

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 11134 / November 18, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21243**

**In the Matter of**

**The Registration Statement of**  
**American CryptoFed DAO LLC**

**Respondent**

**RESPONDENT AMERICAN CRYPTO FED**  
**DAO LLC'S MOTION TO FILE A NIL**  
**FINANCIAL STATEMENT AUDITED BY**  
**AN ACCOUNTING FIRM REGISTERED**  
**WITH PCAOB**

The Securities and Exchange Commission (“SEC” or “Commission”) instituted this proceeding by an Order Instituting Proceedings (OIP) on November 18, 2022. The OIP ordered American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) to file an Answer within ten days after service of the OIP and ordered that a public hearing before Administrative Law Judge Carol Fox Foelak commence at 10:00 a.m. EST on December 1, 2022. Hearing sessions were held on December 1, 2, and 6, 2022, and January 18 and 19, 2023.

**I. Background and Purpose**

During the hearing session on December 6, 2022, American CryptoFed promised to stipulate not to make changes to financials (Transcript p. 606:6-10) and thereafter had fruitful discussion with the Division of Enforcement (Division). However, the stipulation was not finalized. Given that now the hearing was closed, American CryptoFed will follow the Division of Corporation Finance’s guidance and Judge Foelak’s suggestion below to engage a PCAOB accounting firm (“Auditor”) to conduct an audit.

Mr. Dobbie: So, they would merely need to prepare the financial statements of the issuer, in this case American CryptoFed DAO, LLC, have those financial statements audited regardless of whether they reflect significant revenues or no revenues, significant costs or no costs. And then, present those in -- in the filing as required by the form. (Transcript p.42:21-25 & 43:1-2).

JUDGE FOELAK: That's sort of a legal problem. There's -- there's no doubt -- I mean, it can't be cured unless you hire a CPA who will, you know, provide an audited financial statement stating -- you know, apparently stating zero, zero, zero on everything. I mean, you could cure it by --by -- you think these things that you have explained why these things are meaningless, but you could provide them anyway I guess. (Transcript, p.166:2-10).

It is highly possible that the audit will result in a Nil Financial Statement, but American CryptoFed has a concern that the Division may not accept a Nil Financial Statement, because the Division's following statement implies a sort of uncertainty:

MR. BRUCKMANN: To the extent that's an offer of settlement, the Division's position is that it's completely inappropriate to determine before financial statements are even issued that an auditor will decide that it's acceptable for them to say, zero, zero, zero. We will not proceed in that fashion. (Transcript, p.854:2-8).

The purpose of this Motion to File a Nil Financial Statement is to obtain permission to engage the Auditor and remove this uncertainty.

## **II. Comments from Both the Divisions of Corporation Finance and Enforcement**

As a DAO to be operated by tokens on a distributed ledger and smart contracts, American CryptoFed's token operation cannot start until the Form S-1 is declared effective by the SEC, the tokens are issued thereafter, and the distributed ledger is established. For compliance purposes, the American CryptoFed's Constitution ("Constitution", Ex.1A), must define the transition timeline from the sole member MShift's control, to American CryptoFed Locke tokens' control, as the timing when the SEC "declares the effectiveness of CryptoFed's Form S-1 filing for Locke and Ducat token registration." (p. 3, Section 4.1). Therefore, the timeline for the audited financial statement must be after American CryptoFed's Form S-1 is declared effective by the SEC, because prior to that timing, American CryptoFed's token operation is not allowed to start

by the Constitution. To this extent, given that the Form S-1 has not yet been declared effective, the Auditor does not have past events to audit. The Auditor cannot provide an audited financial statement for what has not yet happened. Therefore, what the Auditor **can** do is to provide the Auditor's opinion by reasoning from GAAP perspective, whether American CryptoFed will generate revenue in the future, based on their examination of the Constitution.

That reason has the power to make clear through pure ratiocination the essential features of action is a consequence of the fact that action is an offshoot of reason. The theorems attained by correct praxeological reasoning are not only perfectly certain and incontestable, like the correct mathematical theorems. They refer, moreover, with the full rigidity of their apodictic certainty and incontestability to the reality of action as it appears in life and history. (Exhibit 148, p.39).

From GAAP's perspective, by the design of American CryptoFed's Constitution, American CryptoFed will never have any Revenue, Asset, Profit, Fundraising, Cost or Liability. Both Divisions of Corporation Finance and Enforcement have not yet provided any systematic comments regarding this assertion. To demonstrate good faith, American CryptoFed provides the explanation below to seek comments from both Divisions so that the Auditor can have an opportunity to address their comments. Pursuant to the SEC's Filing Review Process (Exhibit 3, p.3), "The company or its representatives should feel free to involve the Disclosure Program Director, the Division's Deputy Director or Director at any stage in the filing review process". To this extent, American CryptoFed has the right to receive comments from these SEC staff and requests that their comments be provided by March 10, 2023. The request is reasonable, given that the exercise is no more than to make comments by logical reasoning regarding American CryptoFed's application of GAAP to its future operation as defined by the Constitution.

**1. No Revenue, No Profits and No Taxable Income**

Deloitte describes Revenue Recognition as follows (Ex.269, p.1).

The core principle of the revenue standard is to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which an entity expects to be entitled in exchange for those goods and services. Significant judgments frequently need to be made when an entity evaluates the appropriate recognition of revenue from contracts with customers. These judgments are often required throughout the revenue standard's five-step process that an entity applies to determine when, and how much, revenue should be recognized.

Let us apply "the revenue standard's five-step process" to American CryptoFed to prove that revenue will never exist.

◇ **Step 1. Identify the Contract with a Customer**

The Constitution is the only contract American CryptoFed has and will have. The Constitution was effective on September 15, 2021, signed by the symbolic CEO American CryptoFed DAO LLC and the CEO & COO of MShift as the LLC's sole member. The Constitution only allows the symbolic CEO to communicate to and file documents with regulators (p.3-4, Section 4.4). The future smart contracts to execute the Constitution's clauses are part of this Constitution (p.1, Section 2).

◇ **Step 2. Identify the Performance Obligations in the Contract**

The obligations of American CryptoFed have been defined in the Constitution.

i) As an obligation defined by the Constitution, the proceeds in US dollar pegged stablecoins ("Stablecoin") from Locke token refundable auctions must be used for refunding the auction purchasers or buying back Locke tokens from the open market (p.13, Section 15.4). The Locke tokens which were bought back, must be immediately and automatically burnt (destroyed) (p.14, Section 16.2).

ii) As an obligation defined by the Constitution, the proceeds in Stablecoins from Ducat token sales must be used for buying back Locke tokens from the open market (p.14, Section 15.5). The Locke tokens which are bought back, must be immediately and automatically burnt (destroyed) (p.14, Section 16.2).

iii) Because all the proceeds in Stablecoins will be dedicated to buy back Locke tokens from the open market which in turn must be burnt (destroyed), the market price of Locke tokens will be supported by the buyback. In addition, as an obligation defined by the Constitution, new Locke tokens will be issued to buy back Ducat to maintain the Target Equilibrium Exchange Rate between Ducat and US dollar (p.14, Section 15.5). The Ducat tokens which are bought back, must be immediately and automatically burnt (destroyed) (p.14, Section 16.2).

iv) As an obligation defined by the Constitution, during a crisis affecting Locke tokens, all the proceeds in Stablecoins must be used for buying back Locke tokens from the open market (p.11, Section13.2). Again, the Locke tokens which are bought back, must be immediately and automatically burnt (destroyed) (p.14, Section 16.2).

◇ **Step 3. Determine the Transaction Price**

The proceeds in Stablecoins should be the transaction price, although the market price of each individual transaction varies.

◇ **Step 4. Allocate the Transaction Price to Performance Obligations**

All the Stablecoin proceeds must be used for buying back Locke tokens. All Locke tokens bought back must be burnt (destroyed). New Locke tokens must be issued to buy back Ducat. All Ducat tokens bought back must be burnt (destroyed).

◇ **Step 5: Recognize Revenue When (or as) the Entity Satisfies a Performance Obligation**

After a performance obligation is satisfied, no remaining value exists. The Constitution's mandate is to automatically and immediately burn (destroy) all Locke tokens and Ducat tokens which are bought back (p.14, Section 16.2). American CryptoFed is not allowed to hold its own outstanding tokens of Locke and Ducat. One of the major issues of centralized crypto players, is that they hold their own outstanding tokens as assets. For example, FTX and its sister company

Alameda Research held its own FTT tokens as assets, which made it possible for them to manipulate the FTT market price, lend FTT, use FTT as collateral and create an unrealistic value in their book.

The proceeds in Stablecoins either from Locke token refundable auction or from Ducat token sales, are the only funds received pursuant to the Constitution. However, these proceeds cannot be booked as revenue in accordance with “the revenue standard’s five-step process”. No revenue also means no profit and no taxable income.

## **2. No Assets**

FASB Conceptual Framework provides the following definition for asset (Ex.277, p.5).

E16. An asset is a present right of an entity to an economic benefit.

Characteristics of Assets

E17. An asset has the following two essential characteristics:

- a. It is a present right.
- b. The right is to an economic benefit.

The combination of those two characteristics allows an entity to obtain the economic benefit and control others’ access to the benefit. A present right of an entity to an economic benefit entitles the entity to the economic benefit and the ability to restrict others’ access to the benefit to which the entity is entitled.

Economic Benefit is a key concept in the FASB definition. To the extent that the proceeds in Stablecoins, either from Locke token refundable auction or from Ducat token sales cannot provide any economic benefit (revenue), the proceeds can never be booked as assets.

Although MShift has licensed all the intellectual properties (“IPs”), including issued patents, patent applications, copyrights, trademarks, logos, website, etc. exclusively, permanently and irreversibly to American CryptoFed, in accordance with the Constitution (p.4, Section 4.7), to the extent that the IPs cannot generate any economic benefit (revenue) for American CryptoFed, the IPs can never be booked as assets.

## **3. No Fundraising**

To the extent there is not and there will never be, any revenue and asset in American CryptoFed business model, there will never be any fundraising.

#### **4. No Liability (Actual Liability)**

FASB Conceptual Framework provides the following definition for liability (Ex.277, p.9-10).

E37. A liability is a present obligation of an entity to transfer an economic benefit.

##### Characteristics of Liabilities

E38. A liability has the following two essential characteristics:

- a. It is a present obligation.
- b. The obligation requires an entity to transfer or otherwise provide economic benefits to others.

Obligation is a key concept in the FASB definition. Although American CryptoFed pays Ducat interest to Ducat holders and Ducat reward to consumers and merchants, neither interest payment nor reward payment is an obligation, because, pursuant to the Constitution, the interest payment and reward payment are not entitlements for Ducat holders, consumers and merchants (p. 6, Section 6.1 & p.7, Section 8.1). To the extent that the interest payment and reward payment are not obligations, they are not liabilities.

Given that the Constitution does not allow American CryptoFed to have “hierarchy, such as an executive branch, a board of directors, or an advisory board,” (p.3, Section 4.4), no liability can be caused by a human resource.

#### **5. Contingent Liability**

Deloitte describes Contingent Liability as follows (Ex.279, p.1).

An entity must recognize a contingent liability when both (1) it is probable that a loss has been incurred and (2) the amount of the loss is reasonably estimable. In evaluating these two conditions, the entity must consider all relevant information that is available as of the date the financial statements are issued (or are available to be issued).

Pursuant to the Constitution Section 4.8 (p.4-5), all token holders of Ducat and Locke have signed a waiver. American CryptoFed has done and will continue to do its best to comply

with laws and regulations pursuant to the Constitution (p.3, Section 4.1, p.5-6, Section 5.1&5.3). Pursuant to the Constitution (p.3-4, Section 4.4), the only contracts other than this Constitution which are allowed to be signed by the symbolic CEO, are contracts with regulators. As a result, there is no possibility of any Contingent Liabilities, whatsoever. The Division raised a hypothetical liability caused by American CryptoFed's violation of anti-money laundering rules (Transcript, p. 869:9-17). However, this liability belongs to wallet issuers, not American CryptoFed, because wallet issuers are responsible for onboarding users and are the gatekeepers for the entrance to American CryptoFed Blockchain, pursuant to the Constitution below (p.5, Section 5.1).

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

Pursuant to the Constitution (p.7, Section 7), wallet issuers receive Ducat token as compensation, and pursuant to the Constitution (p.5, Section 4.8), "Ducat and Locke token holders agree to indemnify and hold harmless CryptoFed and CryptoFed IDE for all claims arising out of their CryptoFed Participation."

## **6. No Costs**

Pursuant to the Constitution (p.3, Section 4.1), American CryptoFed's token operation is not allowed to start until its Form S-1 is declared effective by the SEC. Prior to that timing, the costs belong to MShift which is American CryptoFed DAO LLC's sole member, not the DAO per se, even if the invoices are addressed to American CryptoFed, such as the invoice of US Conference of Mayors dated November 8, 2021 and paid by MShift. As explained in the Form S-1 filing below, the operation is MShift's operation for DAO setup, not the DAO's operation, following



the IRS rule stating, “If the single-member LLC is owned by a corporation or partnership, the LLC should be reflected on its owner's federal tax return as a division of the corporation or partnership.”<sup>1</sup>

As the founding organization, MShift will cover CryptoFed operating costs until December 31, 2021. The costs are one time setup expenses which will no longer continue for the ongoing operation of CryptoFed. From January 1, 2022, CryptoFed will completely operate as a token economic DAO without fiat currency. (Ex.1, p.26).

Despite the SEC’s significant delay, once American CryptoFed’s Form S-1 filing is declared effective by the SEC, pursuant to the Constitution (p.3, Section 4.1), MShift’s “powers and rights will completely and irreversibly become delegated to Locke token holders”. Subsequently, MShift’s operation ends and the DAO’s token operation starts. Participants of the Ducat Economic Zone (Exhibit 1B), such as merchants, banks, municipalities, consumers, crypto exchanges, etc. can start building and operating American CryptoFed monetary system. The participants as **Autonomous** decision makers, pursuant to the **Constitution** which is a set of rules executed by smart contracts to coordinate all autonomous participants’ activities so that the autonomous participants can act as an **Organization**, cover their own costs, and receive tokens as compensation for performing various roles which they voluntarily choose in a completely **Decentralized** American CryptoFed Blockchain without any hierarchy.

Because “Locke tokens represent citizenship, not ownership” pursuant to the Constitution (p.4, Section 4.6), the Constitution does not create any form of partnership among participants, ensuring that all participants are completely **Autonomous** and consent to enter or exit the Ducat Economic Zone by acquiring or relinquishing Locke and Ducat tokens. The tokens per se which autonomous participants may receive as compensation, can only be generated collectively by

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<sup>1</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies>

multiple autonomous participants' voluntary actions, in accordance with the triggers designed by the Constitution, executed by smart contracts on the American CryptoFed Blockchain *"And thus came in the use of money; some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly useful but perishable supports of life"* (Exhibit 264, p.125), under the constituted governance by Locke tokens. The costs to operate American CryptoFed Blockchain will be covered collectively and automatically by all independent and autonomous participants, in exchange for tokens which will also be collectively and automatically generated by these participants. American CryptoFed as a Wyoming legal entity does not bear any costs for American CryptoFed's operation.

**III. Conclusion**

For all the reasons set forth above, American CryptoFed respectfully requests that Judge Foelak i) permit American CryptoFed to engage a PCAOB accounting firm for an audited financial statement, ii) order both the Divisions of Enforcement and Corporation Finance to provide comments on American CryptoFed's assertion of No Revenue, No Asset, No Profit, No Fundraising, No Cost and No Liability, and iii) order both Divisions to accept the audited financial statement even if the audited report is a nil financial statement.

Dated: January 29, 2023

Respectfully submitted

DocuSigned by:  
*Scott Moeller*  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this **RESPONDENT AMERICAN CRYPTO FED DAO LLC'S MOTION TO FILE A NIL FINANCIAL STATEMENT AUDITED BY AN ACCOUNTING FIRM REGISTERED WITH PCAOB**, was filed by eFAP and was served on the following on this 29th day of January 2023, in the manner indicated below:

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