

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93806 / December 16, 2021

Admin. Proc. File No. 3-20650

In the Matter of

AMERICAN CRYPTO FED DAO LLC

ORDER DENYING MOTION TO APPOINT A HEARING OFFICER AND MOTIONS FOR A CONTINUANCE OF THE PREHEARING CONFERENCE AND DIRECTING FURTHER PROCEDURES FOR THE FILING OF A MOTION FOR SUMMARY DISPOSITION

On November 10, 2021, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) pursuant to Section 12(j) of the Securities Exchange Act of 1934 against American CryptoFed DAO LLC (“Respondent”).¹ Respondent filed its answer and seven motions for a more definite statement on December 6, 2021.² Shortly thereafter, on December 8 and December 10, 2021, Respondent filed three additional motions relating to the prehearing conference.³ For the reasons set forth below, we deny the requests to

¹ *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93551, 2021 WL 5236544 (Nov. 10, 2021).

² The motions for a more definite statement will be addressed by separate order.

³ Filing seven motions for a more definite statement and three motions regarding the prehearing conference within a one-week period was inconsistent with the Rules of Practice, which contemplate only a single motion for a more definite statement and discourage repetitive, overlapping, or duplicative filings that contribute to “unnecessary delay or needless increase” in the resources needed to resolve the proceeding. *See* Rule of Practice 220(d), 17 C.F.R. § 201.220(d) (“A respondent may file with an answer *a* motion for a more definite statement”) (emphasis added); Rule of Practice 153(b)(1)(iii), 17 C.F.R. § 201.153(b)(1)(iii). “[W]e expect even unrepresented parties to comply with our rules, to file all required papers, and to comply with all orders: ‘Parties, including those appearing *pro se*, are obligated to familiarize themselves with the Rules of Practice.’” *BDO China Dahua CPA Co., Ltd.*, Exchange Act Release No. 72134, 2014 WL 1871077, at *3 (May 9, 2014) (quoting Adopting Release, *Rules of Practice*, Exchange Act Release No. 35833, 1995 WL 368865, at *36 (June 9, 1995)); *see also* *Edward M. Daspin*, Exchange Act Release No. 10813, 2020 WL 4463315, at *7 n.60 (Aug. 3, 2020) (collecting cases for the proposition that the Commission may reject filings that do not comply with the Rules of Practice).

appoint a hearing officer and to continue the prehearing conference, and we set forth procedures for the submission of briefing as to any motion for summary disposition that may be filed.

First, Respondent requests that the Commission designate an Administrative Law Judge (“ALJ”) as hearing officer to preside over this proceeding. Rule of Practice 110 provides that “[a]ll proceedings shall be presided over by the Commission” unless the Commission “so orders.”⁴ Here, the OIP set this matter “before the Commission,” not an ALJ, and no subsequent order issued by the Commission in this proceeding has directed otherwise.⁵ Respondent contends that the Commission made “a public promise to designate an administrative law judge as the Presiding officer” in a press release dated November 10, 2021.⁶ But a press release is not an “order” of the Commission,⁷ so it cannot supersede either Rule 110’s default rule (*i.e.*, that proceedings are presided over by the Commission) or the OIP itself. Further, the Commission retains at all times the authority to designate or to re-designate the presiding officer in its administrative proceedings, and, as the Supreme Court stated in *Lucia v. SEC*, “[b]y law, the Commission itself may preside over’ any administrative proceeding that it institutes.”⁸

We deny Respondent’s motion to designate an ALJ as the presiding officer at this juncture. In so doing, we express no view as to whether this proceeding can be resolved by summary disposition or an in-person evidentiary hearing will be necessary. As stated in the OIP, the Commission will issue a final order resolving this proceeding after either (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) the completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition, where the Commission has determined that no public hearing is necessary; or (C) the determination that a party is in default and no public hearing is necessary.⁹ Whether this proceeding may be resolved by summary disposition without a public hearing depends on the content of the record and the parties’ briefs and the established standards for summary disposition, not whether a hearing officer has been appointed to preside over the case.¹⁰

⁴ Rule of Practice 110, 17 C.F.R. § 201.110.

⁵ *Am. CryptoFed DAO*, 2021 WL 5236544, at *4.

⁶ Press Release, *Registration of Two Digital Tokens Halted* (Nov. 10, 2021), available at <https://www.sec.gov/news/press-release/2021-231> (last visited Dec. 13, 2021) (referring to “determination by an administrative law judge whether to deny or suspend the registration of the tokens”).

⁷ See Rule of Practice 140, 17 C.F.R. § 201.140 (setting forth formal requirements of a Commission order under the Rules of Practice, including that it be signed by the Secretary or an authorized designee).

⁸ *United Dev. Funding III, LP*, Exchange Act Release No. 89535, 2020 WL 4720528, at *6 (Aug. 12, 2020) (quoting *Lucia v. SEC*, 138 S. Ct. 2044, 2049 (2018)).

⁹ *Am. CryptoFed DAO*, 2021 WL 5236544, at *6.

¹⁰ See *Jocelyn Murphy*, Exchange Act Release No. 93626, 2021 WL 5415355 (Nov. 19, 2021) (denying motion to appoint a hearing officer).

Second, Respondent requests that the Commission continue the prehearing conference until after it rules on Respondent’s motions for a more definite statement. The OIP directed the parties to conduct a prehearing conference within 14 days of service of Respondent’s answer to the OIP and, following the conference, to file a statement advising the Commission of any agreements reached at said conference.¹¹ Because Respondent filed its answer on December 6, 2021, the prehearing conference should be conducted by December 20, 2021.

Respondent contends that delaying the prehearing conference is necessary “[i]n order to have a fruitful and a constructive prehearing conference.” However, Rule of Practice 221(c) contemplates a wide-ranging—and neither exclusive nor exhaustive—list of subjects for discussion at the prehearing conference, and we are unable to conclude that such a conference would be futile while the parties await the Commission’s resolution of the motions for a more definite statement.¹² Nothing in the Rules of Practice requires a ruling on a motion for a more definite statement (or any other motion) before a prehearing conference.¹³ Nor do the Rules of Practice preclude the parties from holding additional prehearing conferences if they deem it advisable, including following the Commission’s ruling on such a motion.¹⁴ We therefore deny Respondent’s request for a continuance of the prehearing conference.

Third, Respondent seeks “confirmation” that the prehearing conference must be conducted before the Division can file a motion for summary disposition. But the Rules of Practice impose no such sequencing requirement. Rule of Practice 250(b) permits a party to file a motion for summary disposition “after a respondent’s answer has been filed and documents have been made available to that respondent for inspection and copying,” and says nothing about whether a prehearing conference must first be conducted.¹⁵

Likewise, the Rules of Practice contain no requirement that the Commission rule on a motion for a more definite statement before a party seeks summary disposition. Nonetheless, under the facts and circumstances of this case, it appears appropriate to order that motions for summary disposition not be filed until after the Commission rules on the motions for a more definite statement. Rule of Practice 250(b) provides that summary disposition is appropriate if “there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary disposition as a matter of law.”¹⁶ An opposition to a motion for summary disposition

¹¹ *Am. CryptoFed DAO*, 2021 WL 5236544, at *4; *see also* Rule of Practice 221, 17 C.F.R. § 201.221.

¹² Rule of Practice 221(c), 17 C.F.R. § 201.221(c).

¹³ *See generally* Rules of Practice 220(d), 221, 17 C.F.R. §§ 201.220(d), .221.

¹⁴ Rule of Practice 221(d), 17 C.F.R. § 201.221(d) (stating that “*at least one* prehearing conference should be held”) (emphasis added).

¹⁵ Rule of Practice 250(b), 17 C.F.R. § 201.250(b). The Division asserted that it made documents available to Respondent pursuant to Rule 230 on November 15, 2021. If that is not the case, the parties should notify the Commission in a response to this order.

¹⁶ 17 C.F.R. § 201.250(b).

must precisely specify in the brief the basis for that opposition, identify with particularity the material factual issues in dispute, and address relevant Commission precedent.¹⁷ Ordering that summary disposition briefing not take place until after the Commission rules on the motions for a more definite statement ensures that the briefing will squarely address the operative claims and defenses at issue in the proceeding. The Commission will set a schedule for summary disposition briefing when it rules on the motions for a more definite statement. We express no view at this time as to the disposition of those motions or whether summary disposition is appropriate.

To summarize, IT IS ORDERED that Respondent's motion to designate an ALJ as presiding officer is denied; and it is further ORDERED that the parties not file motions for summary disposition until after the Commission rules on Respondent's motions for a more definite statement; and it is further ORDERED that the Respondent's requests for relief regarding the prehearing conference are denied as set forth above. Accordingly, the parties should conduct a prehearing conference by December 20, 2021, and file a statement advising the Commission of any agreements reached at the prehearing conference by January 3, 2022.

If a prehearing conference is not held, both parties shall file by that date a statement, jointly or separately, advising the Commission of that fact and of the efforts made to meet and confer. If Respondent fails to participate in the prehearing conference as directed by this order, it may be deemed in default, the proceeding may be determined against it, and the effectiveness of the registration of its securities may be denied or suspended.¹⁸ Pursuant to Rule of Practice 180(c), a party's failure to comply with this order may result in the Commission's determination of the matter at issue against that party, a finding of waiver, dismissal of the proceeding, or such other sanction as the Commission finds appropriate.¹⁹

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

¹⁷ See, e.g., *United Dev. Funding III, LP*, Exchange Act Release No. 85197, 2019 WL 936699, at *1–2 & nn.6–9 (Feb. 26, 2019) (discussing appropriateness of summary disposition in Section 12(j) proceeding); *Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at *5–8 (Apr. 4, 2014) (discussing types of factual disputes that may be relevant in ruling on summary disposition in Section 12(j) proceeding).

¹⁸ Rules of Practice 155(a), 221(f), 17 C.F.R. §§ 201.155(a), .221(f); see also *Am. CryptoFed DAO*, 2021 WL 5236544, at *4 (“If Respondent . . . fails to appear at a hearing or conference after being duly notified, . . . [it] may be deemed in default and the proceedings may be determined against [it] . . .”).

¹⁹ Rule of Practice 180(c), 17 C.F.R. § 201.180(c).