENT**

**AMERICAN CRYPTO FED DAO LLC**

**EXHIBIT 3**



January 15, 2022

Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit  
Division of Enforcement, U.S. Securities and Exchange Commission  
100 F Street, N.E., Washington, D.C. 20549-5949  
Phone 202-551-5986, Email: bruckmannc@sec.gov

Cc:

Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov

Michael Baker, Division of Enforcement, BakerMic@sec.gov

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

Dear Mr. Bruckmann,

In your response to my letter dated January 13, 2022, you said “We decline to provide anything further at this time.”

Your response is not acceptable, given that you’ve made serious allegations against American CryptoFed DAO as an organization, as well as against named individuals below in the Division of Enforcement’s Opposition to Respondent’s Motion for Exemption from Section 12(g) of the Securities Exchange Act of 1934 in p. 2 and p.8 (Emphasis added).

Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, the Division asserts that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 (“Securities Act”), and notes that willful violations of the Securities Act can result in **criminal penalties**. See Securities Act Section 24, 15 U.S.C. §77x. (p.2)

Finally, the Motion appears to suggest that **American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act** by asserting that “Respondent has the rights [sic] to issue restricted, untradeable, and non-transferable tokens to more than 500 persons” as long as Respondent subsequently files a Form 10. (p.8).



The Division's allegations above relate to a future Form 10 registration by American CryptoFed after implementing a mass distribution plan, which is not the current OIP. American CryptoFed does not believe you could make such serious criminal allegations without first performing a substantial analysis by the Howey Test to support your allegations. American CryptoFed is entitled to receive a copy of your analysis to prepare an effective defense.

American CryptoFed has requested you to substantiate your allegations above twice before, but the Division has been adamant in its refusal to provide its Howey Test analysis in accordance with the Supreme Court's ruling in SEC v. W.J. Howey Co., 328 U.S. 293 (1946). As a result, in order to prepare for an effective defense, American CryptoFed finds it must file a motion to compel you to produce the Howey Test analysis and other related documents you used to arrive at the allegations. Pursuant to the Commission's order below (emphasis added, Release No. 93922 / January 6, 2022), American CryptoFed requests to schedule a meeting in the week of January 17, 2022 to meet and confer regarding this matter, prior to filing the motion..

In the interim, it would serve the interests of justice to prescribe procedures for regulating the filing of all other, non-dispositive motions.<sup>10</sup> Accordingly, it is ORDERED that the Division's motion is denied; and **it is further ORDERED that the parties must meet and confer prior to filing any motion**; and it is further ORDERED that the parties must seek and receive leave from the Commission prior to filing it. A request for leave must be in the form of a separate motion, not to exceed two pages in length, and concisely set forth the underlying relief sought, a statement of the basis for that relief, and a justification for why the underlying motion must be considered and determined prior to summary disposition. The request for leave must not attach or incorporate by reference the motion as to which permission for filing is sought.

I look forward to receiving your date and time availability for this meeting by the end of January 18, 2022. We will be available at your earliest availability.

Thank you.

Sincerely,



Scott Moeller

President, American CryptoFed DAO

**RESPONDENT**  
**AMERICAN CRYPTO FED DAO LLC**

**EXHIBIT 4**



January 19, 2022

Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit  
Division of Enforcement, U.S. Securities and Exchange Commission  
100 F Street, N.E., Washington, D.C. 20549-5949  
Phone 202-551-5986, Email: bruckmannc@sec.gov

Cc:

Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov

Michael Baker, Division of Enforcement, BakerMic@sec.gov

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

Dear Mr. Bruckmann,

Thank you for agreeing to my request for a meet and confer. In your response to me dated January 18, 2022, you asked us to prepare the following items below:

Please come to the meet and confer (1) prepared to clarify whether you are seeking to compel the production of existing documents, requesting that the Division compile a new analysis for you, or both; (2) prepared to identify the Commission Rule of Practice pursuant to which you believe we are obligated to provide this information; (3) able to explain how documents related to an issue that you describe as "is not the current OIP" are relevant to the claims or defenses in this proceeding; and (4) prepared to discuss the application of the work-product doctrine to your request.

Below is our response to the Division's requests for tomorrow's meet and confer.

(1). We believe that the Division should already have an existing Howey Test analysis prior to making serious allegations below against American CryptoFed DAO as an organization, as well as against named individuals below in the Division of Enforcement's Opposition to Respondent's Motion for Exemption from Section 12(g) of the Securities Exchange Act of 1934,



in p. 2 and p.8 (Emphasis added). If you do not have this Howey Test analysis, please let us know. We will decide at that juncture whether to ask you to compile an analysis.

Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, the Division asserts that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 (“Securities Act”), and notes that willful violations of the Securities Act can result in **criminal penalties**. See Securities Act Section 24, 15 U.S.C. §77x. (p.2)

Finally, the Motion appears to suggest that **American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act** by asserting that “Respondent has the rights [sic] to issue restricted, untradeable, and non-transferable tokens to more than 500 persons” as long as Respondent subsequently files a Form 10. (p.8).

(2). Given that the Division made these serious allegations, in accordance with 5 U.S. Code § 556 plain text below, the Division has the burden of proof to prove that Locke token and Ducat token are securities.

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).

In addition to the Commission Rule of Practice, the Division is obligated to comply with the statute 5 U.S. Code § 556 and provides the evidence to prove the allegations.

(3). Through the allegations of criminal penalties that “American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act”, the Division actually expanded the scope of the current OIP to encompass American CryptoFed’s future. American CryptoFed has no choice, but to defend its future in this OIP, unless the Division would like to provide American CryptoFed with a no-action letter for its future plan.



(4). With regards to the work-product doctrine, American CryptoFed respects privileged documents. What American CryptoFed asks the Division is to comply with Statute 5 U.S. Code § 556 to prove its allegations.

I look forward to our WebEx discussion tomorrow, January 20, 2022 at 1pm EST.

Thank you.



Scott Moeller  
President, American CryptoFed DAO

**RESPONDENT**

**AMERICAN CRYPTO FED DAO LLC**

**EXHIBIT 5**



----- Forwarded message -----

From: **Marian Orr** <marian.orr@americancryptofed.org>

Date: Sun, Jan 9, 2022 at 4:13 PM

Subject: In the Matter of American CryptoFed, AP File No. 3-20650 – Howey Test

To: Bruckmann, Christopher <bruckmannc@sec.gov>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Scott Moeller <scott.moeller@americancryptofed.org>

Dear Mr Bruckmann,

Please see the following attached request by us to your division regarding the division's analysis of the Howey Test as it pertains to our filing.

Best regards,

Marian Orr

----- Forwarded message -----

From: **Bruckmann, Christopher** <bruckmannc@sec.gov>

Date: Wed, Jan 12, 2022 at 9:56 AM

Subject: RE: In the Matter of American CryptoFed, AP File No. 3-20650 – Howey Test

To: Marian Orr <marian.orr@americancryptofed.org>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Scott Moeller <scott.moeller@americancryptofed.org>  
Cc: Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Ms. Orr,

Thank you for your e-mail below.

As you are aware, on September 16, 2021, American CryptoFed DAO LLC (“American CryptoFed”) filed a Form 10 General Form for Registration of Securities with the Commission. That filing listed the Ducat token and the Locke token as “Securities to be registered pursuant to Section 12(g) of the [Exchange] Act.” Our present administrative

proceeding seeks to determine, in part, whether it is necessary and appropriate to deny the registration of each class of securities that may become registered pursuant to American CryptoFed's Form 10.

We note that American CryptoFed represented in the Form 10 that American CryptoFed is seeking to register the Ducat and Locke tokens as securities. To the extent that American CryptoFed attempts to use the Form 10 to register two tokens that are not securities, claiming in the Form 10 that it is registering two tokens pursuant to Section 12(g) of the Exchange Act is materially false and misleading. Section 12(g) contains no provision for the registration of non-security tokens, it only contains provisions for the registration of securities. Such an attempt also runs counter to the purpose of Form 10, which, as the name implies, is a general form for registration of securities with the Commission. There is no provision of law permitting an entity to register non-security tokens with the Commission. Similarly, using the Commission's EDGAR system to register non-security tokens "for the purpose of disclosure" is not permitted.

Regarding your request for a "Howey Test Analysis," the Division of Enforcement does not issue advisory legal opinions, nor can we provide legal advice to respondents in Commission proceedings. It remains American CryptoFed's obligation to ensure that it is complying with the relevant laws, and American CryptoFed is free to choose to retain counsel to advise it if it feels that is the appropriate course of action.

Regards,

Chris Bruckmann

----- Forwarded message -----

From: **Scott Moeller** <scott.moeller@americancryptofed.org>

Date: Thu, Jan 13, 2022 at 8:07 PM

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

To: Bruckmann, Christopher <bruckmannc@sec.gov>

Cc: Marian Orr <marian.orr@americancryptofed.org>, Zhou Xiaomeng

<zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael

<BakerMic@sec.gov>

Mr. Bruckmann,

Please see my reply attached, as American CryptoFed's response to your answers to Ms. Orr's letter to your attention on January 9th.

Additionally, I've reiterated our request for the Division's Howey analysis on American CryptoFed DAO's Ducat and Locke tokens to be delivered by January 19th.

Sincerely,

-Scott Moeller

----- Forwarded message -----

From: **Bruckmann, Christopher** <bruckmannc@sec.gov>

Date: Fri, Jan 14, 2022 at 6:23 AM

Subject: RE: In the Matter of American CryptoFed, AP File No. 3-20650 – Howey Test

To: Scott Moeller <scott.moeller@americancryptofed.org>

Cc: Marian Orr <marian.orr@americancryptofed.org>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Mr. Moeller,

We decline to provide anything further at this time.

Regards,

Chris Bruckmann

----- Forwarded message -----

From: **Scott Moeller** <scott.moeller@americancryptofed.org>

Date: Sat, Jan 15, 2022 at 6:10 PM

Subject: Re: In the Matter of American CryptoFed, AP File No. 3-20650 – Howey Test  
To: Bruckmann, Christopher <bruckmannc@sec.gov>  
Cc: Marian Orr <marian.orr@americancryptofed.org>, Zhou Xiaomeng  
<zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael  
<BakerMic@sec.gov>

Mr. Bruckmann,

Please see my response to your last reply in this thread sent as a Docusigned attachment to this email.

In my response, I want to draw your attention to our request for scheduling a time to meet and confer with the Division, per the ruling of the Commission.

If you have any issues opening or reviewing the attachment, please let me know.

Thank you.

Scott Moeller

----- Forwarded message -----

From: Bruckmann, Christopher <bruckmannc@sec.gov>  
Date: Tue, Jan 18, 2022 at 6:54 AM  
Subject: RE: In the Matter of American CryptoFed, AP File No. 3-20650 – Howey Test  
To: Scott Moeller <scott.moeller@americancryptofed.org>  
Cc: Marian Orr <marian.orr@americancryptofed.org>, Zhou Xiaomeng  
<zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael  
<BakerMic@sec.gov>

Mr. Moeller,

We are available for a meet and confer at 11am ET tomorrow or 1pm ET Thursday. Please let us know if either of those times are acceptable to you.

Please come to the meet and confer (1) prepared to clarify whether you are seeking to compel the production of existing documents, requesting that the Division compile a new analysis for you, or both; (2) prepared to identify the Commission Rule of Practice pursuant to which you believe we are obligated to provide this information; (3) able to explain how documents related to an issue that you describe as "is not the current OIP" are relevant to the claims or defenses in this proceeding; and (4) prepared to discuss the application of the work-product doctrine to your request.

Thank you,

Chris Bruckmann

----- Forwarded message -----

From: Marian Orr <marian.orr@americancryptofed.org>

Date: Tue, Jan 18, 2022 at 7:03 AM

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

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,

We are available to meet Thursday at 1pm ET.

Best,

Marian Orr

----- Forwarded message -----

From: Scott Moeller <scott.moeller@americancryptofed.org>

Date: Wed, Jan 19, 2022 at 10:36 PM

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

To: Bruckmann, Christopher <bruckmannc@sec.gov>

Cc: Marian Orr <marian.orr@americancryptofed.org>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>

Mr. Bruckmann,

Please see the attached letter regarding our January 20th meet and confer on the Howey Test.

I look forward to our discussion Jan 20th at 1pm EST.

Regards,

Scott Moeller

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President

American CryptoFed DAO