

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21243

In the Matter of

The Registration Statement of
American CryptoFed DAO LLC,

Respondent.

**DIVISION OF ENFORCEMENT'S OPPOSITION TO AMERICAN
CRYPTOFED'S MOTION TO FILE A NIL FINANCIAL STATEMENT
AUDITED BY AN ACCOUNTING FIRM REGISTERED WITH PCAOB**

The Division of Enforcement ("Division"), by counsel, respectfully submits this opposition to American CryptoFed's Motion to File a Nil Financial Statement Audited by an Accounting Firm Registered with PCAOB (the "Motion").

The Motion, which cites no legal authority, largely consists of arguments by American CryptoFed's non-accountant officers regarding their belief that American CryptoFed does not have and never will have assets, revenue, or liabilities. It concludes by seeking three forms of relief, which are separately addressed below.

First, the Motion requests that this tribunal "permit American CryptoFed to engage a PCAOB accounting firm for an audited financial statement." There is nothing stopping American CryptoFed from hiring an auditor firm to review its financial statements. But the hearing in this matter is closed, and any financial statements, even if audited, should not be part of the record in this proceeding.

Should a stop order issue in this proceeding, American CryptoFed could then seek to amend the Form S-1 to address **all** the noted defects. But, as the only relief presently requested is permission to hire an auditor, the request should be denied as moot.

Second, the Motion requests that this tribunal “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.”¹ This request seeks relief beyond the scope of the Order Instituting Proceedings, and should be denied accordingly. Further, it is not the Division’s obligation to prove that Respondent has assets, revenue, or liabilities. It is Respondent’s obligation to provide audited financial statements regardless of whether it has assets, revenue or liabilities.

Third, the Motion requests this tribunal “order both Divisions to accept the audited financial statement even if the audited report is a nil financial statement.” This request seeks relief beyond the scope of the Order Instituting Proceedings, and should be denied accordingly. It is also not ripe, as no financial statements have been submitted and it is therefore not proper for the tribunal to order what hypothetical position the Division would be required to have regarding non-existent audited financials. Finally, it is completely inappropriate for Respondent to presume that an **independent** auditor will automatically reach the same conclusion regarding American CryptoFed’s assets, revenue, and liabilities that

¹ The Division of Corporation Finance is not a party to these proceedings, and the Division is not aware whether the Motion was even served on the Division of Corporation Finance. The Division’s Opposition states the position of the Division only.

Respondent’s non-accountant officers have reached. An auditor cannot be engaged simply to rubber stamp management’s conclusions. *See Anton & Chia, LLP*, Rel. No. 34-87033, 2019 SEC LEXIS 2864 at *56, (Sept. 20, 2019) (“[The auditor] was required to exercise due professional care, including professional skepticism, in planning and performing the audits. ‘Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence’ (PCAOB Standard AU § 230.07, Due Professional Care in the Performance of Work), and requires auditors to ‘neither assume[] that management is dishonest nor assume[] unquestioned honesty’ (AU § 230.09).”).

CONCLUSION

For the reasons stated above, Respondent’s motion should be denied.

Dated: February 2, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on this 2nd day of February 2023, in the manner indicated below:

By Email:

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