

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93922 / January 6, 2022

Admin. Proc. File No. 3-20650

In the Matter of
AMERICAN CRYPTOFED DAO LLC

ORDER DENYING MOTION FOR A BRIEFING SCHEDULE AND DIRECTING FURTHER
PROCEDURES FOR THE FILING OF MOTIONS

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 Since these proceedings were instituted, Respondent has filed 16 motions, including seven motions for a more definite statement, three motions relating to the prehearing conference, four motions for a judgment on the pleadings, a motion to lift the stay on the effectiveness of its Form 10 registration statement, and a motion for an exemption from Exchange Act Section 12(g). Respondent has indicated an intent to file additional “creative motions” to “explore” potential settlement approaches. The Division of Enforcement filed a motion requesting a briefing schedule “to approach any future motions in a more orderly fashion.” In substance, the Division proposes that all subsequent motions, other than motions for summary disposition, be filed by a fixed date, with subsequent dates for the filing of (possibly omnibus) oppositions and/or replies. We deny the Division’s motion for a briefing schedule, but set forth herein procedures for the submission of further motions in this proceeding.

On December 16, 2021, the Commission denied Respondent’s three motions relating to the prehearing conference and, in doing so, advised Respondent that its filings were inconsistent with the Rules of Practice, which “discourage repetitive, overlapping, or duplicative filings that contribute to ‘unnecessary delay or needless increase’ in the resources needed to resolve the proceeding.”² Respondent nevertheless proceeded to file four motions for a judgment on the pleadings between December 16 and December 20, 2021.

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).

These motions were procedurally improper, as we explained in a January 5, 2022 order: The Rules of Practice contemplate only a single motion for judgment on the pleadings per party. Moreover, the arguments raised and the relief sought did not “represent an appropriate use of the Rule 250(a) procedure, which is meant to secure a ruling on the ‘sufficiency of the pleadings’”—not to secure piecemeal advisory opinions on disputed legal issues.³ We reminded the parties that “repetitive, overlapping, or duplicative filings are not appropriate.”⁴ We stressed the importance of compliance with procedural rules that “serve the rational purpose of promoting accurate, efficient and final decisionmaking.”⁵ And we again placed the parties on notice about the consequences for continued non-compliance with those rules.⁶

The Division filed the instant motion, which requests a briefing schedule “to approach any future motions in a more orderly fashion.” The Division proposes a single, unified briefing schedule “for motions filed on or after December 21, 2021, other than summary disposition motions.” Respondent opposes the Division’s motion, asserting that “the parties should wait for the Commission’s ruling on existing motions.” Respondent asserted in its opposition that “following the Commission’s rulings, new motions may be needed for Respondent’s effective defense” and that setting a briefing schedule might “preclud[e] Respondent’s opportunities to file timely, proper and creative motions to explore proposals for settlement solution.”

At this juncture, we do not believe that it is necessary to fix a certain date by which the parties must file motions other than a motion for summary disposition. Nevertheless, we are concerned that the continued filing of motions that fail to comply with procedural requirements or that are repetitive, overlapping, or duplicative will interfere with the orderly and efficient resolution of this proceeding. We remind the parties that Respondent’s motions for a more definite statement and motion to lift the stay on the effectiveness of its Form 10 registration statement remain pending before the Commission.⁷ We further remind the parties that the time

³ *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93905, 2022 WL 44323, at *2 (Jan. 5, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Respondent’s request for an exemption from Exchange Act Section 12(g) is not, as we have explained, within the scope of the instant proceeding. *Id.* at *2 n.13. Applications for exemptive relief must be made in accordance with the distinct and separate procedures described in the Commission’s regulations and webpages. *See* 17 C.F.R. § 240.0-12 (governing requests for exemptive relief under Section 36); *id.* § 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)); *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) (describing procedures); *Exchange Act Exemptive Applications*, available at <https://www.sec.gov/regulatory-actions/exchange-act-exemptive-applications>; *Corporation Finance Submission Form for No-Action, Interpretive and Exemptive Letters*, available at https://www.sec.gov/forms/corp_fin_noaction.

period for filing a motion for judgment on the pleadings pursuant to Rule 250(a) has expired,⁸ so any subsequent Rule 250(a) motion will be rejected as untimely. The only other kind of dispositive motion that the Rules of Practice authorize in a contested case is a motion for summary disposition pursuant to Rule 250(b).⁹ Both parties have indicated an intent to file such motions, and a briefing schedule will be set by separate order.

In the interim, it would serve the interests of justice to prescribe procedures for regulating the filing of all other, non-dispositive motions.¹⁰ Accordingly, it is ORDERED that the Division's motion is denied; and it is further ORDERED that the parties must meet and confer prior to filing any motion; and it is further ORDERED that the parties must seek and receive leave from the Commission prior to filing it. A request for leave must be in the form of a separate motion, not to exceed two pages in length, and concisely set forth the underlying relief sought, a statement of the basis for that relief, and a justification for why the underlying motion must be considered and determined prior to summary disposition. The request for leave must not attach or incorporate by reference the motion as to which permission for filing is sought.

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.¹¹

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

Vanessa A. Countryman
Secretary

⁸ Rule of Practice 250(a), 17 C.F.R. § 201.250(a) (requiring that a motion for a ruling on the pleadings be made “[n]o later than 14 days after a respondent’s answer has been filed”).

⁹ Rule of Practice 250(b), 17 C.F.R. § 201.250(b).

¹⁰ Rules of Practice 100(c), 111(d), 17 C.F.R. §§ 201.100(c), .111(d).

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