September 2, 2022

Via Electronic Email

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CC:
Christopher Carney, Division of Enforcement, CarneyC@sec.gov
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Michael Baker, Division of Enforcement, BakerMic@sec.gov
John Lucas, Division of Enforcement, LucasJ@sec.gov
Justin Dobbie, Division of Corporation Finance, dobbiej@sec.gov

**Re: In the Matter of American CryptoFed, AP File No. 3-20650:**

Dear Mr. Bruckmann,

Thank you for your email yesterday stating the following:

Your August 28, 2022 letter to Justin Dobbie of the SEC's Division of Corporation Finance, which you also sent to us, states in part: "Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal." We write to remind you that there is a **pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1**, and that Section 5(c) [15 U.S.C. §77e(c)] reads in part "It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security . . . while the registration statement is the subject of . . . any . . . examination under section 77h of this title." Additionally, your continuing refusal to cooperate with the Section 8(e) Examination by refusing to provide subpoenaed documents and refusing to answer questions asked of you during your testimony hampers the Division of Enforcement's ability to bring that examination to a prompt conclusion. (emphasis added).

In my August 7th, 2022 letter ("August 7, 2022 Letter" attached) addressed to Mr. Baker and cc'd you, I outlined the facts and legal basis why the "pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1" ("8 (e) Order") violated Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc.*(*see* Section **IV The 8(e)**

**Order Violates Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc***, page 9 - 10). Mr. Baker did not respond to this August 7, 2022 Letter.

As Mr. Baker has not been able to respond, Mr. Bruckmann, can you respond to my August 7, 2022 Letter on or before September 12th, 2022 and clearly explain why the 8 (e) Order does not violate Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*, given that you still use the 8 (e) Order to justify your argument above, including the unlawful subpoena pursuant to the 8 (e) Order?

Even though the 8 (e) Order and the subsequent subpoena pursuant to the 8 (e) Order are unlawful, in my August 7th, 2022 Letter to Mr. Baker, I still offered to provide him with the following (*see*, page 11-12).

> As such, without waiving the objection on the grounds discussed above in this letter, American CryptoFed can consider providing an explanatory affidavit under perjury and answer your questions related to American CryptoFed DAO's operation with zero assets. No entity can generate securities or investment contracts, whatsoever, if the entity does not have **a traditional balance sheet equation of Assets = Liabilities + Shareholder's Equities**. Please let us know your question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP). American CryptoFed has confidence that no such documents exist.

However, Mr. Baker did not respond to this overture as well. I even sent a follow-up letter to his attention on August 18th, 2022 ("August 18, 2022 Letter" attached) to remind Mr. Baker of this offer. As of today, Mr. Baker has not yet responded.

Mr. Bruckmann, as Mr. Baker is either unable or unwilling to respond, can you, on or before September 12th, 2022, provide me with the "question list and document list which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP)"? This request for the question and document list is especially cogent, given that in your letter yesterday, as quoted above, you complained to me about "refusing to provide subpoenaed documents and refusing to answer questions".

After the deadline of September 12th, 2022 passes, American CryptoFed will file a Form S-1 amendment to remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal. This process will occur unless Mr. Dobbie at the Division of Corporation Finance, on or before September 5th, 2022, provides the necessary

"precision and guidance" as required by the Supreme Court opinion below in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012).

Even when speech is not at issue, the **void for vagueness doctrine** addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; **second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.** See Grayned v. City of Rockford, 408 U. S. 104, 108– 109 (1972). When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech. *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (emphasis added).

The purpose of the Form S-1's delaying amendment is for American CryptoFed to accommodate the comments and guidance from the Securities and Exchange Commission ("SEC" or "Commission"). The delaying amendment is not for the SEC to unlawfully delay or stop or obstruct American CryptoFed's legitimate disclosure. It is time for American CryptoFed to remove the Form S-1 delaying amendment to make the Form S-1 effective, given that Mr. Dobbie does not provide the necessary "precision and guidance", despite multiple repeated requests for such. American CryptoFed does not believe that the effectiveness of the Form S-1 can be stopped by an unlawful Stop Order pursuant to the 8 (e) Order, because the 8 (e) Order itself is unlawful. Even if a Stop Order is unlawfully issued, the Stop Order and the detailed documentation trail of the communications between the SEC and American CryptoFed will:

i) create a historic precedence of case law that no necessary "precision and guidance" is available for American CryptoFed to complete its Form S-1 registration statement, and

ii) will have a profound consequence that will undisputedly prove the following public policy statements of the SEC's Chairman Gary Gensler in his July 14, 2022 interview with Yahoo Finance below are false and misleading (emphasis added)[1].

JENNIFER SCHONBERGER: Chair Gensler, given that you've said that nearly all tokens, with the exception of Bitcoin and perhaps Ethereum, would be classified as securities based on their use cases, **how do you feel about applying the disclosure regime under current securities laws for equities to crypto**?

[1] https://finance.yahoo.com/video/sec-chair-investors-know-someone-153326153.html

GARY GENSLER: So it's really an age old concept. If you're raising money from the public and the public's anticipating profits based on the efforts of that common enterprise, that's a security. It's kind of a logical thing. And we at the SEC have a disclosure regime, as you said. **I've said to the industry, to the lending platforms, to the trading platforms, come in, talk to us.**

**We do have robust authorities from Congress also to use their exemptive authority so that we can tailor investor protection, and in your specific question about the tokens themselves, even tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token.** But I would note, we don't have the same disclosures for an asset-backed security that we do for a stock offering. So it's a thoughtful way to sort of tailor things.

Therefore, before this historic precedence is established by an unlawful Stop Order issued pursuant to the unlawful 8 (e) Order, it will be fair for Chairman Gensler and all the Commissioners to be notified that their public policy statements above are not being implemented by the SEC staff. As I already told Mr. Dobbie directly in my August 28, 2022 letter, if Mr. Dobbie has difficulties to abide by Chairman' Gensler's instruction in his public policy statements above to provide American CryptoFed with tailored disclosure requirements, please let me know immediately. I will write Chairman Gensler directly to ask him and all SEC Commissioners to provide Mr. Dobbie with the necessary instructions to fulfill his duties.

The public requires, and the entire crypto industry is actively demanding the SEC to provide the necessary "precision and guidance" as required by the Supreme Court opinion above in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012). American CryptoFed is the first historic case to test whether Chairman Gensler's public policy statements as quoted above are true or false. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", is unable to complete its Form S-1 and Form 10 registration, **all** the pending litigation actions that the SEC has brought against the entities and individuals in crypto industry under the name of "Unregistered Securities" could be proved unlawful, pursuant to "the **void for vagueness doctrine**" upheld by the Supreme Court in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) cited above, because there is no way whatsoever for crypto industry entities to complete the registrations with the SEC. Given that the SEC has no necessary "precision and guidance" for crypto industry entities to complete registrations, the SEC has no legal basis to bring any legal actions against any entity and/or against any individual

with allegations of "Unregistered Securities", when the actual pathway to registration for crypto industry entities with the Commission did not and does not exist at all.

I will emphasize this point to Chairman Gensler and all Commissioners in my letter to them and remind them of the March 11th, 2022 order in *SEC v. Ripple Labs,* issued by Judge Analisa Torres of the Southern District of New York, who allowed Ripple Labs' Fair Notice affirmative defense, citing *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012) below (*see* page 6-7, emphasis added)[2].

"**A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required**." *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012). This clarity requirement is "essential to the protections provided by the **Due Process Clause of the Fifth Amendment**," and requires the invalidation of laws that are "impermissibly vague." *Id*. Laws fail to comport with due process when they "fail[] to provide **a person of ordinary intelligence** fair notice of what is prohibited," or **when they are so standardless that they authorize or encourage "seriously discriminatory enforcement."** *Id*. (citation omitted).

Mr. Bruckmann, I look forward to your response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller
Scott Moeller
President, American CryptoFed DAO
scott.moeller@americancryptofed.org

[2] https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf