

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93905 / January 5, 2022

Admin. Proc. File No. 3-20650

In the Matter of
AMERICAN CRYPTO FED DAO LLC

ORDER REGARDING MOTIONS FOR JUDGMENT ON THE PLEADINGS

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. Shortly thereafter, Respondent filed three additional motions relating to the prehearing conference.

In ruling on Respondent’s motions relating to the prehearing conference, the Commission stated that “[f]iling 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.”²

Respondent now has filed a “proposed prehearing conference agenda,” a motion to lift the stay on the effectiveness of its Form 10 registration statement, and four motions for judgment on the pleadings. According to the “agenda,” Respondent also intends to file a motion for summary disposition. The first motion for judgment on the pleadings seeks to “confirm” that [] Section 12(j) of the Exchange Act contains the specific phrase ‘on the record’” and to “confirm” that it will be entitled to conduct “cross-examination . . . orally at an in-person hearing.” The second such motion asserts that “there are no existing and potential investors to be protected” in light of purported admissions in the Division’s opposition to Respondent’s motions for a more definite statement. The third motion seeks to “confirm” that “an issuer does not need to provide information required by Exchange Act Section 12(g), 12(b) and Form 10, if the information does

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

² *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93806, 2021 WL 5966848, at *1 n.3 (Dec. 16, 2021).

not and will not exist” and that such an issuer can “apply for exemption pursuant to Exchange Act Section 12(h).” This motion attaches an article in an industry publication as support for its premise that this is a “scenario[] for which information” required by those provisions does not and will not exist. And the fourth motion requests that the Commission “confirm” that “if information provided pursuant to Rule 12b-20³ is inconsistent with [a] Form 10 requirement, the Commission will either require an issuer to provide [alternative] information pursuant to Section 12(c) or will declare that Form 10 does not apply.”

The Rules of Practice contemplate only a single motion for judgment on the pleadings per party.⁴ And Respondent’s motions do not, at any rate, represent an appropriate use of the Rule 250(a) procedure, which is meant to secure a ruling on the “sufficiency of the pleadings”⁵—not to seek “confirmation” of factual or legal contentions that the movant deems important or to effectively propound interrogatories on the Division or the Commission. We have previously observed that a Rule 250(a) motion is unlikely to be granted in a disputed Section 12(j) proceeding because the pleadings alone—that is, the OIP and the answer—with the *non-movant’s* factual allegations taken as true typically will not be sufficient to establish that the movant is entitled to a ruling in its favor as a matter of law.⁶ Here, the non-movant is the Division, meaning the OIP’s allegations must be taken as true. None of Respondent’s motions “identif[ies] and cite[s] to undisputed allegations of the *OIP* and assert that they entitle it to the relief it seeks, as it would have to do to prevail.”⁷ The focus of a Rule 250(a) motion is “necessarily on the pleadings,” and “matters outside them are not properly before us.”⁸

Furthermore, the Commission is entitled to specify and enforce procedural rules that “serve the rational purpose of promoting accurate, efficient and final decisionmaking.”⁹ And, to

³ Exchange Act Rule 12b-20 provides that “[i]n addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.” 17 C.F.R. § 240.12b-20.

⁴ Rule of Practice 250(a), 17 C.F.R. § 201.250(a) (“[A]ny party may move for a ruling on the pleadings The [decision-maker] shall promptly grant or deny *the* motion.”) (emphasis added).

⁵ See *ERHC Energy, Inc.*, Exchange Act Release No. 90517, 2020 WL 6891409, at *2 (Nov. 24, 2020).

⁶ See *id.* at *2-4.

⁷ *Id.* at *1 (emphasis added).

⁸ *Id.* at *2.

⁹ *Brown v. NTSB*, 795 F.2d 576, 578-79 (6th Cir. 1986); accord *Baptist Mem’l Hosp. - Golden Triangle v. Sebelius*, 566 F.3d 226, 227 (D.C. Cir. 2009) (affirming finding that the agency “had permissibly applied its own procedures in rejecting the [petitioner’s] appeals”); *Galvez Pineda v. Gonzales*, 427 F.3d 833, 837 (10th Cir. 2005) (refusing to permit the “petitioner to circumvent proper procedural requirements of the [agency] by presenting contentions that were procedurally barred”).

repeat, “we 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.’”¹⁰ Non-compliance has consequences: “The Commission . . . may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made.”¹¹ Moreover, the “Commission . . . may enter a default . . . , dismiss one or more claims, decide the particular claim(s) at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that claim if a person fails” to make a required filing or to cure a deficient filing.¹²

Respondent’s motions for judgment on the pleadings are procedurally deficient and, accordingly, it is ORDERED that they are stricken from the record and that no further action will be taken with respect to them. This is without prejudice to Respondent raising those contentions in a single motion for summary disposition (or in opposition to the Division’s motion for summary disposition, if any);¹³ the Commission expressly reserves judgment as to their merits, and will consider them, if properly raised, on the basis of the summary disposition briefing and record. The motions for a more definite statement and the motion to lift the stay will be addressed by separate orders. A schedule for summary disposition briefing will also be established in a separate order.¹⁴ The parties are reminded that the Rules of Practice provide for

¹⁰ *Am. CryptoFed DAO*, 2021 WL 5966848, at *1 n.3.

¹¹ Rule of Practice 180(b), 17 C.F.R. § 201.180(b).

¹² Rule of Practice 180(c), 17 C.F.R. § 201.180(c).

¹³ Without expressing any view as to appropriateness of exemptive relief (under Section 12(h) or otherwise), the Commission notes that there is an established procedure for filing applications for such relief. *See* 17 C.F.R. § 240.0-12; *see also Commission Procedures for Filing Applications for Orders for Exemptive Relief*, Exchange Act Release No. 39624, 63 Fed. Reg. 8101, 8101-02 & n.3 (Feb. 8, 1998) (“Some provisions under the Exchange Act give the Commission specific authority to provide exemptions. In those areas, the Commission intends to continue to consider exemptive requests under the specific exemptive provisions. Under general exemptive authority, the Division of Corporation Finance will evaluate on a case-by-case basis any requests for exemptive relief it receives.”); 17 C.F.R. § 200.30-1(f)(7) (delegating authority to the Division of Corporation Finance to consider, in the first instance, requests for exemptive relief under Section 12(h)). The Commission has sole discretion to decline to consider such applications, 63 Fed. Red. at 8102, and their processing and disposition does not constitute a formal adjudication within the scope of the instant proceeding. *See* Rules of Practice 101(a)(9), 191, 17 C.F.R. §§ 201.101(a)(9), .191.

¹⁴ We previously indicated that the Commission would set a schedule for summary disposition briefing in the course of ruling on Respondent’s motions for a more definite statement. *Am. CryptoFed DAO*, 2021 WL 5966848, at *2. But upon further consideration, and in light of the other motions pending before the Commission, we find it appropriate to defer doing so and will issue a briefing schedule separately. The Commission will also rule separately on the Division’s motion for procedures to govern the filing of motions other than motions for summary disposition.

only a single motion for summary disposition per party, and that repetitive, overlapping, or duplicative filings are not appropriate. The Commission will not hesitate to impose consequences for continued non-compliance with its procedural rules.

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

Vanessa A. Countryman
Secretary