

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>
--

DIVISION OF ENFORCEMENT’S MOTION FOR LEAVE
TO FILE A MOTION TO SET AN EXPEDITED BRIEFING SCHEDULE

Recent developments make it imperative that this proceeding move forward on an expedited basis. Accordingly, the Division of Enforcement (“Division”) of the U.S. Securities and Exchange Commission (“Commission”), pursuant to the Commission’s January 6, 2022 Order establishing procedures for filing further non-dispositive motions in this proceeding, respectfully requests leave to file a motion to set an expedited briefing schedule regarding summary disposition. Respondent American CryptoFed DAO LLC has announced its intent to begin distributing the Locke tokens on July 1, 2022 notwithstanding the Commission’s prior order staying the effectiveness of Respondent’s Form 10. *See* May 30, 2022 letter from Scott Moeller, attached as Exhibit 1.

The Division has followed the specific procedures established in the Commission’s January 6 Order concerning filing additional non-dispositive motions in this matter. The Division requested via letter on June 3, 2022 and email on June 7, 2022 that Respondent meet and confer regarding this motion, and the Respondent never responded to either request.

The Division seeks leave for permission to file a motion to set a briefing schedule for the summary disposition motion that the Division intends to file. 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 Division recognizes that the Commission has previously deferred issuing a briefing schedule for summary disposition briefing given the pendency of other motions. See Jan. 5, 2022 Order at 3, n.14; Jan. 12, 2022 Order at 8. However, as the Division hopes to explain in the motion it seeks leave to file, Respondent’s apparent plan to ignore the Commission’s stay order and engage in an unregistered offering of securities makes it imperative that this proceeding move forward on an expedited basis.¹

Accordingly, the Division respectfully requests that the Commission grant the Division leave to file a motion to set an expedited summary disposition briefing schedule.

Dated: June 8, 2022

Respectfully submitted,

/s/ Christopher Bruckmann

Christopher Bruckmann (202) 551-5986

Martin Zerwitz (202) 551-4566

Michael Baker (202) 551-4471

Christopher J. Carney (202) 551-2379

Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549-5949

bruckmannc@sec.gov

zerwitzm@sec.gov

bakermic@sec.gov

carneyc@sec.gov

COUNSEL FOR

DIVISION OF ENFORCEMENT

¹ The Commission’s January 6 Order also required any request for leave to file a motion to provide “justification for why the underlying motion must be considered and determined prior to summary disposition.” Jan. 6, 2022 Order at 3. Here, the underlying motion must be considered and determined prior to summary disposition, because the Commission’s previous orders foreclose the Division from moving for summary disposition until after the Commission has entered an order setting a briefing schedule.

CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Motion for Leave to File a Motion to Set an Expedited Briefing Schedule to be served on the following on June 8, 2022, in the manner indicated below:

By Email:

Scott Moeller
scott.moeller@americancryptofed.org President
American CryptoFed DAO LLC

Zhou Xiaomeng
zhouxm@americancryptofed.org
Chief Operating Officer
American CryptoFed DAO LLC

/s/ Christopher Bruckmann
Christopher Bruckmann



May 30, 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
Christopher Carney, Division of Enforcement, CarneyC@sec.gov

Re: In the Matter of American CryptoFed, AP File No. 3-20650:
Cease and Desist Order Request

Dear Mr. Bruckmann,

While waiting for the Securities and Exchange Commission (“SEC”, “Commission”) to rule on the three pending motions below, American CryptoFed DAO LLC (“American CryptoFed”) will proceed with implementing its business plan as described in the Form 10 and the Form S1 filed with the SEC on September 16 and 17, 2021 respectively. Starting from Q3 2022, we will distribute to contributors, in paper contracts, free of charge, Locke governance tokens which are restricted, untradeable and non-transferable. Starting from Q3, 2022 through December 31, 2022, we will conduct Locke token refundable auctions. The winning bidders are required to demonstrate the funds are available in their designated wallets without actually moving funds. They will receive NFT certificates which are not allowed to trade. The NFT certificates will lose eligibility to exchange for fungible Locke tokens, if they are transferred out of the original designated wallets. The holders of NFT certificates may exchange them for fungible and tradable Locke tokens on or after January 1, 2023, transferring the bidding tokens (proceeds) to a CryptoFed trustee or trustless account. The proceeds will be used in accordance with the following description in the Form 10 filing.

“Proceeds from these token sales are reserved in order to allow purchasers to request full refunds at the original purchase prices via smart contracts. Purchasers refund rights expire if: a) Locke’s price surpasses five (5) times the original purchase price, or b) the original Locke tokens are sold, or c) Three (3) years pass from the original time 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. No proceeds can be used for other purposes” (Section 2.4.1.1.6. Page 22).

If the SEC Division of Enforcement (“Division”) perceives any violations of related securities laws and wants to prohibit American CryptoFed from launching the Locke refundable auction, or distributing Locke tokens to contributors, please send CryptoFed a Cease-and-Desist Order within 30 business days, on or before June 30, 2022. This Cease-and-Desist Order should include a Howey Test Analysis or other legal justifications from the Division to prove that Locke token and Ducat token are securities. Even after the Locke refundable auction starts in Q3 2022, the Division will still have at least 3 months until December 31, 2022 to send American CryptoFed the Cease-and-Desist Order, before the Locke tokens are allowed to trade.

1. Motion to Lift the Stay Order:

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

On November 10, 2021, the SEC issued an order instituting administrative proceedings (“OIP”) against American CryptoFed pursuant to Section 12(j) of the Securities Exchange Act of 1934. The OIP’s Section IV included an order stating, “IT IS FURTHER ORDERED that the institution of these proceedings stays the effectiveness of the Respondent’s Form 10 filed on September 16, 2021” (“Stay Order”).

The motion filed on December 15, 2021 requests the Commission to lift the Stay Order. The Stay Order is unlawful because it prohibits American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934, if the SEC perceives Locke token and Ducat token are securities. When and only when the SEC had made decision that Locke token and Ducat token are not securities and are outside the SEC’s jurisdiction, could the Stay Order be lawful. Otherwise, The OIP and the Stay Order are equivalent to an order which exempts American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934.

2. Exemption Motion:

RESPONDENT AMERICAN CRYPTOFED DAO LLC’S MOTION FOR EXEMPTION FROM SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934.



This “Exemption Motion” filed on January 4, 2022, requests the Commission to confirm the fact that the OIP and its Stay Order are equivalent to an order which exempts American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934. However, in the Division’s Opposition, 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).

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, explaining why an investment contract does not exist in the case of Locke and Ducat.

3. Motion for Leave to File A Motion:
RESPONDENT AMERICAN CRYPTOFED DAO LLC’S MOTION FOR LEAVE TO FILE A MOTION.

Facing serious allegations without legal justifications from Division, American CryptoFed repeatedly asked the Division to provide American CryptoFed with a Howey Test analysis to prove that Locke token and Ducat token are securities. However, the Division refused to do so. On January 23, 2022, American CryptoFed had no choice but to file this “Motion for Leave to File A Motion”. The purpose is to compel the Division to provide a Howey Test Analysis or other legal justifications to prove that Locke token and Ducat token are securities.

4. Conclusion: Execution of American CryptoFed Business Plan

Through the Form 10 filed on September 16, 2021 and the Form S1 filed on September 17, 2021 with the SEC, by motions, numerous emails and letters, American CryptoFed has done its best to comply with the securities related laws and regulations and will continue doing so. Upon the receipt of the Commission’s order instituting administrative proceedings (“OIP”) on November 10, 2021, American CryptoFed filed its answer timely on December 6, 2021. In



addition, American CryptoFed filed the Motion to Lift the Stay Order on December 15, 2021, pursuant to **Rule 250. Dispositive motions** stating the following:

(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).**

More than 5 months has passed, and the Commission has not yet made a decision regarding this Motion to Lift the Stay Order. Without complaining about the Commission's nondecision and indecision, American CryptoFed will continue waiting for the Commission's ruling with patience. However, American CryptoFed has a critical mission to accomplish. American CryptoFed has no choice but to move forwards to execute its business plan described in its Form 10 and Form S1 filing. The Locke token distribution to the contributors will be granted in paper contracts, free of charge. Locke token refundable auction will be conducted without moving funds. If the Division sends a Cease-and-Desist Order with a Howey Test analysis justification, all transactions can be reversed easily and timely without causing any damages to anyone. American CryptoFed is entitled to see the Division's Howey Test analysis so that we can make an effective defense and rebut the possible Cease-and-Desist Order, if any. The Fifth Amendment of the U.S. Constitution guarantees due process when someone is denied "life, liberty, or property."

Through the Form 10 filing, the Form S1 filing, answers, responses, replies, motions, letters, emails, conference calls, and other numerous communications with both the Division and the Commission, American CryptoFed consistently and repeatedly explained as to why Locke and Ducat are NOT securities. American CryptoFed had to apply a preliminary defense in its reply to the Division's Opposition to American CryptoFed's Exemption Motion, explaining why an investment contract does not exist in the case of Locke and Ducat. The quote below is from an article authored by two attorneys, Daniel L. McAvoy and Stephen A. Rutenberg of Polsinelli PC, which was published in the National Law Review, Volume XI, Number 327, Tuesday, November 23, 2021 and was entitled "DAOsing Rods and the Power of Enforcement Prediction".

<https://www.natlawreview.com/article/daosing-rods-and-power-enforcement-prediction>



The two authors' opinion echoes American CryptoFed's view in analyzing the SEC's action against American CryptoFed and can serve as a perfect conclusion to this request letter.

“On November 10, 2021 the US Securities and Exchange Commission (the SEC) announced that it had halted **the first ever attempt to register digital tokens issued by a decentralized autonomous organization (DAO) under the US federal securities laws.** American CryptoFed – **also the first DAO to take advantage of Wyoming's new “DAO Law”** that attempts to give DAOs legal status – filed Form 10 and subsequently filed a Form S-1 in an effort to register its digital assets in the form of two coins designed to operate in tandem issued under the names Locke and Ducat.

In the SEC's announcement, they alleged that the registration statement filed by American CryptoFed contained a number of deficiencies, including purportedly misleading statements such as claims that the tokens were not intended to be securities and may be distributed on the form of registration statement used for registration of securities under an employee benefit plan. Perhaps just as importantly, the registration statement failed to provide substantive information about the issuer as is required to be disclosed in the form, such as information regarding its business, management, and financial condition. **One telling example of the deficient information concerns the issuer's ownership structure, which a pure DAO would be unable to produce by its very nature of being a DAO.**

A DAO is an organization encoded as a transparent computer program, controlled by the organization members and not by a central corporate entity, often through a governance token utilized on a blockchain....

This highlights several issues with being able to register DAO-issued tokens under the current regulatory framework. The SEC disclosure forms rightly require financial statements and business information regarding the issuer. That said, a DAO is not really an entity. There often is a supporting entity in place alongside a DAO, and in some instances an organization that isn't really decentralized may be mislabeled as a DAO, **but the DAO itself in almost all circumstances would not be able to produce financial statements prepared in accordance with generally accepted accounting principles. If the DAO does not have a definable business and truly is decentralized, then there may not be a management structure for which information can be provided.** Further, depending on the circumstances, the financial condition of a DAO may be of limited relevance to holders of the tokens, particularly if there truly is a level of decentralization that would allow the project to move forward even if the 'entity' sponsoring the token were to collapse (or the financial statements of the issuer could be looking at the wrong thing if the treasury of the DAO is not housed in that entity). **Simply put, this action implies that it will be difficult if not impossible for a true DAO to register its tokens under the current regulatory framework, even if it sets itself up in a way to attempt robust compliance.”** (All emphases in bold are added.)

Sincerely,

DocuSigned by:

 A82E97EDD0C44FD...
 Scott Moeller

President, American CryptoFed DAO