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 OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR LEAVE TO FILE A MOTION TO SET AN EXPEDITED BRIEFING SCHEDULE**

American CryptoFed DAO LLC ("Respondent" or "American CryptoFed") respectfully submits this opposition ("June 9th Opposition") to the Division of Enforcement's ("Division") Motion for Leave to File a Motion to Set an Expedited Briefing Schedule regarding summary disposition (the "June 8th Motion"), because the Division already filed a materially identical motion on March 24, 2022 ("March 24th Motion") which remains pending the ruling by the Securities and Exchange Commission ("Commission"). American CryptoFed was surprised by the fact that the Division filed the materially identical motion twice, instead of waiting for the ruling of the Commission.

American CryptoFed already filed an opposition to the March 24th Motion around 1:50 am, March 25, 2022 EST ("March 25th Opposition"). To save the Commission's time, American CryptoFed incorporates the March 25th Opposition in full as if it were written for this June 8th Opposition hereto.

Furthermore, American CryptoFed asserts that the Division's following statement included in the June 8th Motion is incorrect.

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.

When and only when the Division is unable to apply the Howey Test to prove that American CryptoFed's Locke and Ducat tokens are securities, will American CryptoFed execute its business plan. To avoid misunderstanding, please see Exhibit 1 through Exhibit 3 for a comprehensive exchange of communications regarding this.

For the reasons set forth above, the Commission should deny the Division's Motion for Leave to File a Motion to Set an Expedited Briefing Schedule regarding summary disposition.

Dated: June 9, 2022

Respectfully submitted,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

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 9th day of June 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

By /s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

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

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RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 1

American CryptoFed

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 digitals 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:
Scott Moeller
A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

June 3, 2022

BY EMAIL & UPS

Scott Moeller
CEO, American CryptoFed DAO
1607 Capitol Ave, Ste 327
Cheyenne, WY 82001
scott.moeller@americancryptofed.org

Re: *In the Matter of American CryptoFed DAO LLC*
AP File No. 3-20650

Dear Mr. Moeller:

I write to respond to your letter dated May 30, 2022. That letter described American CryptoFed DAO LLC's ("American CryptoFed") plan to "proceed with implementing its business plan as described in the Form 10 and Form S1" that American CryptoFed had previously filed with the Securities and Exchange Commission ("SEC" or "Commission").

Planned Distribution of Locke Tokens

Under Section 5 of the Securities Act of 1933 ("Securities Act"), any offering of securities needs to be registered or exempt from registration. If neither is true, the offering is illegal. There is no registration statement in effect for any offering of the Locke or Ducat tokens, and you have not identified any exemption which you assert applies to their distribution. Accordingly, your letter appears to announce a plan to willfully violate Section 5 of the Securities Act, and possibly other provisions of the federal securities laws, by offering and/or selling Locke tokens to investors without an effective registration statement, even though you have applied to register these same tokens as securities with the SEC. Violations of the provisions of the Securities Act can have serious consequences.

Your letter asserts that the distribution will be "as described in the Form 10 and Form S1." But the effectiveness of the Form 10 was stayed by the Commission's November 10, 2021 Order Instituting Proceedings. Even if the

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Form 10 was effective (which it isn't), the distribution would still need to be pursuant to either the Form S-1 or another Securities Act registration statement, or pursuant to an exemption from registration. The Form S-1 is not yet effective as it contains a delaying amendment.[1] Moreover, the Commission, on November 9, 2021, issued an Order Directing Examination and Designating Officers Pursuant to Section 8(e) of the Securities Act of 1933 ("8(e) Examination Order"), which we are serving on you today along with this letter.

Please note that while Securities Act Section 5(a) prohibits the sale of securities unless there is a registration statement in effect (or an exemption applies), Securities Act Section 5(c) prohibits either the offer or sale of any security "while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title." 15 U.S.C. §77e(c). Thus, American CryptoFed can neither offer nor sell the Locke tokens pursuant to the Form S-1 while the 8(e) Examination Order is in effect.

You can expect to hear from us in the near future with requests pursuant to the 8(e) Examination Order, including requests to provide documents and testimony.

Request for a Cease-and-Desist Order

Your letter requests, without citing any provision of law, that the Division of Enforcement issue a Cease-and-Desist order. We believe you are again conflating the role of the Division of Enforcement and the Commission in this proceeding. The Division of Enforcement does not issue orders, that is the role of the Commission. Additionally, while some Commission administrative proceedings are captioned as "Cease and Desist" proceedings (*see, e.g.*, 15 U.S.C. §77h-1), there is no requirement that proceedings take that precise form in order to halt conduct. Here, the Commission's November 10, 2021 Order Instituting Proceedings stays the effectiveness of American CryptoFed's Form 10. At the conclusion of this proceeding, the Division of Enforcement may seek, and the Commission may enter, an order denying or revoking the

[1] The Form S-1 states in relevant part: "The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

registration of that Form 10. Neither the Commission nor the Division of Enforcement needs to use the phrase "Cease and Desist" in taking this step.

If you proceed with your announced plan to distribute the Locke tokens despite the November 9, 2021 8(e) Examination Order and the November 10, 2021 Order Instituting Proceedings, we reserve the right to take any and all appropriate steps.

Timing of This Proceeding

Your letter appears to complain about the length of time certain motions have been pending. We remind you that, at the outset of this proceeding, we suggested that we jointly ask the Commission to expedite this matter and you responded that "it would be inappropriate to ask 'the Commission to take this matter under consideration on an expedited basis.'" (Nov. 26, 2021 email from Marian Orr to Christopher Bruckmann). You then filed more than a dozen meritless motions that were so frivolous that the Commission instituted special procedures governing the filing of motions in this matter. You have opposed every effort we have made to move this case forward expeditiously, including through seeking a briefing schedule, and in response to our most recent attempt to obtain a briefing schedule requested that the Commission sanction the Division of Enforcement merely for seeking a briefing schedule. Thus, to the extent that the Commission has not acted as quickly as you now appear to want it to have acted, it is largely, if not entirely, because of your actions. We continue to believe that requesting an expedited briefing schedule is the appropriate course of action in this matter and suggest we meet and confer to discuss a joint motion requesting an expedited briefing schedule. Please let us know your availability for a meet-and-confer session.

Request for Howey Analysis

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "***Securities*** to be registered pursuant to Section 12(g) of the Act" (emphasis added).

Materially Misleading Statements in American CryptoFed's Filings with the Commission.

In addition to Securities Act Section 5's restrictions on unregistered offerings of securities, the federal securities laws contain prohibitions against materially misleading statements and omissions in connection with the offer and sale of securities. *See generally* 15 U.S.C. § 77q; 15 U.S.C. § 78j; 17 C.F.R. §240.10b-5. As we, and the Division of Corporation Finance, have repeatedly informed you, American CryptoFed's Form 10 appears to contain numerous materially misleading statements. *See, e.g.,* Division of Enforcement's Omnibus Memorandum in Opposition to Respondent's Motions for a More Definite Statement at 6-8 (and documents cited therein).

Your planned distribution, as described in your May 30, 2022 letter, appears to compound these problems. The letter outlines a plan to introduce Non-Fungible Token (or "NFT") certificates into the offering process. Neither American CryptoFed's Form 10, nor its Form S-1 contain any disclosures regarding the use of NFT certificates as part of the offering process. Based on your description of this process it certainly appears that this is material information that a reasonable investor would want to know, and its omission from both the Form 10 and Form S-1 raises questions as to whether American CryptoFed offering or selling the Locke or Ducat tokens in this manner would violate the antifraud provisions of the federal securities laws. *See, e.g.,* 17 C.F.R. §240.10b-5 ("It shall be unlawful for any person . . . to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . . . in connection with the purchase or sale of any security).

Please feel free to contact us to further discuss any of these issues.

Regards,

/s/ Christopher M. Bruckmann
Christopher M. Bruckmann

cc: Xiaomeng Zhou (by email to zhouxm@americancryptofed.org)

Encl: 8(e) Examination Order

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 3

American CryptoFed

June 8, 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,

Thank you for your June 3, 2022, letter responding to my Cease-and-Desist Order Request. I would like to reply to your letter to increase our mutual understanding and explore possible solutions, including but not limited to, your request in this letter for a meet-and-confer session.

A. 8(e) Examination Order

In your June 3, 2022, letter at page 2, you stated the following:

> The Form S-1 is not yet effective as it contains a delaying amendment. Moreover, the Commission, on November 9, 2021, issued an Order Directing Examination and Designating Officers Pursuant to Section 8(e) of the Securities Act of 1933 ("8(e) Examination Order"), which we are serving on you today along with this letter.

Is there any provision of law which allows the Division of Enforcement ("Division") to delay the service to American CryptoFed for approximately 174 days?

We were surprised by this order. We were ambushed by the Division's opaque tactic. The delay significantly damages our capacity to construe our defense strategy. If the order was served timely on us, we would have taken a different defense strategy. We believe this order should be nulled as if it were not issued.

B. Meet-and-Confer Session

In your June 3, 2022, letter at page 3, you stated the following:

> We continue to believe that requesting an expedited briefing schedule is the appropriate course of action in this matter and suggest we meet and confer to discuss a joint motion requesting an expedited briefing schedule. Please let us know your availability for a meet-and-confer session.

On December 15, 2021, over five months ago, American CryptoFed filed the Motion to Lift the Stay Order below pursuant to **Rule 250. Dispositive motions.**

> RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO LIFT THE ORDER THAT STAYS THE EFFECTIVENESS OF RESPONDENT'S FORM 10 ("Motion to Lift the Stay Order")

Rule 250 states 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).**

According to Rule 250, American CryptoFed is entitled to a prompt "ruling as a matter of law" under the condition of "even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor". American CryptoFed's Motion to Lift the Stay Order is a **dispositive motion**. "The hearing officer shall promptly grant or deny the motion", Rule 250 above mandates. Therefore, "a joint motion requesting an expedited briefing schedule" as you suggested above is not needed. What the Division and American CryptoFed should do jointly is to urge the Securities and Exchange Commission ("Commission") to comply with Rule 250 and to promptly make a ruling on American CryptoFed's Motion to Lift the Stay Order. If the Motion to Lift the Stay Order is granted, the implication is that the Division does not have a valid case, even under the condition of accepting all of the Division's factual allegations as true and drawing all reasonable inference in the Division's favor.

We suggest we have a meet-and-confer session to jointly file a motion, pursuant to Rule 250, to request the Commission to make a ruling on the Motion to Lift the Stay Order to which

American CryptoFed is entitled. It is overdue. Please let us know your availability for a meet-and-confer session for this purpose.

C. Non-Fungible Token ("NFT") Certificates

In your June 3, 2022, letter at page 4, you stated the following:

Your planned distribution, as described in your May 30, 2022 letter, appears to compound these problems. The letter outlines a plan to introduce Non-Fungible Token (or "NFT") certificates into the offering process. Neither American CryptoFed's Form 10, nor its Form S-1 contain any disclosures regarding the use of NFT certificates as part of the offering process. Based on your description of this process it certainly appears that this is material information that a reasonable investor would want to know, and its omission from both the Form 10 and Form S-1 raises questions as to whether American CryptoFed offering or selling the Locke or Ducat tokens in this manner would violate the antifraud provisions of the federal securities laws.

We only use the NFT certificates as a method of delivery, not as a product. The purpose is to avoid delivering a tradable and fungible Locke token. Once we finalize the design, we will file an amendment to the Form 10 filing to disclose the NFT process. We proactively disclosed our activities via EDGAR until the Commission issued the Stay Order on November 10, 2021, which stopped our Form 10 filing. We would like to ask the Commission to grant our Motion to Lift the Stay Order as soon as possible, so that we can constantly and proactively disclose our activities. To be clear, it is the Division and the Commission that stopped our efforts to timely disclose our activities by issuing the Stay Order on American CryptoFed's Form 10 filing which states the following:

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** (emphasis added, page 5).

We may be able to find better method than NFT certificates for delivery. Then, we will not need to use the NFT certificate method.

D. Howey Test

In your June 3, 2022, letter at page 3, you stated the following:

Request for Howey Analysis

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "**Securities** to be registered pursuant to Section 12(g) of the Act" (emphasis added).

Does the Division have any legal justification to classify Locke and Ducat tokens as **Securities** other than by American CryptoFed's filing of a Form 10 with the Commission per se? There are only two possible scenarios for this answer.

i) If your answer is "No", American CryptoFed can just withdraw the Form 10 filing, because the Division cannot prove the Locke and Ducat tokens are securities. The Commission no longer has jurisdiction over Locke token and Ducat token and American CryptoFed no longer needs to register the two tokens with the Commission. American CryptoFed withdrew its Form S1 filing on June 6, 2022 for the reason that the Locke and Ducat tokens are not securities.

ii) If the Answer is "Yes", the Division is then obligated to provide us with a Howey Test to substantiate its "Yes" answer and justify the November 10, 2021 Order Instituting Proceedings. To be clear, this request is not and has never been a request for the Division's internal work product and analysis, whatsoever. As of today, the Division has failed to provide any substantive analysis in support of its position that the Locke and Ducat tokens are securities. In accordance with the plain text of 5 U.S. Code § 556 as shown below, the Division has the burden of proof to show that Locke token and Ducat token are securities, given that the Commission issued the November 10, 2021 Order Instituting Proceedings.

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 Commission published on its website, [Framework for “Investment Contract” Analysis of Digital Assets], 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).

Furthermore, Chair Gary Gensler has repeatedly emphasized that the Commission complies with the Supreme Court’s Howey Test to make judgements. There is no legal basis that the Division can carry out enforcement without providing a Howey Test analysis. Below are just three examples of Chair Gary Gensler’s policy remarks with which the Division should be well aware.

On May 11, 2022:

My predecessor Jay Clayton said it, and I will reiterate it: Without prejudging any one token, most crypto tokens are investment contracts under the Supreme Court’s Howey Test. https://www.sec.gov/news/speech/gensler-remarks-swaps-and-derivatives-association-annual-meeting-051122

On April 4, 2022:

The Supreme Court's 1946 Howey Test, which was about orange groves, says that an investment contract exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.
https://www.sec.gov/news/speech/gensler-remarks-crypto-markets-040422

On Aug. 3, 2021:

The following decade, the Supreme Court took up the definition of an investment contract. This case said an investment contract exists when "a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." The Supreme Court has repeatedly reaffirmed this Howey Test.
https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03

E. Request for a Cease-and-Desist Order

In your June 3, 2022, letter at page 2 - 3, you stated the following:

The Division of Enforcement does not issue orders, that is the role of the Commission. Additionally, while some Commission administrative proceedings are captioned as "Cease and Desist" proceedings (*see, e.g.*, 15 U.S.C. §77h-1), there is no requirement that proceedings take that precise form in order to halt conduct. Here, the Commission's November 10, 2021 Order Instituting Proceedings stays the effectiveness of American CryptoFed's Form 10. At the conclusion of this proceeding, the Division of Enforcement may seek, and the Commission may enter, an order denying or revoking the registration of that Form 10. Neither the Commission nor the Division of Enforcement needs to use the phrase "Cease and Desist" in taking this step.

Given that the Division has failed to provide any substantive analysis in support of its position, we have concluded that the Division is unable to prove that Locke token and Ducat Token are securities. The logical implication is that the Division and the Commission have no jurisdiction over Locke and Ducat tokens. As a result, American CryptoFed should withdraw its Form 10 filing for the reason that the Locke and Ducat tokens are not securities, as we already did for the Form S1 filing.

Please let us know whether the Division agrees with our conclusion that the Division is unable to prove that Locke token and Ducat Token are securities in one week, on or before June 15, 2022. Once we receive the Division's agreement, we will file a Request for Withdrawal of Registration Statement on Form 10. After the withdrawal of both the Form 10 and Form S1 filing becomes effective, American CryptoFed will proceed with implementing its business plan exactly as described in the Form 10 and the Form S1. According to the Division, it is the Form

10 filing and the Form S1 filing that make Locke token and Ducat token securities, not the substance of the business plan itself.

However, if the Division does not agree with our conclusion that the Division is unable to prove that Locke token and Ducat token are securities, and if the Division perceives any violations of related securities laws and wants to prohibit American CryptoFed from implementing the business plan, please seek authorization from the Commission to issue a Cease-and-Desist Order within 30 calendar days, on or before July 8, 2022, as the Division did for the November 10, 2021, Order Instituting Proceedings and the 8(e) Examination Order.

If we do not receive a Cease-and-Desist order by July 8, 2022, including a Howey Test analysis or other legal justifications, we will assume that the Commission and the Division has no intention or authority to stop the implementation of business plan, because the Division is unable to prove that Locke token and Ducat token are securities. American CryptoFed has a critical mission to accomplish and has no choice now but to implement its business plan, while waiting for the Commission's ruling on all the pending motions with patience. We do not complain about the Commission's nondecision and indecision. However, we cannot afford to be left in limbo for any longer. The time is short, but the stakes are high. The Locke token distribution to the contributors will be granted in paper contracts, free of charge. The Locke token refundable auction will be conducted without moving funds. Even after we start the implementation on or after July 8, 2022, Locke tokens will not be allowed to trade until January 1, 2023. Therefore, the Commission can still send a Cease-and-Desist Order with a Howey Test analysis justification by December 31, 2022. All transactions can be reversed easily and timely without causing any inconvenience and damages to anyone. We intentionally allow sufficient time to reverse all the transactions, in case that the Commission decides to send us a Cease-and-Desist order including a Howey Test analysis justifying the Division's position.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO