

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 93971 / January 12, 2022

Admin. Proc. File No. 3-20650

In the Matter of  
AMERICAN CRYPTO FED DAO LLC

ORDER DENYING MOTIONS FOR A MORE DEFINITE STATEMENT

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”).<sup>1</sup> Respondent filed seven motions for a more definite statement, which we deny for the reasons discussed below.

**I. Background**

Section 12(j) authorizes the Commission as it deems “necessary or appropriate for the protection of investors” to deny or suspend the effective date of the registration of a security if the Commission finds that the issuer has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.<sup>2</sup> The OIP alleges that on September 16, 2021, Respondent filed with the Commission a materially deficient Form 10 registration statement, which sought to register two classes of digital assets, the Ducat token and the Locke token. The OIP alleges further that the Form 10 failed to comply with six specific requirements of Regulation S-K and Regulation S-X.<sup>3</sup> The OIP also alleges that the Form 10 contained two sets of misleading statements and omissions: firstly, regarding whether Respondent’s tokens are securities, and, secondly, regarding the intended distribution of the tokens.<sup>4</sup> According to the

---

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

<sup>2</sup> 15 U.S.C. § 78l(j).

<sup>3</sup> *Am. CryptoFed DAO*, 2021 WL 5236544, at \*1–2 (alleging failure to comply with Items 101, 202, 303, 305, 402, 403, and 601 of Regulation S-K, and Rule 3 or 8 of Regulation S-X).

<sup>4</sup> *Id.* at \*2 (alleging Form 10 contained a materially misleading statement that Respondent’s tokens were not securities and materially misleading information concerning intended distribution of Respondent’s Locke tokens using Form S-8).

OIP, staff from the Division of Corporation Finance (“Corporation Finance”) alerted Respondent to these deficiencies, but Respondent did not correct them or withdraw its Form 10 filing.

The OIP directed Respondent to file an answer to the allegations.<sup>5</sup> Respondent filed its answer and seven motions for a more definite statement on December 6, 2021. The Division of Enforcement (“Division”) filed an omnibus opposition to Respondent’s motions, arguing that a more definite statement is not necessary because “the OIP recites specific facts giving rise to this Section 12(j) proceeding,” “recites exactly what types of information are missing and exactly what provisions of law require the information,” and “sets forth the materially misleading statements and explains why they are misleading.”<sup>6</sup> Furthermore, the Division contends that the matters addressed in Respondent’s motions “have either already been answered or are simply not appropriate for a motion for a more definite statement.” The Division also submitted as exhibits correspondence after the OIP was issued in which the Division responded to Respondent’s inquiries and provided additional information about the Division’s theory of the case.

## II. Analysis

Rule of Practice 220(d), which governs motions for more definite statement, provides that a “motion for a more definite statement of specified matters of fact or law” must “state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite.”<sup>7</sup> The requisite degree of “definiteness” depends on the totality of the circumstances, and is assessed against the standards governing fair notice in administrative proceedings.<sup>8</sup>

As relevant here, Rule of Practice 200(b) requires that the OIP set forth the “factual and legal basis alleged therefor in such detail as will permit a specific response thereto” in the

---

<sup>5</sup> *Id.* at \*4.

<sup>6</sup> We note that the Division cites a number of orders issued by administrative law judges in its omnibus opposition, but those rulings are not binding on the Commission. *See Sands Bros. Asset Mgmt.*, Advisers Act Release No. 4083, 2015 WL 2229281, at \*4 (May 13, 2015) (“[A]n order issued by a law judge is not binding on the Commission or on other law judges.”); *Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at \*8 n.48 (Apr. 4, 2014) (“We are not bound by a law judge’s initial decision.”).

<sup>7</sup> Rule of Practice 220(d), 17 C.F.R. § 201.220(d).

<sup>8</sup> *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at \*14 (June 30, 2005) (affirming denial of motion for a more definite statement where the OIP “satisfied the due process requirement that a respondent be given fair notice of the claims lodged and the grounds upon which those claims rest”); *Charles M. Weber*, Exchange Act Release No. 4830, 1953 WL 44090, at \*2 (Apr. 16, 1953) (finding general contentions to be sufficiently “clear in the context of the specific allegations supporting them”); *Charles C. Wright*, SEC Release No. 112, 1936 WL 32774, at \*3 (May 22, 1936) (noting “inherent flexibility” of inquiry and denying motion for bill of particulars, a predecessor to a motion for a more definite statement, so long as the respondent has “ample opportunity to present an appropriate defense”).

respondent’s answer.<sup>9</sup> The OIP thus must inform the respondent of the charges in enough detail to allow the respondent to respond to the allegations—that is, admit or deny them or state that it does not have sufficient information to do so<sup>10</sup>—and to prepare a defense, but it need not “disclose to the respondent the evidence upon which the Division intends to rely.”<sup>11</sup> The purpose of the OIP is to provide notice of *what* violations of the securities laws are alleged, not to explain *how* the Division will try to prove those violations.<sup>12</sup> In determining whether notice is adequate, the central question is “whether the respondent ‘understood the issue’” such that it has a “‘full opportunity’ to justify [his or her] conduct” during the course of the proceedings.<sup>13</sup>

In short, a motion for a more definite statement may not be used to obtain an advance ruling about what the evidence shows or what legal theory will prevail.<sup>14</sup> Nor is it a means to try to rewrite the OIP’s allegations. If a respondent believes that an allegation in the OIP mischaracterizes the facts or draws incorrect inferences from them, it may deny the allegation.<sup>15</sup>

---

<sup>9</sup> Rule of Practice 200(b)(3), 17 C.F.R. § 201.200(b)(3).

<sup>10</sup> Rule of Practice 220(c), 17 C.F.R. § 201.220(c) (setting forth content of answer).

<sup>11</sup> *Daniel Joseph Touizer*, Exchange Act Release No. 86420, 2019 WL 3251484, at \*2 (July 19, 2019).

<sup>12</sup> *See Morris J. Reiter*, Exchange Act Release No. 6108, 1959 WL 59479, at \*2 (Nov. 2, 1959) (explaining that “appropriate notice of proceedings is given when the respondent is sufficiently informed of the nature of the charges against him so that he may adequately prepare his defense, and that he is not entitled to a disclosure of evidence”). Subsequent to *Reiter*, the Rules of Practice were amended to make the Division’s investigative file available to respondents. *See* Rule of Practice 230, 17 C.F.R. § 201.230. But there is no requirement that the Division provide a roadmap or highlight particularly inculpatory or exculpatory materials. *optionsXpress, Inc.*, Exchange Act Release No. 70698, 2013 WL 5635987, at \*7 (Oct. 16, 2013).

<sup>13</sup> *Wendy McNeeley, CPA*, Exchange Act Release No. 68431, 2012 WL 6457291, at \*9 (Dec. 13, 2012) (citing *Aloha Airlines, Inc. v. Civil Aeronautics Bd.*, 598 F.2d 250, 262 (D.C. Cir. 1979)); *McConville*, 2005 WL 1560276, at \*14.

<sup>14</sup> *See Gerald M. Loeb*, Exchange Act Release No. 1677, 1938 WL 33033, at \*1 (Apr. 28, 1938) (“Similarly prolix motions [for a bill of particulars], obviously extending beyond any possible necessity of the respondents for advice concerning the nature of the charges against them, will afford proper grounds for the denial by the Commission of such a motion as improperly made.”).

<sup>15</sup> *Compare* Rule of Practice 220(c), 17 C.F.R. § 201.220(c) (“[A]n answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings.”), *with* Rule of Practice 220(d), 17 C.F.R. § 201.220(d) (“Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite.”).

**A. The OIP complies with Rule of Practice 200(b) and provides a sufficient factual and legal basis for Respondent to defend against the allegations.**

The OIP satisfied the requirements of Rule 200(b) by identifying the specific respects in which Respondent’s Form 10 registration statement failed to comply with the securities laws. The OIP unambiguously specified the issuer, form type, and date of the filing, stating that “[o]n September 16, 2021, American CryptoFed filed a Form 10 registration statement with the Commission.”<sup>16</sup> The OIP then identified each of the six alleged deficiencies by a description of the missing information and an accompanying citation to the relevant regulation.<sup>17</sup> The OIP also identified the purported materially misleading statements in Respondent’s Form 10 and explained why each statement was, in the Division’s view, misleading. For example, the OIP alleged that the Form 10’s statements “throughout that the Ducat and Locke tokens were not securities” was inconsistent with the statement on the Form 10’s cover page identifying the tokens as “[s]ecurities to be registered pursuant to Section 12(g) of the [Exchange] Act.”<sup>18</sup> Likewise, the OIP alleged that the Form 10’s statement concerning distribution of the Locke token using Form S-8 was materially misleading because the form is only for offerings of securities to employees through employee benefit plans and the Form 10 elsewhere stated that Respondent will not have any employees.<sup>19</sup>

Respondent also received additional information about the matters in dispute both before and after these proceedings were instituted on November 10, 2021.<sup>20</sup> According to the OIP, Corporation Finance staff communicated the deficiencies in the Form 10 to Respondent orally on October 4, 2021, and in written correspondence on October 8, 2021. The record also reflects that, in its written correspondence with Respondent on November 22 and 29, 2021, the Division

---

<sup>16</sup> *Am. CryptoFed DAO*, 2021 WL 5236544, at \*1.

<sup>17</sup> *Id.* at \*1–2 (alleging that Form 10 failed to include “financial information as required by Items 303 and 305 of Regulation S-K; audited financial statements as required by Rule 3 or Rule 8 of Regulation S-X, as applicable; a beneficial ownership table that complies with Item 403 of Regulation S-K; an executive compensation table that complies with Item 402 of Regulation S-K; exhibits as required to be filed by Item 601 of Regulation S-K; and a clear and complete description of the general development of American CryptoFed’s business or the terms, rights and obligations of the securities to be registered, as required by Items 101 and 202 of Regulation S-K, respectively”).

<sup>18</sup> *Id.* at \*2.

<sup>19</sup> *Id.*

<sup>20</sup> *See KPMG Peat Marwick LLP*, Exchange Act Release No. 44050, 2001 WL 223378, at \*2–6 (Mar. 8, 2001) (looking to entire course of proceedings, including submissions filed after the OIP, in determining that the respondent had notice of and a fair opportunity to rebut the Division’s claims); *Gen. Aeromation, Inc.*, Securities Act Release No. 4251, 1960 WL 56276, at \*2 (July 13, 1960) (denying request for factual particulars where “the factual basis of the charges is clearly alleged in the [OIP], and has been supplemented by information voluntarily furnished by the Division”).

provided more detail about its theory of the case and the legal authorities supporting the relief sought. Under these circumstances, we find that Respondent has been sufficiently informed of the claims at issue in this proceeding such that it has a fair opportunity to prepare its defense.

**B. Respondent’s motions for a more definite statement are meritless.**

Respondent filed seven motions for a more definite statement. The motions either object to specific language used in the OIP or seek information that is outside the scope of the OIP. For the reasons set forth below, we deny each of the motions.

*First*, an introductory, unnumbered paragraph of the OIP in Section I states that it is “necessary and appropriate for the protection of investors” to institute administrative proceedings against Respondent, and another unnumbered paragraph in Section III states that the purpose of the proceeding is to determine whether the allegations in the OIP are true and, if so, what sanctions are “necessary and appropriate for the protection of investors.”<sup>21</sup> Motion No. 1 asserts that the “protection of investors” language is ambiguous because it “does not specify who are these investors and what possible damages they have suffered, are suffering and will possibly suffer.” But this motion for a more definite statement is misdirected, since it does not take issue with an allegation of the OIP requiring a response in Respondent’s answer—Respondent is required only to admit, deny, or state that it has insufficient information with respect to the OIP’s “allegations,” which are set forth in Section II.<sup>22</sup> The challenged statements merely provide context and background for the institution of proceedings. More generally, we have repeatedly held that Section 12(j) proceedings seek to protect both existing and potential investors.<sup>23</sup> And we have explained that sanctions may be “imposed based on our concern about protecting future investors in the [c]ompany,” as well as the interests of present investors.<sup>24</sup> As such, the Division was not required to identify individual investors or specific damages in the OIP.<sup>25</sup>

---

<sup>21</sup> *Am. CryptoFed DAO*, 2021 WL 5236544, at \*1, \*4.

<sup>22</sup> *See* Rule of Practice 220(c)–(d), 17 C.F.R. § 201.220(c)–(d).

<sup>23</sup> *See, e.g., Gateway Int’l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 WL 1506286, at \*7 (May 31, 2006) (explaining that Section 12(j) is “a means of protecting investors” and that “regard must be had not only for existing stockholders of the issuer, but also for potential investors”) (internal quotation marks and citation omitted); *Advanced Life Scis. Holdings, Inc.*, Exchange Act Release No. 81253, 2017 WL 3214455, at \*5 (July 28, 2017) (“Current and potential investors need the information contained in those [periodic] filings to help decide whether to invest or to stay invested.”).

<sup>24</sup> *Citizens Cap. Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at \*8 (June 29, 2012).

<sup>25</sup> *See generally SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1244 (11th Cir. 2012) (stating that neither reliance nor loss causation is a requirement in Commission enforcement actions); *Graham v. SEC*, 222 F.3d 994, 1001 n.15 (D.C. Cir. 2000) (same).

*Second*, the OIP alleges that American CryptoFed DAO LLC “is the successor entity to American CryptoFed, Inc.”<sup>26</sup> Motion No. 2 argues that this statement creates an “ambiguity” concerning whether the allegations of the OIP target American CryptoFed DAO LLC or American CryptoFed, Inc. But the OIP states that the action is “against the Respondent named in the caption” (the DAO entity), names the same entity in paragraph 1, and specifically identifies the DAO entity by its CIK No. 1881928 as the filer of the Form 10 registration statement as to which remedial sanctions are sought.<sup>27</sup> Although Respondent contends that it would be “impossible” to prepare its defense without further clarification, the filings in this case establish that Respondent is able to distinguish the entities and make arguments based on asserted differences in their legal status. For example, Respondent asserts that “certain Form 10 requirements may not be applicable” to the DAO entity and would “mandat[e] a new framework and exemptions.” To the extent Respondent is of the view that American CryptoFed DAO LLC is *not* the successor entity to American CryptoFed, Inc., it may deny the allegation in question.

*Third*, several of Respondent’s motions either request advice from the Division concerning compliance with Form 10’s requirements or seek an exemption from them. Motion No. 3 requests that the Division specify whether Respondent should use Form 10 and, if so, whether the “information” that, in Respondent’s view, “Locke and Ducat [tokens] are not securities” should be included in the Form 10 registration statement. Motion Nos. 4 and 7 assert that certain information required by Form 10 “does not exist and will never exist” and, as a result, the Division must clarify whether such information is required under the federal securities laws. Such requests for advice about compliance with the securities laws are not appropriately raised by a motion for a more definite statement; they do not seek to clarify or to make more definite an allegation in the OIP.<sup>28</sup>

*Fourth*, the OIP alleges that Respondent asserted that it intends to use Form S-8 “to distribute Locke tokens to more than 500 entities, such as municipalities, merchants, banks, and ‘crypto exchanges,’ and non-employee individual contributors.”<sup>29</sup> Motion No. 5 asserts that it is

---

<sup>26</sup> *Am. CryptoFed DAO*, 2021 WL 5236544, at \*1.

<sup>27</sup> *Id.* at \*1, \*4.

<sup>28</sup> *See* Rules of Practice 100(a), 220(d), 17 C.F.R. §§ 201.100(a), .220(d). To the extent that Respondent seeks authorization under Exchange Act Section 12(c) to submit alternative information in lieu of the requirements of Section 12(b), or an exemption pursuant to Exchange Act Section 12(h) or otherwise, a motion for more definite statement likewise is not the appropriate means to do so. “Applications for exemptive relief must be made in accordance with the distinct and separate procedures described in the Commission’s regulations and webpages.” *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93922, 2022 WL 62722, at \*2 n.7 (Jan. 6, 2022); *see also* 17 C.F.R. §§ 200.30-1(f)(7), 240.0-12; *Application of the Nasdaq Stock Market, Inc. and the NASDAQ Stock Market LLC for Section 12(b) Registration on Behalf of Certain Issuers*, Exchange Act Release No. 54240, 2006 WL 2135716 (July 31, 2006). The processing and disposition of such applications 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.

<sup>29</sup> *Am. CryptoFed DAO*, 2021 WL 5236544, at \*2.

“unclear” where the “500 entities” comes from. As stated in the OIP, and as elaborated upon in the Division’s correspondence with Respondent, this allegation is based on the Division’s characterization of Respondent’s Form 10. To the extent Respondent’s position is that the Division has mischaracterized the Form 10, Respondent may deny the allegation.

*Fifth*, the OIP alleges that “Section 12(j) allows the Commission to deny, suspend the effective date of, suspend for a period not to exceed 12 months, or revoke the registration of a security if, after notice and opportunity for hearing, the Commission finds the issuer has failed to comply with the Exchange Act or its rules.”<sup>30</sup> Motion No. 6 requests a more definite statement because “[i]t is unclear why the Division needs to remove ‘on the record’ from the statute and whether the Division has a different statute which Respondent does not know.”<sup>31</sup> The OIP’s allegation does not purport to be a verbatim quotation of the statute. Moreover, Respondent has consistently demonstrated its awareness of the statute under which this proceeding was instituted. Indeed, Respondent’s motion is based on its own word-by-word comparison of Section 12(j) with the text of the OIP. To the extent Respondent believes the OIP’s allegation inaccurately or incompletely paraphrases the statute, it may deny the allegation. Additionally, Section IV of the OIP makes clear that “the Commission shall issue a decision on the basis of the record in this proceeding.”<sup>32</sup> Finally, on the Commission’s own motion, we find it appropriate to provide a full quotation of Section 12(j) of the Exchange Act here:

“(j) Denial, suspension, or revocation of registration; notice and hearing

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer, of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.”<sup>33</sup>

---

<sup>30</sup> *Id.*

<sup>31</sup> On November 17, 2021, Respondent filed a motion for judgment on the pleadings pursuant to Rule of Practice 250(a) requesting, *inter alia*, that the Commission “confirm[] that [] Section 12(j) of the Exchange Act contains the specific phrase ‘on the record.’” We determined that Respondent’s motion was procedurally deficient and struck that motion from the record. *See Am. CryptoFed DAO LLC*, Exchange Act Release No. 93905, 2022 WL 44323 (Jan. 5, 2022).

<sup>32</sup> *Am. CryptoFed DAO*, 2021 WL 5236544, at \*6.

<sup>33</sup> 15 U.S.C. § 78l(j).

*Lastly*, Motion No. 6 objects to the OIP’s statement that the “institution of these proceedings stays the effectiveness of the Respondent’s Form 10” pending resolution of this proceeding, asserting that the stay is inconsistent with the text of Section 12(j). The relief sought—lifting the stay—is not available in the context of a motion for a more definite statement, and must be sought by separate motion, which Respondent has done.<sup>34</sup> We express no view at this time as to the disposition of Respondent’s December 15, 2021 motion to lift the stay, which will be resolved by separate order.

### III. Conclusion

Respondent has been provided with sufficient information regarding the factual and legal basis for this proceeding, and the specific grounds on which the Division bases its allegations, to enable Respondent to file an answer, which it already has, and to prepare its defense. Accordingly, it is ORDERED that Respondent’s seven motions for a more definite statement are denied.

\* \* \*

Both parties have indicated an intent to file motions for summary disposition, and an opportunity will be provided for them to do so. We previously indicated that the Commission would set a schedule for summary disposition briefing in its ruling on the motions for a more definite statement.<sup>35</sup> However, 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.<sup>36</sup> We express no view at this time as to the disposition of those motions or whether summary disposition is appropriate.

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

Vanessa A. Countryman  
Secretary

---

<sup>34</sup> See Rule of Practice 154(a), 17 C.F.R. § 201.154(a).

<sup>35</sup> See *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93806, 2021 WL 5966848, at \*2 (Dec. 16, 2021).

<sup>36</sup> See generally *Am. CryptoFed DAO*, 2022 WL 44323, at \*2 n.14.