August 7, 2022
Via Electronic Email

Michael Baker, Division of Enforcement, BakerMic@sec.gov,
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549-5949

Cc:
Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@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 LLC's Response to Follow-up Subpoena

Dear Mr. Baker

This letter is in response to your letter dated August 4, 2022 (Exhibit 1) regarding the June 15, 2022 subpoena and June 28, 2022 testimony subpoena (collectively the "Subpoenas") pursuant to the November 9, 2021 Order Directing Examination and Designating Officers pursuant to Section 8(e) ("8(e) Order") of the Securities Act of 1933 ("Securities Act"), regarding the Form S-1 that American CryptoFed DAO LLC ("American CryptoFed") filed with the Securities and Exchange Commission ("SEC" or "Commission") on September 17, 2021. American CryptoFed objects to your subpoena requests of the August 4, 2022 letter on the grounds that both the Subpoenas and its legal base of the 8(e) Order are unlawful.

I
The Subpoenas pursuant to the 8(e) Order Are Unlawful

Mr. Baker, in the August 4, 2022 letter above, you stated the following:

American CryptoFed's broad objections to our requests appear grounded in American CryptoFed's belief that the Ducat and Locke tokens are not securities, and, as a result, asserts

that nothing the SEC staff requested is relevant to our examination. This assertion is wrong. **The SEC staff seeks documents from American CryptoFed that are relevant to the contemplated offering of Ducat and Locke tokens pursuant to the Form S-1. We remind you that American CryptoFed stated in the introductory pages of the Form S-1 that the Ducat and Locke tokens are classes of securities**. (Exhibit 1, page 2, emphasis added).

Your reminder ("American CryptoFed stated in the introductory pages of the Form S-1 that the Ducat and Locke tokens are classes of securities.") is the same reminder provided to American CryptoFed by your colleague Mr. Bruckmann's below in his June 3, 2022 letter (Exhibit 2) in response to my May 30, 2022 letter (Exhibit 3), which also informed American CryptoFed of the existence of the non-public "8(e) Order" for the first time.

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. **We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "Securities to be registered pursuant to Section 12(g) of the Act"** (Exhibit 2, page 3, emphasis added).

Upon receiving Mr. Bruckmann's reminder above on June 3, 2022, American CryptoFed filed Form S-1 withdrawal on June 6, 2022, three calendar days, and the first business day following receipt so that Locke and Ducat tokens would not become securities because of the Form S-1 filing per se. Furthermore, after filing the Form S-1 withdrawal, two days later on June 8, 2022, American CryptoFed asked Mr. Bruckmann a critical follow-up question below to which he never responded (Exhibit 4, page 4).

Does the Division have any legal justification to classify Locke and Ducat tokens as Securities other than by American CryptoFed's filing of a Form 10 with the Commission per se?

Given that American CryptoFed already filed the Form S-1 withdrawal and no other legal justification was provided to classify Locke and Ducat tokens as Securities other than by American CryptoFed's filing of a Form S-1 with the Commission per se, your argument in your August 4, 2022 letter below should cease to be legitimate, after the filing of the Form S-1 withdrawal.

The SEC staff seeks documents from American CryptoFed that are relevant to the contemplated offering of Ducat and Locke tokens pursuant **to the Form S-1**. We remind you that American CryptoFed stated in the introductory pages of **the Form S-1** that the Ducat and Locke tokens are classes of securities. (Emphasis added).

Furthermore, given that the sole purpose of the 8(e) Order is "to determine whether a stop order should be issued under Section 8(d) of the Securities Act with respect to the Form S-1 and any supplements and amendments thereto" (8(e) Order attached as Exhibit 5, page 2), once the American CryptoFed filed the Form S-1 withdrawal, the purpose of the 8(e) Order had ceased to exist and the 8(e) Order should be moot. Logically, no Stop Order is needed for a Form S-1 which was already withdrawn. As a result, the legal basis of the Subpoenas no longer exists.

II
The Order Denying American CryptoFed's Form S-1 Withdrawal Is Unlawful

You may argue that American CryptoFed's Form S-1 withdrawal was denied by the ORDER DENYING WITHDRAWAL OF REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 ("Denial Order" attached as Exhibit 6) issued by the Commission on June 17, 2022. However, the Denial Order is unlawful, because it violates the Supreme Court Opinions in *Jones v. SEC, 298 U.S. 1 (1936)*. The violation has been conducted jointly by the Division of Corporation Finance which recommended the Denial Order, the Commission which issued the Denial Order, and the Division of Enforcement which used the Denial Order to maintain the 8(e) Order for the sole purpose of unlawful investigation via Subpoenas.

In the June 13, 2022 letter (Exhibit 7, page 2), American CryptoFed asked Mr. Dobbie at the Division of Corporate Finance the following question, which he never answered.

Mr. Dobbie, as Acting Office Chief, does your Division or does the Commission have any legal justification to classify Locke and Ducat tokens as Securities other than by American CryptoFed's filing of a Form S-1 with the Commission per se?

This question was asked separately of Mr. Bruckmann at the Division of Enforcement. Both Mr. Dobbie at the Division of Corporate Finance and Mr. Bruckmann at the Division of Enforcement have not answered this same question. Therefore, other than by American CryptoFed's filing of a Form S-1 and Form 10 with the Commission per se, no Howey Test

Analysis or other legal justification has been provided by the Commission, or by its Divisions of Enforcement and Corporation Finance to prove that Locke and Ducat tokens are securities. As long as American CryptoFed issues Locke and Ducat tokens after Form S-1 and Form 10 have been withdrawn, these tokens should not be considered securities. As a result, the facts do not support the # 3 statement in the Denial Order below, which implies that American CryptoFed willfully intends to distribute Locke tokens as securities and would violate related securities laws.

On May 30, 2022, American CryptoFed informed Commission staff that in July 2022 it would "proceed with implementing its business plan as described in. . . the Form S1 [sic]" and begin distributing Locke tokens despite the Form S-1 not yet being effective.

Therefore, American CryptoFed, which is the equivalent to the Petitioner at *Jones v. SEC,* 298 U.S. 1 (1936), meets the following condition specified by the Supreme Court ruling:

Petitioner emphatically says that no steps had been taken looking to the issue of the securities; and **this is not denied**. at 23, *Jones v. SEC,* 298 U.S. 1 (1936).(emphasis added).

As of today, no Locke tokens or Ducat tokens have been issued or sold pursuant to the Registration Statement S-1. Because Locke token and Ducat token are not securities, there are no investors, existing or potential, to be affected, under any related securities laws. Except for the Commission and its respective Divisions of Enforcement and Corporation Finance, there are no adversary parties. As a result, the facts do not support the # 5 statement in the Denial Order below as well, which implies that American CryptoFed may damage investors and the public interest.

After considering American CryptoFed's application and the ongoing examination, the Commission has determined that the granting of the withdrawal request is not consistent with the public interest and the protection of investors.

For the reasons set forth above, the Supreme Court ruling below in *Jones v. SEC*, 298 U.S. 1 (1936) perfectly applies to American CryptoFed's request for the withdrawal of the Registration Statement Form S -1.

In this proceeding, there being no adversary parties, the filing of the registration statement is in effect an ex parte application for a license to use the mails and the facilities of interstate commerce for the purposes recognized by the act. We are unable to see how any right of the general public can be affected by the withdrawal of such an application before it has gone into effect. **Petitioner emphatically says that no steps had been taken looking to the issue of the securities; and this is not denied.** So far as the record shows, there were no investors, existing or potential, to be affected. The conclusion seems inevitable that an abandonment of the application was of no concern to anyone except the registrant. **The possibility of any other interest in the matter is so shadowy, indefinite, and equivocal that it must be put out of consideration as altogether unreal.** Under these circumstances, the right of the registrant to withdraw his application would seem to be as absolute as the right of any person to withdraw an ungranted application for any other form of privilege in respect of which he is at the time alone concerned. at 23, *Jones v. SEC,* 298 U.S. 1 (1936). (Emphasis added).

The Commission and its Divisions of Enforcement and Corporation Finance willfully violate the Supreme Court ruling in *Jones v. SEC,* 298 U.S. 1 (1936) at 26 and 28 (emphasis added) below, given that they have jointly used the Denial Order to keep the Non-Public 8(e) Order in place for performing an investigation, without providing a Howey Test Analysis or any other legal justifications other than by American CryptoFed's filing of a Form S-1 with the Commission per se, which American CryptoFed has already filed a request for withdrawal. Therefore, in accordance with the opinion of the Supreme Court in *Jones v. SEC*, 298 U.S. 1 (1936) below, not only the Denial Order but also all the subpoenas are also unlawful.

The citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer. **Since here the only disclosed purpose for which the investigation was undertaken had ceased to be legitimate when the registrant rightfully withdrew his statement, the power of the commission to proceed with the inquiry necessarily came to an end. Dissociated from the only ground upon which the inquiry had been based, and no other being specified, further pursuit of the inquiry, obviously, would become what Mr. Justice Holmes characterized as "a fishing expedition . . . for the chance that something discreditable might turn up"** (*Ellis* v. *Interstate Commerce Comm'n,* 237 U.S. 434, 445) — **an undertaking which uniformly has met with judicial condemnation**. *In re Pacific Ry. Comm'n,* 32 Fed. 241, 250; *Kilbourn* v. *Thompson,* 103 U.S. 168, 190, 192, 193, 195, 196; *Boyd* v. *United States,* 116 U.S. 616; *Harriman* v. *Interstate Commerce Comm'n,* 211 U.S. 407, 419; *Federal Trade Comm'n* v. *American Tobacco Co.,* 264 U.S. 298, 305-307. at 26 *Jones v. SEC,* 298 U.S. 1 (1936).

The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in

the American system of government. **An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing, to light.** Cf. *Byars v. United States*, 28*28 273 U.S. 28, 29, and cases cited. If the action here of the commission be upheld, it follows that production and inspection may be enforced not only of books and private papers of the guilty, but those of the innocent as well, notwithstanding the proceeding for registration, **so far as the power of the commission is concerned, has been brought to an end by the complete and legal withdrawal of the registration statement.**

Exercise of "such a power would be more pernicious to the innocent than useful to the public"; and approval of it must be denied, if there were no other reason for denial, because, like an unlawful search for evidence, it falls upon the innocent as well as upon the guilty and unjustly confounds the two. *Entick v. Carrington*, 19 Howell's St. Trials, 1030, 1074 — followed by this court in *Boyd v. United States*, 116 U.S. 616, 629-630. No one can read these two great opinions, and the opinions in the Pacific Ry. Comm'n case, from which the foregoing quotation is made, without perceiving how closely allied in principle are the three protective rights of the individual — **that against compulsory self-accusation, that against unlawful searches and seizures, and that against unlawful inquisitorial investigations**. They were among those intolerable abuses of the Star Chamber, which brought that institution to an end at the hands of the Long Parliament in 1640. Even the shortest step in the direction of curtailing one of these rights must be halted *in limine*, lest it serve as a precedent for further advances in the same direction, or for wrongful invasions of the others. at 28 *Jones v. SEC,* 298 U.S. 1 (1936).

The unlawful Denial Order has enabled the Division of Enforcement to conduct unlawful search and investigations similar to a “police state” characterized by repressive governmental control of political, economic, and social life usually demonstrated by an arbitrary exercise of power by police and especially secret police in place of regular operation of administrative and judicial organs of the government according to publicly known legal procedures. Approximately 84 years ago, and only a few years after the United States Congress formed the Commission, the Supreme Court in *Jones v. SEC*, 298 U.S. 1 (1936) already anticipated the SEC’s abuse of power now experienced by American CryptoFed, and rendered the following opinion regarding the SEC’s abuse and unlawful extension of their regulatory power:

In re Pacific Ry. Comm'n involved the power of a Congressional commission to investigate the private affairs, books and papers of officers and employees of certain corporations indebted to the government. That commission called before it the president of one of these corporations, required the production of private books and papers for inspection, and submitted interrogatories which the witness declined to answer. Acting under the statute, the commission sought a peremptory order from the circuit court to compel the witness to answer the interrogatories. The court, consisting of Mr. Justice Field, Circuit Judge Sawyer, and District

Judge Sabin. denied the motion of the district attorney for the order 27*27 and discharged the rule to show cause. Opinions were rendered *seriatim,* the principal one by Justice Field. The authority of the commission was definitely denied. That decision has frequently been cited and approved by this court. Judge Sawyer, in the course of his opinion (at p. 263), after observing that a bill in equity seeking a discovery upon general, loose and vague allegations is styled "a fishing bill," and will, at once, be dismissed on that ground (Story, Eq. Pl. § 325), said: **"A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end."** at 27, *Jones v. SEC*, 298 U.S. 1 (1936), (Emphasis added).

III
None of the Legal Authorities Cited in Your August 4, 2022 Letter Are Relevant

The key issue in question is whether the ORDER DENYING WITHDRAWAL OF REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 ("Denial Order" attached as Exhibit 6) issued by the Commission on June 17, 2022, is unlawful, given that you stated below that the SEC's subpoena authority in your August 4, 2022 letter is pursuant to the Form S-1 filing.

The SEC staff seeks documents from American CryptoFed that are relevant to the contemplated offering of Ducat and Locke tokens pursuant **to the Form S-1**. We remind you that American CryptoFed stated in the introductory pages of **the Form S-1** that the Ducat and Locke tokens are classes of securities. (Emphasis added).

To the extent that none of the legal authorities you cited in your August 4, 2022 letter addressed a dispute related to a Federal agency's power denying an application withdrawal, all of the legal authorities you cited are not relevant. American CryptoFed's position is that American CryptoFed's Form S-1 filing has been withdrawn since June 6, 2022, because pursuant to Supreme Court opinions in *Jones v. SEC*, 298 U.S. 1 (1936) cited above, the Denial Order to stop the effectiveness of American CryptoFed's Form S-1 withdrawal is unlawful and the SEC's subpoena power based on Form S-1 has ceased to be legitimate.

American CryptoFed has informed Mr. Dobbie at the Division of Corporation Finance, and cc'd you and your team members at the Division of Enforcement, of American CryptoFed's

position via detailed letters dated July 6, 2022 (Exhibit 8) and July 11, 2022 (Exhibit 9) respectively, and requested written responses. As of today, after one month passed, neither Mr. Dobbie, you, or any individual in your respective Divisions have responded to these letters. American CryptoFed urges you to respond to our legal arguments pursuant to the Supreme Court opinions in *Jones v. SEC*, 298 U.S. 1 (1936) cited above. We will seriously consider your additional subpoena requests accordingly once we receive and review your response.

IV
The 8(e) Order Violates Supreme Court Opinions in *F.C.C. v. Fox Television Stations, Inc*

In *SEC v. Ripple Labs,* on March 11, 2022, Judge Analisa Torres of the Southern District of New York, citing *F.C.C. v. Fox Television Stations, Inc,* issued an order allowing Ripple Labs' Fair Notice affirmative defense (Exhibit 10, page 6-7, emphasis added). The 8(e) Order clearly violates the Supreme Court opinions in *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012) shown below.

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. See *Connally* v. *General Constr. Co.*, 269 U. S. 385, 391 (1926) ("[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law"); *Papachristou* v. *Jacksonville*, 405 U. S. 156, 162 (1972) ("Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids' " (quoting *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939); alteration in original)). **This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment**. See *United States* v. *Williams*, 553 U. S. 285, 304 (2008). It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Ibid.* As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved. See *id.,* at 306.

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.

American CryptoFed does not believe that its Locke token and Ducat token are securities, but on September 16 and September 17, 2021, American CryptoFed filed Form 10 and Form S-1 with the SEC in good faith, in case that the SEC may hold a different view. On October 8, 2021, Ms. Erin Purnell, Acting Legal Branch Chief, Division of Corporation Finance, stated the following regarding our Form S-1 filing (Exhibit 11) and Form 10 filing (Exhibit 12) respectively.

Our preliminary review of your filing indicates that it fails to comply with the requirements of the Securities Act of 1933, the related rules and regulations, and the requirements of the form. Because of these serious deficiencies, you should not assume that your filing may be relied upon for the purposes of Section 5(c) or for compliance with any other rule or regulation. (Exhibit 11).

Our initial review of your registration statement indicates that it fails in numerous material respects to comply with the requirements of the Securities Exchange Act of 1934, the rules and regulations thereunder and the requirements of the form. (Exhibit 12).

On October 12, 2021, American CryptoFed responded to Ms. Erin Purnell's two October 8, 2021 letters point by point, deriving the following conclusion, to which Ms. Purnell never responded (Exhibit 13, page 7). Because the substance of the American CryptoFed Form S-1 filing and Form 10 filings were identical, American CryptoFed's response focused primarily on Form 10. However, the conclusion below should apply equally to the Form S-1.

Ms. Purnell failed to identify and specify one single item of important information, which does exist, but we did not disclose. Ms. Purnell concluded our Form 10 filing has "deficiencies" by asking us to provide information which does not exist. We believe that Ms. Purnell emphasizes form rather than substance.

On October 29, October 30 and November 3, 2021, three consecutive letters excerpted below, were addressed and sent to the attention of Ms. Deborah Tarasevich, Assistant Director of the Division of Enforcement's Cyber Unit. In each of these letters, American CryptoFed requested a written response to our October 12, 2021 letter.

On October 12, 2021, American CryptoFed DAO ("CryptoFed") replied point-by-point to Ms. Erin Purcell's two October 8th, 2021 letters regarding all of the purported deficiency issues

related to our Form 10 filing. In addition to our reply directed to Ms. Erin Purcell's attention, the reply was also sent to Chairman Gary Gensler and all Commissioners. Our reply has provided sufficient evidence and reasoning to prove that our Form 10 filing has zero deficiency. Ms. Erin Purcell has not responded to our reply. (Exhibit 14).

We accept your offer of the SEC staff's time in the Division of Corporate Finance and reserve their time. However, instead of a call, we request that they use the reserved time to respond in writing point-by-point directly to our October 12th point-by-point reply to Ms. Erin Purnell's October 8th letters, so that we are able to clearly assess whether we have any material and substantial gaps which will need to be closed by us. We have asked multiple times, but both you and Ms. Erin Purnell are unable to provide any responses in writing yet. The unwillingness of both you and Ms. Erin Purnell to provide a written response further demonstrates that our October 12th reply provided sufficient evidence and reasoning to prove that our Form 10 filing has zero deficiency. Therefore, we do need your response to seriously consider your request for withdrawing our Form 10 filing. (Exhibit 15).

Will SEC staff in the Division of Corporate Finance be able to respond in writing point-by-point directly to our October 12th point-by-point reply to Ms. Erin Purnell's October 8th letters, so that we are able to clearly assess whether we have any material and substantial gaps which will need to be closed by us?

If Ms. Erin Purnell and the Division of Corporate Finance are unable to provide any written responses to our October 12th point-by-point reply to Ms. Purnell's October 8th letters, can you then let us know in writing what legal and factual basis have empowered you and your Division of Enforcement to initiate this investigation and to recommend an enforcement action against us? (Exhibit 16).

Ms. Tarasevich never responded to our requests above to provide American CryptoFed with Constitutionally required fair notice. As a matter of fact, on November 9, 2021, instead of complying with the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc*: **"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"**, the non-public 8(e) Order was issued solely "to determine whether a stop order should be issued under Section 8(d) of the Securities Act with respect to the Form S-1 and any supplements and amendments thereto". To the extent that the sole purpose of the 8(e) Order is to issue a Stop Order, not to provide American CryptoFed with Fair Notice for compliance, despite American CryptoFed's repeated requests, the 8(e) Order willfully violated Supreme Court opinions in *F.C.C. v. Fox Television Stations, Inc.*

V
Explanatory Affidavit Related to American CryptoFed's Zero Assets Assertion

Mr. Baker, the inherent contradiction within your August 4, 2022 letter is vividly reflected by your following statement (Exhibit 1, page 4):

The SEC staff reminds you that Section 8(e) of the Act empowers the SEC to conduct an examination of registration statements such as American CryptoFed's Form S-1, and further provides that " If the issuer or underwriter shall fail to cooperate , or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order" 15 U.S.C. § 77h€; *see also In the Matter of the Registration Statements of Crest Radius, Inc.*, AP File No. 3-20021, Initial Decisions Release No. 1406, 2021 SEC LEXIS 42 at *5 (Jan. 5, 2021) ("By providing incomplete responses to investigative subpoenas, Crest Radius failed to cooperate with the Commission's Section 8€ examination"); *In the Matter of Augion-Unipolar Corp*., Admin. Proc. File Nos. 3-2079, July 5, 1971, 1971 SEC LEXIS 44 S.E.C. 613.

The penalty for refusing to cooperate with your Subpoenas is to issue a Stop Order for American CryptoFed's Form S-1. The sole purpose of the 8(e) Order is also "to determine whether a stop order should be issued under Section 8(d) of the Securities Act with respect to the Form S-1 and any supplements and amendments thereto" (Exhibit 5, page 2). Your Subpoenas issued pursuant to the 8(e) Order are wasting taxpayer's money and the SEC's resources as well as our resources and money to stop American CryptoFed's Form S-1 which has been withdrawn. To make matters worse, the Commission and its Divisions of Enforcement and Corporation Finance have willfully engineered the Denial Order for denying American CryptoFed's withdrawal of its Form S-1 so that you can continue the Subpoenas issued pursuant to the 8(e) Order whose sole purpose is to issue a Stop Order for American CryptoFed's Form S-1.

"As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact **but rather because it is unclear as to what fact must be proved.** See *id.,* at 306.", the Supreme Court's opinions emphasized in *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012).

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. Under a traditional organization structure, all and every entity has assets. The existence of assets is accepted as a given. However, under a DAO structure, the DAO can outsource all necessary tasks to supporting entities and individuals without holding any assets and without hiring any employees. There is only one method by which a DAO can operate without assets and without employees.

The method has been demonstrated by the operation of Bitcoin. Bitcoin as a blockchain network, by design, automatically outsources all tasks to miners and BTC holders. It is the miners and BTC holders who play the role of supporting entities and individuals to maintain Bitcoin's operation and expand the Bitcoin network for their own benefit. Even the BTC rewards received by miners are generated by the collective actions of all miners and BTC holders through a process of hash computation competition and verification. Bitcoin as a blockchain network has No Asset, No Revenue, No Profit, No Costs, No Liabilities, No Employees, No Bank Accounts, and No Crypto Exchange Accounts. All Bitcoin miners and BTC holders are independent supporting entities and individuals working collectively in accordance with a set of rules of Bitcoin for generating rewards to maintain operation. It is these independent supporting entities and individuals (not the Bitcoin network) who take risks of loss, who earn profits and create assets.

Similarly, there will be many individuals and centralized entities who will elect to join American CryptoFed as supporting entities, which includes MShift as the founding organization. They join American CryptoFed for their own best interest. The key precondition is that American CryptoFed has designed an architecture and a set of rules to coordinate their activities to generate attractive benefits for these supporting individuals and entities. The American CryptoFed economy must be sustainable and automatically growing. American CryptoFed is very similar to Bitcoin, in terms of rule-based operation, although American CryptoFed has two tokens (Locke and Ducat) for token holders to run the economy with solid governance via voting. By design, American CryptoFed architecture has a set of rules to enable rule changes by supporting individuals and entities of Locke token holders. To this extent, American CryptoFed is able to adapt to ever changing environments without having to resort to hard forks.

The article in the National Law Review quoted below analyzing American CryptoFed's Form 10 filing with SEC, is the best article in describing the relationship between a DAO and its supporting entities/individuals. MShift, as the creator of American CryptoFed DAO, is a supporting entity of the DAO, just as Bitcoin miners and Satoshi Nakamoto are the supporting entities/individuals of Bitcoin.

DAOsing Rods and the Power of Enforcement Prediction
https://www.natlawreview.com/article/daosing-rods-and-power-enforcement-prediction

A DAO is an organization encoded as a transparent computer program, controlled by the organization members and not by a central corporate entity, often through a governance token utilized on a blockchain.

In the SEC's announcement, they alleged that the registration statement filed by American CryptoFed contained a number of deficiencies, including purportedly misleading statements such as claims that the tokens were not intended to be securities and may be distributed on the form of registration statement used for registration of securities under an employee benefit plan. Perhaps just as importantly, the registration statement failed to provide substantive information about the issuer as is required to be disclosed in the form, such as information regarding its business, management, and financial condition. **One telling example of the deficient information concerns the issuer's ownership structure, which a pure DAO would be unable to produce by its very nature of being a DAO.**

This highlights several issues with being able to register DAO-issued tokens under the current regulatory framework. The SEC disclosure forms rightly require financial statements and business information regarding the issuer. That said, a DAO is not really an entity. **There often is a supporting entity in place alongside a DAO**, and in some instances an organization that isn't really decentralized may be mislabeled as a DAO, **but the DAO itself in almost all circumstances would not be able to produce financial statements prepared in accordance with generally accepted accounting principles.** If the DAO does not have a definable business and truly is decentralized, then there may not be a management structure for which information can be provided. Further, depending on the circumstances, the financial condition of a DAO may be of limited relevance to holders of the tokens, particularly if there truly is a level of decentralization that would allow the project to move forward even if the 'entity' sponsoring the token were to collapse (or the financial statements of the issuer could be looking at the wrong thing if the treasury of the DAO is not housed in that entity). **Simply put, this action implies that it will be difficult if not impossible for true a DAO to register its tokens under the current regulatory framework, even if it sets itself up in a way to attempt robust compliance**. (Emphasis added).

I look forward to your written response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller

Scott Moeller

President, American CryptoFed DAO

Table of Exhibits

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 1

Am. CryptoFed DAO Exhibit 12

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

August 4, 2022

VIA EMAIL (scott.moeller@americancryptofed.org)
American CryptoFed DAO LLC
c/o Scott Moeller
1607 Capitol Ave.
Suite 327
Cheyenne, WY 82001

Re: In the Matter of American CryptoFed DAO LLC

Dear Mr. Moeller:

This letter is in response to your June 21, 2022 response to the SEC staff's June 15, 2022 subpoena issued to American CryptoFed DAO LLC ("American CryptoFed") in the above-referenced examination (the "June 15, 2022 Subpoena") and your July 7, 2022 testimony before the SEC staff pursuant to the June 28, 2022 subpoena issued to you directly (the "June 28, 2022 Subpoena," collectively, with the June 15, 2022 Subpoena, the "Subpoenas"). The Subpoenas were issued pursuant to an order directing examination and designating officers pursuant to Section 8(e) of the Securities Exchange Act of 1933 issued by the Securities and Exchange Commission on November 9, 2021 (the "8(e) Order"). I write to express our concerns that American CryptoFed and you have failed to meet your obligations to respond fully and accurately to the Subpoenas. As discussed further below, the SEC staff believes that American CryptoFed's broad objections to the June 15, 2022 Subpoena and your objections to the staff's questions during testimony are meritless.

As you know, on September 17, 2021, American CryptoFed filed a Form S-1 registration statement (the "Form S-1") seeking to register transactions involving two classes of digital assets, the Ducat and Locke tokens, under the Securities Act of 1933. Pursuant to the 8(e) Order, the SEC staff is investigating whether American CryptoFed's Form S-1 is deficient or contains misstatements or omissions related to the Form S-1's classification of the Ducat and the Locke tokens as securities.

The June 15, 2022 Subpoena requested several categories of documents related to the offering contemplated in the Form S-1, including, among other requests: 1) the identification of and communications with several third parties who are or may be involved in the offering; 2) documents related to the mechanics of the offering, including the refundable auctions, NFTs, and trustless accounts; 3) documents related to the custody of certain fiat and digital assets; and 4)

communications with crypto asset exchanges. The SEC staff requested these categories of documents, in part, to verify the accuracy of the information contained in the Form S-1, and to determine whether the Form S-1 was deficient or contained misstatements or omissions.

Notwithstanding the relevance of each of the staff's requests contained in the June 15, 2022 Subpoena, American CryptoFed objected to every single request on the basis that each request:

> is not reasonably calculated to lead to the discovery of relevant, admissible evidence which can rebut American CryptoFed's assertion that American CryptoFed has **No Fund Raising, No Revenue, No Costs, No Profits and No Assets** and therefore there is no traditional balance sheet equation of **Assets = Liabilities + Shareholder's Equities** to generate securities subject to the SEC's jurisdiction.

American CryptoFed's broad objections to our requests appear grounded in American CryptoFed's belief that the Ducat and Locke tokens are not securities, and, as a result, asserts that nothing the SEC staff requested is relevant to our examination. This assertion is wrong. The SEC staff seeks documents from American CryptoFed that are relevant to the contemplated offering of Ducat and Locke tokens pursuant to the Form S-1. We remind you that American CryptoFed stated in the introductory pages of the Form S-1 that the Ducat and Locke tokens are classes of securities. The requests contained in the June 15, 2022 Subpoena are, in part, to determine whether or not that Form S-1 statement is correct, and to determine whether the Form S-1 is deficient or if it contains misstatements or omissions. We find it concerning that American CryptoFed would object to valid subpoena requests by substituting its own judgment as to the relevancy of the requested documents for the SEC staff's judgment. Your failure to provide documents or written explanations responsive to these requests is particularly unreasonable given your repeated and unsupported claim that the Commission is failing to provide American CryptoFed information about its own tokens.

While you did provide a narrative response to some of the requests in the June 15, 2022 Subpoena, many of those narratives did not respond to the questions. For instance, requests 2 and 3 of the June 15, 2022 Subpoena requested documents related to the identification of certain Contributors (as defined in the June 15, 2022 Subpoena) and communications with those Contributors. After objecting to the request, American CryptoFed pointed to the Form S-1 and the September 16, 2021 Form 10 filed by American CryptoFed as containing the relevant info. They do not. Neither form contains identifying information for Contributors, nor do the forms contain communications with those Contributors.

On July 7, 2022 we took your testimony pursuant to the June 28, 2022 Subpoena. In testimony, you objected to many of the SEC staff's questions, asserting similar meritless objections to the one raised in response to the requests in the June 15, 2022 Subpoena. For instance, you objected when the SEC staff asked you:

1) what city and state you reside in;

2) whether you are the most senior officer of American CryptoFed;
3) who filed the Form S-1;
4) whether you registered the Ducat token as a security;
5) what is mShift's role with American CryptoFed;
6) whether American CryptoFed is a Decentralized Autonomous Organization;
7) the earliest potential date of the Locke refundable auctions;
8) who drafted the response to the June 15, 2022 Subpoena;
9) whether Locke tokens have been pledged to service providers;
10) which service providers American CryptoFed had spoken with;
11) whether the refundable auctions for Locke tokens will be conducted online;
12) what website the refundable auctions for Locke tokens will take place on;
13) whether the refundable auctions for Locke tokens will be open to everybody;
14) whether there will be an income limit for the refundable auctions for Locke tokens;
15) whether American CryptoFed is contemplating listing on non-U.S. exchanges;
16) the plan to reach out to crypto exchanges;
17) whether American CryptoFed is contemplating listing on certain crypto exchanges;
18) whether the refundable auctions for Locke tokens will only start after the Form S-1 is effective;
19) whether the Locke token is an ERC-20 token;
20) questions about the value of Locke tokens;
21) whether purchasers can expect interest from holding Ducat tokens;
22) whether American CryptoFed has written any smart contracts;
23) whether mShift will benefit from a rise in Locke token value; and
24) the identity of the people who had been granted or promised Locke tokens as of the date that the Form S-1 was filed.

Though you sometimes followed up with an answer notwithstanding your objection, your answers frequently did not completely or directly answer the questions. For instance, you often pointed to the principles found in the Form S-1 instead of answering the specific question about how mechanically the Locke token refundable auctions might work.

SEC subpoenas are valid so long as (i) the inquiry has a legitimate purpose, (ii) the subpoena was issued in accordance with the required administrative procedures, and (iii) the information sought is reasonably relevant to some subject of the inquiry. *United States v. Powell*, 379 U.S. 48, 57-58 (1964). Once these threshold criteria are met, the burden shifts to the party refusing to provide information to establish that the subpoena is unreasonable. *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973), *cert. denied,* 415 U.S. 915 (1974). The burden of showing unreasonableness "is not easily met." *Id.* Further, Congress gave the SEC authority to investigate "any facts, conditions, practices or matters" that, in its discretion, the SEC deems necessary or proper to aid in the enforcement of the federal securities laws. 15 U.S.C. § 78u(a)(1).

As the United States Supreme Court explained in *United States v. Morton Salt Co.*, 338 U.S. 632 (1950), an agency can investigate upon mere suspicion that the law has been violated, without a showing of probable cause. The Court explained that:

> [An agency] has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it too may take steps to inform itself as to whether there is probable violation of the law.

Id. at 642-43. The SEC thus is acting within the scope of its Congressionally-granted authority even where its examination is based on nothing more than official curiosity. *See, e.g., Arthur Young*, 584 F.2d at 1023-24 & n.45 (quoting *Morton Salt*) (recognizing that "even if one were to regard a request for information . . . as caused by nothing more than official curiosity, nevertheless law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and public interest").

In summary, American CryptoFed has made meritless objections to relevant requests for information and documents sought pursuant to the June 15, 2022 Subpoena, and you made meritless objections to many questions asked of you in testimony. We ask that you review the June 15, 2022 Subpoena requests and provide all documents covered by the requests in that subpoena by August 12, 2022. In addition, during your testimony, you refused to provide the names of the fifteen people to whom Locke tokens have been granted or promised, as disclosed in the Form S-1. However, you indicated that you would be willing to provide the names in response to a written request. Accordingly, we request that you provide these names to the SEC staff by August 12, 2022.

The SEC staff reminds you that Section 8(e) of the Act empowers the SEC to conduct an examination of registration statements such as American CryptoFed's Form S-1, and further provides that "If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order." 15 U.S.C. § 77h(e); *see also In the Matter of the Registration Statements of Crest Radius, Inc.*, AP File No. 3-20021, Initial Decisions Release No. 1406, 2021 SEC LEXIS 42 at *5 (Jan. 5, 2021) ("By providing incomplete responses to investigative subpoenas, Crest Radius failed to cooperate with the Commission's Section 8(e) examination"); *In the Matter of Augion-Unipolar Corp*., Admin. Proc. File Nos. 3-2079, July 5, 1971, 1971 SEC LEXIS 475, 44 S.E.C. 613.

Sincerely,

/s Michael C. Baker

Michael C. Baker
Senior Counsel
Division of Enforcement
(202) 551-4471
bakermic@sec.gov

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
ENFORCEMENT

June 3, 2022

BY EMAIL & UPS

Scott Moeller
CEO, American CryptoFed DAO
1607 Capitol Ave, Ste 327
Cheyenne, WY 82001
scott.moeller@americancryptofed.org

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

Dear Mr. Moeller:

I write to respond to your letter dated May 30, 2022. That letter described American CryptoFed DAO LLC's ("American CryptoFed") plan to "proceed with implementing its business plan as described in the Form 10 and Form S1" that American CryptoFed had previously filed with the Securities and Exchange Commission ("SEC" or "Commission").

Planned Distribution of Locke Tokens

Under Section 5 of the Securities Act of 1933 ("Securities Act"), any offering of securities needs to be registered or exempt from registration. If neither is true, the offering is illegal. There is no registration statement in effect for any offering of the Locke or Ducat tokens, and you have not identified any exemption which you assert applies to their distribution. Accordingly, your letter appears to announce a plan to willfully violate Section 5 of the Securities Act, and possibly other provisions of the federal securities laws, by offering and/or selling Locke tokens to investors without an effective registration statement, even though you have applied to register these same tokens as securities with the SEC. Violations of the provisions of the Securities Act can have serious consequences.

Your letter asserts that the distribution will be "as described in the Form 10 and Form S1." But the effectiveness of the Form 10 was stayed by the Commission's November 10, 2021 Order Instituting Proceedings. Even if the

Form 10 was effective (which it isn't), the distribution would still need to be pursuant to either the Form S-1 or another Securities Act registration statement, or pursuant to an exemption from registration. The Form S-1 is not yet effective as it contains a delaying amendment.[1] Moreover, the Commission, on November 9, 2021, issued an Order Directing Examination and Designating Officers Pursuant to Section 8(e) of the Securities Act of 1933 ("8(e) Examination Order"), which we are serving on you today along with this letter.

Please note that while Securities Act Section 5(a) prohibits the sale of securities unless there is a registration statement in effect (or an exemption applies), Securities Act Section 5(c) prohibits either the offer or sale of any security "while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title." 15 U.S.C. §77e(c). Thus, American CryptoFed can neither offer nor sell the Locke tokens pursuant to the Form S-1 while the 8(e) Examination Order is in effect.

You can expect to hear from us in the near future with requests pursuant to the 8(e) Examination Order, including requests to provide documents and testimony.

Request for a Cease-and-Desist Order

Your letter requests, without citing any provision of law, that the Division of Enforcement issue a Cease-and-Desist order. We believe you are again conflating the role of the Division of Enforcement and the Commission in this proceeding. The Division of Enforcement does not issue orders, that is the role of the Commission. Additionally, while some Commission administrative proceedings are captioned as "Cease and Desist" proceedings (*see, e.g.*, 15 U.S.C. §77h-1), there is no requirement that proceedings take that precise form in order to halt conduct. Here, the Commission's November 10, 2021 Order Instituting Proceedings stays the effectiveness of American CryptoFed's Form 10. At the conclusion of this proceeding, the Division of Enforcement may seek, and the Commission may enter, an order denying or revoking the

[1] The Form S-1 states in relevant part: "The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

registration of that Form 10. Neither the Commission nor the Division of Enforcement needs to use the phrase "Cease and Desist" in taking this step.

If you proceed with your announced plan to distribute the Locke tokens despite the November 9, 2021 8(e) Examination Order and the November 10, 2021 Order Instituting Proceedings, we reserve the right to take any and all appropriate steps.

Timing of This Proceeding

Your letter appears to complain about the length of time certain motions have been pending. We remind you that, at the outset of this proceeding, we suggested that we jointly ask the Commission to expedite this matter and you responded that "it would be inappropriate to ask 'the Commission to take this matter under consideration on an expedited basis.'" (Nov. 26, 2021 email from Marian Orr to Christopher Bruckmann). You then filed more than a dozen meritless motions that were so frivolous that the Commission instituted special procedures governing the filing of motions in this matter. You have opposed every effort we have made to move this case forward expeditiously, including through seeking a briefing schedule, and in response to our most recent attempt to obtain a briefing schedule requested that the Commission sanction the Division of Enforcement merely for seeking a briefing schedule. Thus, to the extent that the Commission has not acted as quickly as you now appear to want it to have acted, it is largely, if not entirely, because of your actions. We continue to believe that requesting an expedited briefing schedule is the appropriate course of action in this matter and suggest we meet and confer to discuss a joint motion requesting an expedited briefing schedule. Please let us know your availability for a meet-and-confer session.

Request for Howey Analysis

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "***Securities*** to be registered pursuant to Section 12(g) of the Act" (emphasis added).

Materially Misleading Statements in American CryptoFed's Filings with the Commission.

In addition to Securities Act Section 5's restrictions on unregistered offerings of securities, the federal securities laws contain prohibitions against materially misleading statements and omissions in connection with the offer and sale of securities. *See generally* 15 U.S.C. § 77q; 15 U.S.C. § 78j; 17 C.F.R. §240.10b-5. As we, and the Division of Corporation Finance, have repeatedly informed you, American CryptoFed's Form 10 appears to contain numerous materially misleading statements. *See, e.g.,* Division of Enforcement's Omnibus Memorandum in Opposition to Respondent's Motions for a More Definite Statement at 6-8 (and documents cited therein).

Your planned distribution, as described in your May 30, 2022 letter, appears to compound these problems. The letter outlines a plan to introduce Non-Fungible Token (or "NFT") certificates into the offering process. Neither American CryptoFed's Form 10, nor its Form S-1 contain any disclosures regarding the use of NFT certificates as part of the offering process. Based on your description of this process it certainly appears that this is material information that a reasonable investor would want to know, and its omission from both the Form 10 and Form S-1 raises questions as to whether American CryptoFed offering or selling the Locke or Ducat tokens in this manner would violate the antifraud provisions of the federal securities laws. *See, e.g.,* 17 C.F.R. §240.10b-5 ("It shall be unlawful for any person . . . to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . . . in connection with the purchase or sale of any security).

Please feel free to contact us to further discuss any of these issues.

Regards,

/s/ Christopher M. Bruckmann
Christopher M. Bruckmann

cc: Xiaomeng Zhou (by email to zhouxm@americancryptofed.org)

Encl: 8(e) Examination Order

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 3

Am. CryptoFed DAO Exhibit 12

May 30, 2022
Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit
Division of Enforcement, U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549-5949
Phone 202-551-5986, Email: bruckmannc@sec.gov

Cc:
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov

Re: In the Matter of American CryptoFed, AP File No. 3-20650:
Cease and Desist Order Request

Dear Mr. Bruckmann,

While waiting for the Securities and Exchange Commission ("SEC", "Commission") to rule on the three pending motions below, American CryptoFed DAO LLC ("American CryptoFed") will proceed with implementing its business plan as described in the Form 10 and the Form S1 filed with the SEC on September 16 and 17, 2021 respectively. Starting from Q3 2022, we will distribute to contributors, in paper contracts, free of charge, Locke governance tokens which are restricted, untradeable and non-transferable. Starting from Q3, 2022 through December 31, 2022, we will conduct Locke token refundable auctions. The winning bidders are required to demonstrate the funds are available in their designated wallets without actually moving funds. They will receive NFT certificates which are not allowed to trade. The NFT certificates will lose eligibility to exchange for fungible Locke tokens, if they are transferred out of the original designated wallets. The holders of NFT certificates may exchange them for fungible and tradable Locke tokens on or after January 1, 2023, transferring the bidding tokens (proceeds) to a CryptoFed trustee or trustless account. The proceeds will be used in accordance with the following description in the Form 10 filing.

"Proceeds from these token sales are reserved in order to allow purchasers to request full refunds at the original purchase prices via smart contracts. Purchasers refund rights expire if: a) Locke's price surpasses five (5) times the original purchase price, or b) the original Locke tokens are sold, or c) Three (3) years pass from the original time of purchase, whichever comes first. After refund rights expire, the corresponding proceeds will be transferred to CryptoFed's USD-

pegged stablecoin reserve for Locke buyback. No proceeds can be used for other purposes" (Section 2.4.1.1.6. Page 22).

If the SEC Division of Enforcement ("Division") perceives any violations of related securities laws and wants to prohibit American CryptoFed from launching the Locke refundable auction, or distributing Locke tokens to contributors, please send CryptoFed a Cease-and-Desist Order within 30 business days, on or before June 30, 2022. This Cease-and-Desist Order should include a Howey Test Analysis or other legal justifications from the Division to prove that Locke token and Ducat token are securities. Even after the Locke refundable auction starts in Q3 2022, the Division will still have at least 3 months until December 31, 2022 to send American CryptoFed the Cease-and-Desist Order, before the Locke tokens are allowed to trade.

1. **Motion to Lift the Stay Order:**
   RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO LIFT THE ORDER THAT STAYS THE EFFECTIVENESS OF RESPONDENT'S FORM 10.

On November 10, 2021, the SEC issued an order instituting administrative proceedings ("OIP") against American CryptoFed pursuant to Section 12(j) of the Securities Exchange Act of 1934. The OIP's Section IV included an order stating, "IT IS FURTHER ORDERED that the institution of these proceedings stays the effectiveness of the Respondent's Form 10 filed on September 16, 2021" ("Stay Order").

The motion filed on December 15, 2021 requests the Commission to lift the Stay Order. The Stay Order is unlawful because it prohibits American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934, if the SEC perceives Locke token and Ducat token are securities. When and only when the SEC had made decision that Locke token and Ducat token are not securities and are outside the SEC's jurisdiction, could the Stay Order be lawful. Otherwise, The OIP and the Stay Order are equivalent to an order which exempts American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934.

2. **Exemption Motion:**
   RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION FOR EXEMPTION FROM SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934.

This "Exemption Motion" filed on January 4, 2022, requests the Commission to confirm the fact that the OIP and its Stay Order are equivalent to an order which exempts American CryptoFed from fulfilling its legal disclosure obligations required by the Securities Exchange Act of 1934. However, in the Division's Opposition, the Division made the following serious allegations.

"Finally, to the extent Respondent plans a distribution of securities for which there is no registration statement in effect, the Division asserts that Respondent, and all persons directly or indirectly offering or selling such securities, must comply with Section 5 of the Securities Act of 1933 ("Securities Act"), and notes that willful violations of the Securities Act can result in criminal penalties. See Securities Act Section 24, 15 U.S.C. §77x." (p.2)

"Finally, the Motion appears to suggest that American CryptoFed, Marian Orr, Scott Moeller, and/or Xiaomeng Zhou intend to willfully violate Section 5 of the Securities Act by asserting that "Respondent has the rights [sic] to issue restricted, untradeable, and non- transferable tokens to more than 500 persons" as long as Respondent subsequently files a Form 10." (p.8).

Without the opportunity to see how the Division applies the Howey Test to Locke and Ducat, American CryptoFed had to apply a preliminary defense in its reply to Division's Opposition, explaining why an investment contract does not exist in the case of Locke and Ducat.

3. **Motion for Leave to File A Motion:**
   RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION FOR LEAVE TO FILE A MOTION.

Facing serious allegations without legal justifications from Division, American CryptoFed repeatedly asked the Division to provide American CryptoFed with a Howey Test analysis to prove that Locke token and Ducat token are securities. However, the Division refused to do so. On January 23, 2022, American CryptoFed had no choice but to file this "Motion for Leave to File A Motion". The purpose is to compel the Division to provide a Howey Test Analysis or other legal justifications to prove that Locke token and Ducat token are securities.

4. **Conclusion: Execution of American CryptoFed Business Plan**

Through the Form 10 filed on September 16, 2021 and the Form S1 filed on September 17, 2021 with the SEC, by motions, numerous emails and letters, American CryptoFed has done its best to comply with the securities related laws and regulations and will continue doing so. Upon the receipt of the Commission's order instituting administrative proceedings ("OIP") on November 10, 2021, American CryptoFed filed its answer timely on December 6, 2021. In

addition, American CryptoFed filed the Motion to Lift the Stay Order on December 15, 2021, pursuant to **Rule 250. Dispositive motions** stating the following:

(a) Motion for a ruling on the pleadings. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. **The hearing officer shall promptly grant or deny the motion (emphasis added).**

More than 5 months has passed, and the Commission has not yet made a decision regarding this Motion to Lift the Stay Order. Without complaining about the Commission's nondecision and indecision, American CryptoFed will continue waiting for the Commission's ruling with patience. However, American CryptoFed has a critical mission to accomplish. American CryptoFed has no choice but to move forwards to execute its business plan described in its Form 10 and Form S1 filing. The Locke token distribution to the contributors will be granted in paper contracts, free of charge. Locke token refundable auction will be conducted without moving funds. If the Division sends a Cease-and-Desist Order with a Howey Test analysis justification, all transactions can be reversed easily and timely without causing any damages to anyone. American CryptoFed is entitled to see the Division's Howey Test analysis so that we can make an effective defense and rebut the possible Cease-and-Desist Order, if any. The Fifth Amendment of the U.S. Constitution guarantees due process when someone is denied "life, liberty, or property."

Through the Form 10 filing, the Form S1 filing, answers, responses, replies, motions, letters, emails, conference calls, and other numerous communications with both the Division and the Commission, American CryptoFed consistently and repeatedly explained as to why Locke and Ducat are NOT securities. American CryptoFed had to apply a preliminary defense in its reply to the Division's Opposition to American CryptoFed's Exemption Motion, explaining why an investment contract does not exist in the case of Locke and Ducat. The quote below is from an article authored by two attorneys, Daniel L. McAvoy and Stephen A. Rutenberg of Polsinelli PC, which was published in the National Law Review, Volume XI, Number 327, Tuesday, November 23, 2021 and was entitled "DAOsing Rods and the Power of Enforcement Prediction".

https://www.natlawreview.com/article/daosing-rods-and-power-enforcement-prediction

The two authors' opinion echoes American CryptoFed's view in analyzing the SEC's action against American CryptoFed and can serve as a perfect conclusion to this request letter.

"On November 10, 2021 the US Securities and Exchange Commission (the SEC) announced that it had halted **the first ever attempt to register digital tokens issued by a decentralized autonomous organization (DAO) under the US federal securities laws**. American CryptoFed – **also the first DAO to take advantage of Wyoming's new "DAO Law"** that attempts to give DAOs legal status – filed Form 10 and subsequently filed a Form S-1 in an effort to register its digitals assets in the form of two coins designed to operate in tandem issued under the names Locke and Ducat.

In the SEC's announcement, they alleged that the registration statement filed by American CryptoFed contained a number of deficiencies, including purportedly misleading statements such as claims that the tokens were not intended to be securities and may be distributed on the form of registration statement used for registration of securities under an employee benefit plan. Perhaps just as importantly, the registration statement failed to provide substantive information about the issuer as is required to be disclosed in the form, such as information regarding its business, management, and financial condition. **One telling example of the deficient information concerns the issuer's ownership structure, which a pure DAO would be unable to produce by its very nature of being a DAO.**

A DAO is an organization encoded as a transparent computer program, controlled by the organization members and not by a central corporate entity, often through a governance token utilized on a blockchain….

This highlights several issues with being able to register DAO-issued tokens under the current regulatory framework. The SEC disclosure forms rightly require financial statements and business information regarding the issuer. That said, a DAO is not really an entity. There often is a supporting entity in place alongside a DAO, and in some instances an organization that isn't really decentralized may be mislabeled as a DAO, **but the DAO itself in almost all circumstances would not be able to produce financial statements prepared in accordance with generally accepted accounting principles. If the DAO does not have a definable business and truly is decentralized, then there may not be a management structure for which information can be provided.** Further, depending on the circumstances, the financial condition of a DAO may be of limited relevance to holders of the tokens, particularly if there truly is a level of decentralization that would allow the project to move forward even if the 'entity' sponsoring the token were to collapse (or the financial statements of the issuer could be looking at the wrong thing if the treasury of the DAO is not housed in that entity). **Simply put, this action implies that it will be difficult if not impossible for a true DAO to register its tokens under the current regulatory framework, even if it sets itself up in a way to attempt robust compliance.**" (All emphases in bold are added.)

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 4

June 8, 2022
Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit
Division of Enforcement, U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549-5949
Phone 202-551-5986, Email: bruckmannc@sec.gov

Cc:
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov

Re: In the Matter of American CryptoFed, AP File No. 3-20650:
Cease and Desist Order Request

Dear Mr. Bruckmann,

Thank you for your June 3, 2022, letter responding to my Cease-and-Desist Order Request. I would like to reply to your letter to increase our mutual understanding and explore possible solutions, including but not limited to, your request in this letter for a meet-and-confer session.

A. 8(e) Examination Order

In your June 3, 2022, letter at page 2, you stated the following:

> The Form S-1 is not yet effective as it contains a delaying amendment. Moreover, the Commission, on November 9, 2021, issued an Order Directing Examination and Designating Officers Pursuant to Section 8(e) of the Securities Act of 1933 ("8(e) Examination Order"), which we are serving on you today along with this letter.

Is there any provision of law which allows the Division of Enforcement ("Division") to delay the service to American CryptoFed for approximately 174 days?

We were surprised by this order. We were ambushed by the Division's opaque tactic. The delay significantly damages our capacity to construe our defense strategy. If the order was served timely on us, we would have taken a different defense strategy. We believe this order should be nulled as if it were not issued.

B. Meet-and-Confer Session

In your June 3, 2022, letter at page 3, you stated the following:

> We continue to believe that requesting an expedited briefing schedule is the appropriate course of action in this matter and suggest we meet and confer to discuss a joint motion requesting an expedited briefing schedule. Please let us know your availability for a meet-and-confer session.

On December 15, 2021, over five months ago, American CryptoFed filed the Motion to Lift the Stay Order below pursuant to **Rule 250. Dispositive motions.**

> RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION TO LIFT THE ORDER THAT STAYS THE EFFECTIVENESS OF RESPONDENT'S FORM 10 ("Motion to Lift the Stay Order")

Rule 250 states the following:

(a) Motion for a ruling on the pleadings. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, **even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion (emphasis added).**

According to Rule 250, American CryptoFed is entitled to a prompt "ruling as a matter of law" under the condition of "even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor". American CryptoFed's Motion to Lift the Stay Order is a **dispositive motion**. "The hearing officer shall promptly grant or deny the motion", Rule 250 above mandates. Therefore, "a joint motion requesting an expedited briefing schedule" as you suggested above is not needed. What the Division and American CryptoFed should do jointly is to urge the Securities and Exchange Commission ("Commission") to comply with Rule 250 and to promptly make a ruling on American CryptoFed's Motion to Lift the Stay Order. If the Motion to Lift the Stay Order is granted, the implication is that the Division does not have a valid case, even under the condition of accepting all of the Division's factual allegations as true and drawing all reasonable inference in the Division's favor.

We suggest we have a meet-and-confer session to jointly file a motion, pursuant to Rule 250, to request the Commission to make a ruling on the Motion to Lift the Stay Order to which

American CryptoFed is entitled. It is overdue. Please let us know your availability for a meet-and-confer session for this purpose.

C. Non-Fungible Token ("NFT") Certificates

In your June 3, 2022, letter at page 4, you stated the following:

Your planned distribution, as described in your May 30, 2022 letter, appears to compound these problems. The letter outlines a plan to introduce Non-Fungible Token (or "NFT") certificates into the offering process. Neither American CryptoFed's Form 10, nor its Form S-1 contain any disclosures regarding the use of NFT certificates as part of the offering process. Based on your description of this process it certainly appears that this is material information that a reasonable investor would want to know, and its omission from both the Form 10 and Form S-1 raises questions as to whether American CryptoFed offering or selling the Locke or Ducat tokens in this manner would violate the antifraud provisions of the federal securities laws.

We only use the NFT certificates as a method of delivery, not as a product. The purpose is to avoid delivering a tradable and fungible Locke token. Once we finalize the design, we will file an amendment to the Form 10 filing to disclose the NFT process. We proactively disclosed our activities via EDGAR until the Commission issued the Stay Order on November 10, 2021, which stopped our Form 10 filing. We would like to ask the Commission to grant our Motion to Lift the Stay Order as soon as possible, so that we can constantly and proactively disclose our activities. To be clear, it is the Division and the Commission that stopped our efforts to timely disclose our activities by issuing the Stay Order on American CryptoFed's Form 10 filing which states the following:

CryptoFed is registering Locke and Ducat tokens with the SEC as utility tokens, not as securities, **for the purpose of disclosure**. Form 10 allows CryptoFed to voluntarily become a reporting company **for ongoing disclosure purposes** and becomes effective sixty (60) days after the initial filing date regardless of whether there are outstanding SEC comments. **Filing Form 10 does not mean CryptoFed concedes that Locke and Ducat tokens are securities** (emphasis added, page 5).

We may be able to find better method than NFT certificates for delivery. Then, we will not need to use the NFT certificate method.

D. Howey Test

In your June 3, 2022, letter at page 3, you stated the following:

Request for Howey Analysis

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "**Securities** to be registered pursuant to Section 12(g) of the Act" (emphasis added).

Does the Division have any legal justification to classify Locke and Ducat tokens as **Securities** other than by American CryptoFed's filing of a Form 10 with the Commission per se? There are only two possible scenarios for this answer.

i) If your answer is "No", American CryptoFed can just withdraw the Form 10 filing, because the Division cannot prove the Locke and Ducat tokens are securities. The Commission no longer has jurisdiction over Locke token and Ducat token and American CryptoFed no longer needs to register the two tokens with the Commission. American CryptoFed withdrew its Form S1 filing on June 6, 2022 for the reason that the Locke and Ducat tokens are not securities.

ii) If the Answer is "Yes", the Division is then obligated to provide us with a Howey Test to substantiate its "Yes" answer and justify the November 10, 2021 Order Instituting Proceedings. To be clear, this request is not and has never been a request for the Division's internal work product and analysis, whatsoever. As of today, the Division has failed to provide any substantive analysis in support of its position that the Locke and Ducat tokens are securities. In accordance with the plain text of 5 U.S. Code § 556 as shown below, the Division has the burden of proof to show that Locke token and Ducat token are securities, given that the Commission issued the November 10, 2021 Order Instituting Proceedings.

5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; **burden of proof**; evidence; record as basis of decision

(d)Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof**. (Emphasis added).

The Supreme Court ruling in SEC v. W.J. Howey Co., 328 U.S. 293 (1946) stated the following:

The term "investment contract" is undefined by the Securities Act or by relevant legislative reports. But the term was common in many state "blue sky" laws in existence prior to the adoption of the federal statute and, although the term was also undefined by the state laws, it had been broadly construed by state courts so as to afford the investing public a full measure of protection. **Form was disregarded for substance and emphasis was placed upon economic reality.** An investment contract thus came to mean a contract or scheme for "the placing of capital or laying out of money in a way intended to secure income or profit from its employment." State v. Gopher Tire & Rubber Co., 146 Minn. 52, 56, 177 N.W. 937, 938. This definition was uniformly applied by state courts to a variety of situations where individuals were led **to invest money in a common enterprise** with the expectation that they would earn a profit solely through the efforts of the promoter or of some one other than themselves. *SEC v. W.J. Howey Co., 328 U.S. 293 (1946)* at 298. (Emphasis added).

The Division is aware of the Supreme Court ruling above, because on April 3, 2019, the Commission published on its website, [Framework for "Investment Contract" Analysis of Digital Assets], states the following at Note 6:

Whether a contract, scheme, or transaction is an investment contract is a matter of federal, not state, law and does not turn on whether there is a formal contract between parties. Rather, under the **Howey test**, "**form [is] disregarded for substance and the emphasis [is] on economic reality.**" Howey, 328 U.S. at 298. The Supreme Court has further explained that that the term security **"embodies a flexible rather than a static principle"** in order to meet the "variable schemes devised by those who seek the use of the money of others on the promise of profits." Id. at 299. (Emphasis added).

Furthermore, Chair Gary Gensler has repeatedly emphasized that the Commission complies with the Supreme Court's Howey Test to make judgements. There is no legal basis that the Division can carry out enforcement without providing a Howey Test analysis. Below are just three examples of Chair Gary Gensler's policy remarks with which the Division should be well aware.

On May 11, 2022:

My predecessor Jay Clayton said it, and I will reiterate it: Without prejudging any one token, most crypto tokens are investment contracts under the Supreme Court's Howey Test. https://www.sec.gov/news/speech/gensler-remarks-swaps-and-derivatives-association-annual-meeting-051122

On April 4, 2022:

The Supreme Court's 1946 Howey Test, which was about orange groves, says that an investment contract exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.
https://www.sec.gov/news/speech/gensler-remarks-crypto-markets-040422

On Aug. 3, 2021:

The following decade, the Supreme Court took up the definition of an investment contract. This case said an investment contract exists when "a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." The Supreme Court has repeatedly reaffirmed this Howey Test.
https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03

E. Request for a Cease-and-Desist Order

In your June 3, 2022, letter at page 2 - 3, you stated the following:

The Division of Enforcement does not issue orders, that is the role of the Commission. Additionally, while some Commission administrative proceedings are captioned as "Cease and Desist" proceedings (*see, e.g.*, 15 U.S.C. §77h-1), there is no requirement that proceedings take that precise form in order to halt conduct. Here, the Commission's November 10, 2021 Order Instituting Proceedings stays the effectiveness of American CryptoFed's Form 10. At the conclusion of this proceeding, the Division of Enforcement may seek, and the Commission may enter, an order denying or revoking the registration of that Form 10. Neither the Commission nor the Division of Enforcement needs to use the phrase "Cease and Desist" in taking this step.

Given that the Division has failed to provide any substantive analysis in support of its position, we have concluded that the Division is unable to prove that Locke token and Ducat Token are securities. The logical implication is that the Division and the Commission have no jurisdiction over Locke and Ducat tokens. As a result, American CryptoFed should withdraw its Form 10 filing for the reason that the Locke and Ducat tokens are not securities, as we already did for the Form S1 filing.

Please let us know whether the Division agrees with our conclusion that the Division is unable to prove that Locke token and Ducat Token are securities in one week, on or before June 15, 2022. Once we receive the Division's agreement, we will file a Request for Withdrawal of Registration Statement on Form 10. After the withdrawal of both the Form 10 and Form S1 filing becomes effective, American CryptoFed will proceed with implementing its business plan exactly as described in the Form 10 and the Form S1. According to the Division, it is the Form

10 filing and the Form S1 filing that make Locke token and Ducat token securities, not the substance of the business plan itself.

However, if the Division does not agree with our conclusion that the Division is unable to prove that Locke token and Ducat token are securities, and if the Division perceives any violations of related securities laws and wants to prohibit American CryptoFed from implementing the business plan, please seek authorization from the Commission to issue a Cease-and-Desist Order within 30 calendar days, on or before July 8, 2022, as the Division did for the November 10, 2021, Order Instituting Proceedings and the 8(e) Examination Order.

If we do not receive a Cease-and-Desist order by July 8, 2022, including a Howey Test analysis or other legal justifications, we will assume that the Commission and the Division has no intention or authority to stop the implementation of business plan, because the Division is unable to prove that Locke token and Ducat token are securities. American CryptoFed has a critical mission to accomplish and has no choice now but to implement its business plan, while waiting for the Commission's ruling on all the pending motions with patience. We do not complain about the Commission's nondecision and indecision. However, we cannot afford to be left in limbo for any longer. The time is short, but the stakes are high. The Locke token distribution to the contributors will be granted in paper contracts, free of charge. The Locke token refundable auction will be conducted without moving funds. Even after we start the implementation on or after July 8, 2022, Locke tokens will not be allowed to trade until January 1, 2023. Therefore, the Commission can still send a Cease-and-Desist Order with a Howey Test analysis justification by December 31, 2022. All transactions can be reversed easily and timely without causing any inconvenience and damages to anyone. We intentionally allow sufficient time to reverse all the transactions, in case that the Commission decides to send us a Cease-and-Desist order including a Howey Test analysis justifying the Division's position.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 9, 2021

In the Matter of **American CryptoFed DAO LLC,** **Respondent.**	**ORDER DIRECTING EXAMINATION AND DESIGNATING OFFICERS PURSUANT TO SECTION 8(e) OF THE SECURITIES ACT OF 1933**

I.

The Commission's public official files disclose that:

A. American CryptoFed DAO LLC (CIK No. 1881928) ("American CryptoFed") is a Wyoming "Decentralized Autonomous Organization" ("DAO") that was established on July 1, 2021. It is the successor entity to American CryptoFed, Inc., which was incorporated in Wyoming on February 11, 2021. On September 16, 2021, American CryptoFed filed a Form 10 registration statement with the Commission, seeking to register two classes of digital assets, the Ducat token and the Locke token, as equity securities under Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). On September 17, 2021, a day after filing the Form 10, American CryptoFed filed a Form S-1 registration statement (the "Form S-1") seeking to register transactions involving the Ducat and Locke tokens under the Securities Act of 1933 ("Securities Act"). The Form S-1 is not yet effective.

II.

The Commission has information that tends to show that the Form S-1 may be deficient in that it may contain untrue statements of material fact or omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning, among other things, the Form S-1's classification of the Ducat token and the Locke token as securities.

III.

The Commission, deeming such acts and practices, if true, to warrant proceedings pursuant to Section 8(d) of the Securities Act finds it necessary and appropriate and hereby:

ORDERS, pursuant to the provisions of Section 8(e) of the Securities Act that an examination be made to determine whether a stop order should be issued under Section 8(d) of the Securities Act with respect to the Form S-1 and any supplements and amendments thereto; and

FURTHER ORDERS, pursuant to the provisions of Section 8(e) of the Securities Act that for purposes of such investigation, Kristina Littman, Deborah Tarasevich, Martin Zerwitz, Michael Baker, Christopher Bruckmann, John Lucas, Jonathan Austin, Pei Chung, and Elizabeth Doisy, and each of them, are hereby designated as officers of the Commission and are empowered to have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to, and examine, American CryptoFed, or any other person, in respect of any matter relevant to the examination, and may, in their discretion, require the production of a balance sheet exhibiting the assets and liabilities of American CryptoFed or its income statement, or both, to be certified by a public or certified accountant approved by the Commission.

By the Commission.

Vanessa A. Countryman
Secretary

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 6

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 17, 2022

SECURITIES ACT OF 1933
Release No. 11074 / June 17, 2022

In the Matter of **American CryptoFed DAO LLC** **File No. 333-259603**	**ORDER DENYING WITHDRAWAL OF REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

1. American CryptoFed DAO LLC ("American CryptoFed") filed a Form S-1 registration statement with the Commission on September 17, 2021, File No. 333-259603 (the "Registration Statement"). The Registration Statement is still pending. The Registration Statement was filed to register the offer and sale of two crypto assets, the Ducat token and the Locke token.

2. On November 9, 2021, the Commission issued an order pursuant to Section 8(e) of the Securities Act of 1933 ("Securities Act") authorizing the making of an examination to determine whether a stop order should be issued against the Registration Statement pursuant to Section 8(d) of the Securities Act.

3. On May 30, 2022, American CryptoFed informed Commission staff that in July 2022 it would "proceed with implementing its business plan as described in. . . the Form S1 [sic]" and begin distributing Locke tokens despite the Form S-1 not yet being effective.

4. On June 6, 2022, American CryptoFed filed an application to withdraw the Registration Statement pursuant to Rule 477 of Regulation C of the Commission's General Rules and Regulations under the Securities Act, 17 CFR 230.477.

5. After considering American CryptoFed's application and the ongoing examination, the Commission has determined that the granting of the withdrawal request is not consistent with the public interest and the protection of investors.

Accordingly, it is hereby:

ORDERED that American CryptoFed's application to withdraw its Registration Statement on Form S-1 filed September 17, 2021, is denied in accordance with Rule 477.

By the Commission.

Vanessa A. Countryman
Secretary

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 7

June 13, 2022
Via Electronic Email

Justin Dobbie, Acting Office Chief
Office of Finance, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone (202) 551-3469, dobbiej@sec.gov

Re: American CryptoFed DAO LLC
Request for Withdrawal of Registration Statement on Form S-1
File No.: 333-259603

Dear Mr. Dobbie,

Thank you for your email dated on June 13, 2022, requesting American CryptoFed "to file a Form RW WD to voluntarily withdraw the June 6 request for withdrawal of the Form S-1" which was filed with Securities and Exchange Commission ("SEC" or "Commission") on September 17, 2021. I also received your voice mail.

American CryptoFed seeks withdrawal of the Form S-1, because, as we have attested in the S-1, CryptoFed's Locke token and Ducat token are not securities. We will seriously consider your request for withdrawing "the June 6 request for withdrawal of the Form S-1", if you can apply the Howey Test to American CryptoFed's Locke and Ducat tokens to prove that Locke and Ducat are securities, and subject to the SEC's jurisdiction. As of today, the Division of Enforcement is still unable or unwilling to apply a Howey Test analysis to prove that American CryptoFed's Locke and Ducat tokens are securities (Exhibit 2, page 3) as shown below. For your background, I've included the most recent communications with the Division of Enforcement attached to this email as Exhibit 1 through 3.

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "Securities to be registered pursuant to Section 12(g) of the Act" (emphasis added).

Mr. Dobbie, as Acting Office Chief, does your Division or does the Commission have any legal justification to classify Locke and Ducat tokens as **Securities** other than by American CryptoFed's filing of a Form S-1 with the Commission per se?

In accordance with the plain text of 5 U.S. Code § 556 as shown below, your Division and the Commission have the burden of proof to show that Locke token and Ducat token are securities, given that you stated today in both voicemail and email formats that you will seek an order from the Commission to deny American CryptoFed's June 6 request for withdrawal of the Form S-1.

5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; **burden of proof**; evidence; record as basis of decision
(d)Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof**. (Emphasis added).

To avoid any misunderstandings and to comply with the SEC's spirit of disclosure, I have copied your secure email sent to me, under my signature, which we will post on the American CryptoFed DAO website together with this email response.

I look forward to your written reply.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller

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

--- Originally sent by dobbiej@sec.gov on Jun 13, 2022 10:09 AM ---

Mr. Moeller,

I am following up by email on my recent voicemail regarding American CryptoFed.

We have received your request to withdraw your pending Form S-1 that was filed on Form RW on June 6th. As I mentioned in my voicemail, we request that you file a Form RW WD to voluntarily withdraw the June 6 request for withdrawal of the Form S-1. If you do not withdraw the Form S-1 withdrawal request, we intend to recommend that the Commission deny the withdrawal request. If that occurs, any denial order would be publicly available.

You may reach me at (202) 551-3469 with any questions.

Sincerely,

Justin Dobbie

Acting Office Chief

Office of Finance, Division of Corporation Finance

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 8

July 6, 2022

Via Electronic Email

Justin Dobbie, Acting Office Chief,
Office of Finance, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone (202) 551-3469, dobbiej@sec.gov

CC:
Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov

Re: American CryptoFed DAO LLC
Order Denying Withdrawal of Registration Statement under the Securities Act of 1933.
File No.: 333-259603

Mr. Dobbie,

On June 6, 2022, American CryptoFed filed the Request for Withdrawal of Registration Statement on Form S-1. However, on June 17, 2022, the Securities and Exchange Commission ("SEC" or "Commission") issued an ORDER DENYING WITHDRAWAL OF REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 ("Denial Order", Exhibit 1). American CryptoFed DAO is considering filing a motion to lift the Denial Order because the Denial Order does not comply with the US Supreme Court ruling in *Jones v. SEC*, 298 U.S. 1 (1936) cited below. In accordance with the Commission's January 6, 2022 Order, we want to ascertain your position on our motion to lift the Denial Order and set up a time to meet and confer to see if we can come to an agreement. Could you please let us know your preliminary thoughts on this issue and some dates and times after July 11, 2022, to meet and confer?

In both the Form S-1 and Form 10 filed on September 16 and September 17, 2022 respectively, American CryptoFed has included clear statements below that both Locke and Ducat tokens are not securities. Furthermore, these filings also described that **American CryptoFed by design, has No Fund Raising, No Revenue, No Costs, No Profits and No Assets.** No entity can generate securities or an investment contract, whatsoever, if the entity does not have a traditional balance sheet equation of **Assets = Liabilities + Shareholder's Equities**.

This prospectus relates to the registration of two classes of tokens, i) the inflation and deflation protected stable token, Ducat and ii) the governance token, Locke. CryptoFed will not receive any proceeds from the sale of Locke or Ducat tokens. **CryptoFed is registering both Locke and Ducat tokens with the SEC as utility tokens, not as securities.** Registration of the tokens offered under this prospectus does not mean that CryptoFed or Locke token holders will offer or sell Locke or Ducat tokens. The prices which CryptoFed or token holders may sell the tokens in this offering will be determined by the prevailing secondary market price for the tokens. **Filing Form S-1 does not mean CryptoFed concedes that Locke and Ducat are securities.** (Form S-1, page 4).

CryptoFed is registering Locke and Ducat tokens with the SEC as utility tokens, not as securities, for the purpose of disclosure. Form 10 allows CryptoFed to voluntarily become a reporting company for ongoing disclosure purposes and becomes effective sixty (60) days after the initial filing date regardless of whether there are outstanding SEC comments. **Filing Form 10 does not mean CryptoFed concedes that Locke and Ducat tokens are securities.** (Form 10, page 5).

American CryptoFed repeatedly asked the Division of Enforcement to provide a Howey Test Analysis to prove that Locke token and Ducat token are securities. However, the Division of Enforcement refused to do so. On January 23, 2022, American CryptoFed had no choice but to file the RESPONDENT AMERICAN CRYPTOFED DAO LLC'S MOTION FOR LEAVE TO FILE A MOTION ("Motion for Leave to File a Motion"). The purpose is to compel the Division to provide a Howey Test Analysis or other legal justifications to prove that Locke token and Ducat token are securities. More than five months have passed, yet the Commission has not made a decision on this Motion for Leave to File a Motion.

On May 30, 2022, American CryptoFed asked the Division of Enforcement to provide Howey Test Analysis again in a letter stating the following (Exhibit 2, page 2):

If the SEC Division of Enforcement ("Division") perceives any violations of related securities laws and wants to prohibit American CryptoFed from launching the Locke refundable auction, or distributing Locke tokens to contributors, please send CryptoFed a Cease-and-Desist Order within 30 business days, on or before June 30, 2022. This Cease-and-Desist Order should include a Howey Test Analysis or other legal justifications from the Division to prove that Locke token and Ducat token are securities.

However, on June 3, 2022, the Division of Enforcement refused to provide a Howey Test Analysis and stated the following (Exhibit 3, page 3, Emphasis in Original):

Your letter again requests our internal work product and analysis regarding why the Locke and Ducat tokens are securities. As we have explained, repeatedly, this information is privileged and protected from disclosure. We decline to provide it. We also remind you that you choose to register these tokens as securities by filing with the Commission a Form 10 which stated on the cover page that the Locke and Ducat tokens were "**Securities** to be registered pursuant to Section 12(g) of the Act".

On June 8, 2022, American CryptoFed asked the Division of Enforcement the following key question (Exhibit 4, page 4), to which as of today, the Division of Enforcement has not yet responded:

Does the Division have any legal justification to classify Locke and Ducat tokens as Securities other than by American CryptoFed's filing of a Form 10 with the Commission per se?

On June 13, 2022, American CryptoFed also asked you the same question below (Exhibit 5, page 2), to which as of today you have not yet answered as well.

Mr. Dobbie, as Acting Office Chief, does your Division or does the Commission have any legal justification to classify Locke and Ducat tokens as **Securities** other than by American CryptoFed's filing of a Form S-1 with the Commission per se?

In accordance with the plain text of 5 U.S. Code § 556 as shown below, your Division and the Commission have the burden of proof to show that Locke token and Ducat token are securities, given that you stated today in both voicemail and email formats that you will seek an order from the Commission to deny American CryptoFed's June 6 request for withdrawal of the Form S-1.

5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; **burden of proof**; evidence; record as basis of decision

(d)Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof**. (Emphasis added).

In summary, other than by American CryptoFed's filing of a Form S-1 and Form 10 with the Commission per se, no Howey Test Analysis or other legal justification has been provided by the Commission or the Division of Enforcement or the Division of Corporation Finance to prove that Locke and Ducat tokens are securities. Once American CryptoFed issues Locke and Ducat tokens after Form S-1 and Form 10 are withdrawn, these tokens should not be securities. As a result, the facts do not support the statement in the Denial Order below (Exhibit 1, No. 3), which implies that American CryptoFed intends to distribute Locke tokens as securities and violates the related securities laws.

On May 30, 2022, American CryptoFed informed Commission staff that in July 2022 it would "proceed with implementing its business plan as described in. . . the Form S1 [sic]" and begin distributing Locke tokens despite the Form S-1 not yet being effective.

Therefore, American CryptoFed, which is the equivalent to the Petitioner at *Jones v. SEC,* 298 U.S. 1 (1936), meets the following condition specified by Supreme Court ruling:

Petitioner emphatically says that no steps had been taken looking to the issue of the securities; and this is not denied. at 23, *Jones v. SEC, 298 U.S. 1 (1936).*

As of today, no Locke tokens or Ducat tokens have been issued or sold pursuant to the Registration Statement S-1. Because Locke token and Ducat token are not securities, there are no investors, existing or potential, to be affected, under any related securities laws. Except for the Commission, the Division of Enforcement and the Division of Corporation Finance, there are no adversary parties. As a result, the facts do not support the statement in the Denial Order below (Exhibit 1, No. 5) either, which implies that American CryptoFed may damage investors and the public interest.

After considering American CryptoFed's application and the ongoing examination, the Commission has determined that the granting of the withdrawal request is not consistent with the public interest and the protection of investors.

For the reasons set forth above, the Supreme Court ruling in *Jones v. SEC,* 298 U.S. 1 (1936) perfectly applies to American CryptoFed's request for the withdrawal of the Registration Statement Form S -1.

In this proceeding, there being no adversary parties, the filing of the registration statement is in effect an ex parte application for a license to use the mails and the facilities of interstate commerce for the purposes recognized by the act. We are unable to see how any right of the general public can be affected by the withdrawal of such an application before it has gone into effect. **Petitioner emphatically says that no steps had been taken looking to the issue of the securities; and this is not denied.** So far as the record shows, there were no investors, existing or potential, to be affected. The conclusion seems inevitable that an abandonment of the application was of no concern to anyone except the registrant. **The possibility of any other interest in the matter is so shadowy, indefinite, and equivocal that it must be put out of consideration as altogether unreal.** Under these circumstances, the right of the registrant to withdraw his application would seem to be as absolute as the right of any person to withdraw an ungranted application for any other form of privilege in respect of which he is at the time alone concerned. at 23, *Jones v. SEC,* 298 U.S. 1 (1936). (Emphasis added).

The Commission, the Division of Enforcement and the Division of Corporation Finance also violate the Supreme Court ruling in *Jones v. SEC*, 298 U.S. 1 (1936) at 26 and 28 (emphasis added) below, given that they are using a Non-Public Order (Exhibit 6) to perform an investigation, without a Howey Test Analysis or other legal justifications other than by American CryptoFed's filing of a Form S-1 with the Commission per se, which American CryptoFed has already requested to withdraw. In accordance with the opinion of the Supreme Court in *Jones v. SEC,* 298 U.S. 1 (1936) below, not only the Denial Order is unlawful, but also all the subpoenas, the Motions to Seal and Under Seal Notices (Exhibit 7 – 12) initiated by the Division of the Enforcement based on the Denial Order, are also unlawful.

The citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer. **Since here the only disclosed purpose for which the investigation was undertaken had ceased to be legitimate when the registrant rightfully withdrew his statement, the power of the commission to proceed with the inquiry necessarily came to an end. Dissociated from the only ground upon which the inquiry had been based, and no other being specified, further pursuit of the inquiry, obviously, would become what Mr. Justice Holmes characterized as "a fishing expedition . . . for the chance that something discreditable might turn up"** (*Ellis* v. *Interstate Commerce Comm'n,* 237 U.S. 434, 445) — **an undertaking which uniformly has met with judicial condemnation**. *In re Pacific Ry. Comm'n,* 32 Fed. 241, 250; *Kilbourn* v. *Thompson,* 103 U.S. 168, 190, 192, 193, 195, 196; *Boyd* v. *United States,* 116 U.S. 616; *Harriman* v. *Interstate Commerce Comm'n,* 211 U.S. 407, 419; *Federal Trade Comm'n* v. *American Tobacco Co.,* 264 U.S. 298, 305-307. at 26 *Jones v. SEC,* 298 U.S. 1 (1936).

The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. **An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing, to light.** Cf. *Byars v. United States*, 28*28 273 U.S. 28, 29, and cases cited. If the action here of the commission be upheld, it follows that production and inspection may be enforced not only of books and private papers of the guilty, but those of the innocent as well, notwithstanding the proceeding for registration, **so far as the power of the commission is concerned, has been brought to an end by the complete and legal withdrawal of the registration statement.**

Exercise of "such a power would be more pernicious to the innocent than useful to the public"; and approval of it must be denied, if there were no other reason for denial, because, like an unlawful search for evidence, it falls upon the innocent as well as upon the guilty and unjustly confounds the two. *Entick v. Carrington*, 19 Howell's St. Trials, 1030, 1074 — followed by this court in *Boyd v. United States*, 116 U.S. 616, 629-630. No one can read these two great opinions, and the opinions in the Pacific Ry. Comm'n case, from which the foregoing quotation is made, without perceiving how closely allied in principle are the three protective rights of the individual — **that against compulsory self-accusation, that against unlawful searches and seizures, and that against unlawful inquisitorial investigations**. They were among those intolerable abuses of the Star Chamber, which brought that institution to an end at the hands of the Long Parliament in 1640. Even the shortest step in the direction of curtailing one of these rights must be halted *in limine*, lest it serve as a precedent for further advances in the same direction, or for wrongful invasions of the others. at 28 *Jones v. SEC,* 298 U.S. 1 (1936).

Therefore, as shown by the Supreme Court ruling in *Jones v. SEC*, the Commission, the Division of Enforcement and the Division of Corporation Finance should immediately lift the unlawful Denial Order and unlawful investigations through subpoenas and testimonies under the guise of “the public interest and the protection of investors”, while simultaneously the Division of Enforcement initiated two Motions to Seal to hide their investigative actions from the general public.

I look forward to your written response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller

Scott Moeller

President, American CryptoFed DAO

scott.moeller@americancryptofed.org

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 9

July 11, 2022

Via Electronic Email

Justin Dobbie, Acting Office Chief,
Office of Finance, Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone (202) 551-3469, dobbiej@sec.gov

CC:
Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov

Re: American CryptoFed DAO LLC
Order Denying Withdrawal of Registration Statement under the Securities Act of 1933.
File No.: 333-259603

Mr. Dobbie

I'm writing you to follow up on my July 6, 2022 letter starting with the following paragraph requesting a meet and confer with you pursuant to the Commission's January 6, 2022 Order. As this is my second written request, will you respond?

On June 6, 2022, American CryptoFed filed the Request for Withdrawal of Registration Statement on Form S-1. However, on June 17, 2022, the Securities and Exchange Commission ("SEC" or "Commission") issued an ORDER DENYING WITHDRAWAL OF REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 ("Denial Order", Exhibit 1). American CryptoFed DAO is considering filing a motion to lift the Denial Order because the Denial Order does not comply with the US Supreme Court ruling in *Jones v. SEC*, 298 U.S. 1 (1936) cited below. In accordance with the Commission's January 6, 2022 Order, we want to ascertain your position on our motion to lift the Denial Order and set up a time to meet and confer to see if we can come to an agreement. Could you please let us know your

preliminary thoughts on this issue and some dates and times after July 11, 2022, to meet and confer?

As I stated, this letter is my second request for a date and time to meet and confer. If I do not receive your response by July 13, 2022, I will consider that you refuse to have the meet and confer pursuant to the Commission's January 6th, 2022 Order and therefore American CryptoFed will be able to file a Motion for Leave to File a Motion to Lift the Denial Order. From American CryptoFed's perspective, this motion is important, as you can see from my July 6, 2022 letter in which I outlined the facts, cited *Jones v. SEC,* and concluded at page 5-6 the following:

> In accordance with the opinion of the Supreme Court in *Jones v. SEC,* 298 U.S. 1 (1936) below, not only the Denial Order is unlawful, but also all the subpoenas, the Motions to Seal and Under Seal Notices (Exhibit 7 – 12) initiated by the Division of the Enforcement based on the Denial Order, are also unlawful.
>
> Therefore, as shown by the Supreme Court ruling in *Jones v. SEC*, the Commission, the Division of Enforcement and the Division of Corporation Finance should immediately lift the unlawful Denial Order and unlawful investigations through subpoenas and testimonies under the guise of "the public interest and the protection of investors", while simultaneously the Division of Enforcement initiated two Motions to Seal to hide their investigative actions from the general public.

The unlawful Denial Order has enabled the Division of Enforcement to conduct unlawful search and investigations similar to a "police state" characterized by repressive governmental control of political, economic, and social life usually by an arbitrary exercise of power by police and especially secret police in place of regular operation of administrative and judicial organs of the government according to publicly known legal procedures.

About 84 years ago, the Supreme Court in *Jones v. SEC*, 298 U.S. 1 (1936) already anticipated the SEC's abuse of power now experienced by American CryptoFed, and rendered the following opinion regarding the SEC's abuse and unlawful extension of their regulatory power:

> *In re Pacific Ry. Comm'n* involved the power of a Congressional commission to investigate the private affairs, books and papers of officers and employees of certain corporations indebted to the government. That commission called before it the president of one of these

corporations, required the production of private books and papers for inspection, and submitted interrogatories which the witness declined to answer. Acting under the statute, the commission sought a peremptory order from the circuit court to compel the witness to answer the interrogatories. The court, consisting of Mr. Justice Field, Circuit Judge Sawyer, and District Judge Sabin denied the motion of the district attorney for the order [27] and discharged the rule to show cause. Opinions were rendered *seriatim,* the principal one by Justice Field. The authority of the commission was definitely denied. That decision has frequently been cited and approved by this court. Judge Sawyer, in the course of his opinion (at p. 263), after observing that a bill in equity seeking a discovery upon general, loose and vague allegations is styled "a fishing bill," and will, at once, be dismissed on that ground (Story, Eq. Pl. § 325), said: **"A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end."** at 27, *Jones v. SEC*, 298 U.S. 1 (1936), (Emphasis added).

I look forward to your written response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller

Scott Moeller

President, American CryptoFed DAO

scott.moeller@americancryptofed.org

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

RIPPLE LABS, INC., BRADLEY GARLINGHOUSE, and CHRISTIAN A. LARSEN,

Defendants.

20 Civ. 10832 (AT) (SN)

ORDER

ANALISA TORRES, District Judge:

Plaintiff, the United States Securities and Exchange Commission (the "SEC"), brings this action against Defendants Ripple Labs, Inc. ("Ripple"), and two of its senior leaders, Bradley Garlinghouse and Christian A. Larsen, alleging that Defendants engaged in the unlawful offer and sale of securities in violation of Section 5 of the Securities Act of 1933 ("Section 5"), 15 U.S.C. §§ 77e(a) and (c). Amend. Compl. ¶ 9, ECF No. 46. Ripple asserts, as an affirmative defense, that it lacked "fair notice that its conduct was in violation of law, in contravention of Ripple's due process rights." Answer, Affirmative Defenses at 97–99, ECF No. 51. The SEC moves to strike Ripple's fair notice defense under Federal Rule of Civil Procedure 12(f). SEC Mot., ECF No. 128. For the reasons stated below, the SEC's motion is DENIED.

BACKGROUND

The following facts are taken from Ripple's answer and are presumed to be true solely for the purpose of considering the motion to strike. *See Tradeshift, Inc. v. Smucker Servs. Co.*, No. 20 Civ. 3661, 2021 WL 4463109, at *4 (S.D.N.Y. Sept. 29, 2021).

Ripple was founded in 2012 as a "privately-held payments technology company that uses blockchain innovation . . . to allow money to be sent around the world instantly, reliably, and more cheaply than traditional avenues of money transmission." Answer, Preliminary Statement

¶ 6 (footnote omitted). Ripple holds a large percentage of XRP, *id.* ¶ 11, "a fast, efficient and scalable digital asset" that "is transacted on the cryptographic XRP Ledger," *id.* ¶ 7. XRP has a "fully functional ecosystem and [has] utility as a bridge currency" and other types of currency uses. *Id.* ¶ 13. XRP's price is not and has not been determined by Ripple's activities. *Id.* Rather, the market prices XRP in correlation with other virtual currencies, including bitcoin and ether. *Id.* Ripple has not filed a registration statement for XRP with the SEC. Answer, Response ¶ 1.

In February and October 2012, at Ripple's request, a law firm provided two legal memoranda assessing the potential legal risks involved with Ripple's then-proposed business plans, including risks related to banking and money transmission laws, securities laws, commodities laws, gambling laws, consumer protection laws, copyright laws, criminal laws, and tax laws. *See id.* ¶ 51.

Ripple has sold XRP in exchange for fiat or other currencies. *Id.* ¶ 1. To effectuate those sales, Ripple worked with third-party companies known as "market makers" that buy and sell XRP "on-ledger and on exchanges through blind bid/ask transactions." *Id.* ¶ 93. At times, Ripple has included on its website a list of third-party digital asset exchanges that listed XRP. *Id.* ¶ 97. Ripple concedes that Ripple employees at times observed the trading price and volume of XRP. *Id.* ¶ 193. Ripple also admits that proceeds from Ripple's sales of XRP were used to support Ripple's operations, *id.* ¶ 294, but maintains that its sales of XRP consistently constituted a small portion of XRP trading volume, *id.* ¶ 99. In addition to selling XRP, Ripple has also made certain payments in XRP as a virtual currency substituting for fiat currency. *Id.* ¶¶ 83, 127.

Ripple claims that it has not sold XRP as an investment. Answer, Preliminary Statement ¶ 9. XRP holders do not acquire any claim to the assets of Ripple, hold any ownership interest in Ripple, or have any entitlement to share in Ripple's future profits. *Id*. Ripple did not hold an "initial coin offering" ("ICO")[1]; "offer[] or contract[] to sell future tokens as a way to raise money to build an ecosystem;" or promise profits to any XRP holder. *Id.* Ripple also has no relationship with the majority of XRP holders, nearly all of whom purchased XRP from third parties on the open market. *Id*. Moreover, Ripple has no obligation to any counterparty to expend efforts on their behalf, and does not pool proceeds of XRP sales in a "common enterprise." *Id*. ¶ 10. Indeed, "Ripple has its own equity shareholders who purchased shares in traditional venture capital funding rounds and who . . . did contribute capital to fund Ripple's operations, do have a claim on its future profits, and obtained their shares through a lawful (and unchallenged) exempt private offering." *Id*. ¶ 13. Ripple claims that if it ceased to function tomorrow, XRP "would continue to survive and trade in its fully developed ecosystem." *Id*. ¶ 10.

Ripple states that it has "worked to develop products that utilize XRP to allow financial institutions to effect currency transfers." Answer, Response ¶ 67. One of those products is "On-Demand Liquidity" ("ODL"), which is intended to effect cross-border payments. *Id*. ¶ 131. Ripple asserts that it has made certain payments in XRP as a virtual currency in connection with ODL, "in accordance with standard market practices in connection with new products and markets." *Id*.

[1] Ripple states that an ICO "commonly describes a fundraising mechanism where an entity sells directly to investors a digital asset that has no functionality or utility yet, as a means of raising funds for the operations of the entity." Answer, Preliminary Statement ¶ 9 n.4. An ICO "typically involves the release of a white paper by the token issuer to prospective investors describing, among other issues, how the token and the system would function in the future; how the funds raised will be allocated; and what future efforts will be undertaken by the issuer to develop the system and drive returns on the token's price." *Id*.

XRP II, LLC ("XRP II") is a wholly-owned subsidiary of Ripple. *Id.* ¶ 19. XRP II is registered as a money service business with the Financial Crimes Enforcement Network ("FinCEN") and is licensed by the New York Department of Financial Services to conduct certain virtual currency business activities. *Id.* In May 2015, Ripple and XRP II entered into a settlement agreement with the Department of Justice and FinCEN, which refers to XRP as a "convertible virtual currency." *Id.* ¶ 379.

On May 16, 2017, Ripple announced that "it would place 55 billion XRP into an escrow on the XRP Ledger, and thereafter implemented the escrow of that XRP." *Id.* ¶ 191.

In June 2018, the SEC's then-Director of Corporate Finance stated that the SEC did not consider the virtual currencies bitcoin or ether to be securities, and that it would "put[] aside the fundraising that accompanied the creation of [e]ther" and look instead at the "present state of [e]ther." Answer, Affirmative Defenses at 98 (alterations in original). And, in 2019, SEC staff met with a digital asset platform that was considering listing XRP. *Id.* That platform sought guidance on whether the SEC considered XRP a security. *Id.* During the meeting, the SEC did not say that it considered XRP to be a security. *Id.* The platform then proceeded to list XRP. *Id.* SEC officials have also stated publicly that digital assets may be considered securities under certain circumstances.[2]

Before the SEC filed the complaint in this action, "XRP was listed on over 200 exchanges, billions of dollars in XRP was bought and sold each month, numerous market makers engaged in daily XRP transactions, Ripple's ODL product was used by many customers, and

[2] *See*, *e.g.*, SEC, No. 81207, Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (2017), https://www.sec.gov/litigation/investreport/34-81207.pdf; SEC Chairman Jay Clayton, Statement on Cryptocurrencies and Initial Coin Offerings (Dec. 11, 2017), https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11; Jay Clayton & J. Christopher Giancarlo, *Regulators are Looking at Cryptocurrency*, WALL ST. J. (Jan. 24, 2018), https://www.wsj.com/articles/regulators-are-looking-at-cryptocurrency-1516836363. The Court shall consider these statements only to the extent they establish that SEC leadership and employees made certain statements. *See United States v. Strock*, 982 F.3d 51, 63 (2d Cir. 2020).

XRP was used in third-party products, many of which were developed independently of Ripple." *Id*. at 96.[3]

ANALYSIS

I. Legal Standard

Under Federal Rule of Civil Procedure 12(f), a court may strike from a pleading any "insufficient defense." Fed. R. Civ. P. 12(f). Motions to strike an affirmative defense are disfavored and should generally not be granted. *SEC v. Thrasher*, No. 92 Civ. 6987, 1995 WL 456402, at *5 (S.D.N.Y. Aug. 2, 1995); *see also SEC v. Honig*, No. 18 Civ. 8175, 2021 WL 5630804, at *4 (S.D.N.Y. Nov. 30, 2021). In ruling on such a motion, courts "deem the non-moving party's well-pleaded facts to be admitted, draw all reasonable inferences in the pleader's favor, and resolve all doubts in favor of denying the motion to strike." *Tradeshift*, 2021 WL 4463109, at *4 (citation omitted).

To succeed on a motion to strike an affirmative defense, the SEC must "show that: (1) there is no question of fact which might allow the defense to succeed; (2) there is no question of

[3] The SEC asks the Court to take judicial notice of 72 SEC enforcement actions enumerated in an appendix to a report created by a private entity (the "Report"). *See* SEC Reply Mem. at 4–5 & n.2, ECF No. 205; *see also* Report at 12–18, ECF 205-1. The SEC argues that the Court may take judicial notice of the complaints and charging documents listed in the appendix because they are public records. *See* SEC Reply Mem. at 5 n.2. The Court agrees that it may take judicial notice of these filings to the extent that they "establish the fact of such litigation and related filings." *Glob. Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006) (citation omitted). But here, the SEC appears to argue that the Court should accept that these enforcement actions "related to digital assets," and that a subset of these actions "alleged an unregistered securities offering in violation of Section 5." SEC Reply Mem. at 4–5. The SEC also asks the Court to accept that "each of these actions was premised on the allegation that the investment product at issue was a 'security' subject to the provisions of the federal securities laws." *Id*. at 5. To the extent that the SEC urges the Court to adopt this characterization of these enforcement actions, the Court rejects such a suggestion because the Report's analysis and conclusions with respect to these actions are not proper subjects for judicial notice. *See Abraham v. Town of Huntington*, No. 17 Civ. 3616, 2018 WL 2304779, at *9 (E.D.N.Y. May 21, 2018). Moreover, to the extent that the SEC requests that the Court parse each of these filings to determine the underlying facts and legal basis for the enforcement actions and draw conclusions that they are similar to the enforcement action taken against Ripple, the Court declines to do so. Ripple disputes the SEC's interpretation of these filings, *see* Ripple Sur-Reply at 5–6, at ECF No. 423; *cf. White Plains Hous. Auth. v. Getty Properties Corp.*, No. 13 Civ. 6282, 2014 WL 7183991, at *3 (S.D.N.Y. Dec. 16, 2014), and the Court finds that such an assessment would be improper in resolving a motion to strike, *cf. Glob. Network Commc'ns*, 458 F.3d at 157.

law which might allow the defense to succeed; and (3) the plaintiff would be prejudiced by inclusion of the defense." *Town & Country Linen Corp. v. Ingenious Designs LLC*, No. 18 Civ. 5075, 2020 WL 3472597, at *5 (S.D.N.Y. June 25, 2020) (quoting *GEOMC Co. v. Calmare Therapeutics Inc.*, 918 F.3d 92, 96 (2d Cir. 2019)).

With respect to the first factor, "the plausibility standard of *Twombly* applies to determining the sufficiency of all pleadings, including the pleading of an affirmative defense." *GEOMC*, 918 F.3d at 98 (discussing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Therefore, the pleading party, here Ripple, must support its defenses with enough factual allegations to make them plausible. *Id.* at 99. That said, courts generally apply a lower plausibility threshold when evaluating motions to strike affirmative defenses as opposed to motions to dismiss because the pleader has less time to gather facts and craft a response. *See id.* at 98. As to the second factor, "an affirmative defense is improper and should be stricken if it is a legally insufficient basis for precluding a plaintiff from prevailing on its claims." *Id.* Furthermore, in considering the third factor, courts generally look to when the defense was presented. *Id.* "A factually sufficient and legally valid defense should always be allowed if timely filed even if it will prejudice the plaintiff by expanding the scope of the litigation" because "[a] defendant with such a defense is entitled to a full opportunity to assert it and have it adjudicated before a plaintiff may impose liability." *Id.*

II. Application

"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). But, "the degree of vagueness that the Constitution tolerates" often depends, at least in part, on the type of law at issue. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982). Courts, therefore, find that "economic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action." *Id*. (footnotes omitted). The Supreme Court has also expressed greater tolerance of enactments with civil penalties because "the consequences of imprecision are qualitatively less severe." *Id*. at 498–99.

As an affirmative defense, Ripple pleads that it lacked, and the SEC failed to provide, "fair notice that its conduct was in violation of law, in contravention of Ripple's due process rights." Answer, Affirmative Defenses at 97. The SEC argues that the Court should strike this defense at the pleadings stage because it is a "legally insufficient defense on which Ripple cannot prevail as a matter of law." SEC Mem. at 16, ECF No. 132. The SEC also contends that it would be prejudiced by Ripple's defense because the defense would lead Ripple to seek intrusive discovery. *Id*. at 30. After considering the SEC's arguments, the Court holds that the SEC has not met its burden of showing that Ripple's fair notice defense should be stricken at this time.

The parties agree that Ripple is not bringing a facial challenge to the statute. *See* SEC Mem. at 16; Ripple Mem. at 15, ECF No. 172. Because the Court is reviewing an "as applied" challenge, the Court shall consider "the application of the challenged statute to the person

challenging the statute based on the charged conduct." *United States v. Smith*, 985 F. Supp. 2d 547, 592–93 (S.D.N.Y. 2014), *aff'd sub nom. United States v. Halloran*, 664 F. App'x 23 (2d Cir. 2016). Such a consideration requires the Court to evaluate whether a law can be constitutionally applied to the challenger's individual circumstances. *Copeland v. Vance*, 893 F.3d 101, 110 (2d Cir. 2018). This assessment cannot be conducted in the abstract; rather, the Court must consider whether the party claiming a lack of notice has shown "that the statute in question provided insufficient notice that his or her behavior at issue . . . was prohibited." *Id*. at 117 (quotation marks omitted). Therefore, the Court must first determine what Ripple *did* before assessing whether the statute fairly apprised Ripple that its conduct was prohibited. *Cf. id.*

At the pleading stage, the Court's examination of Ripple's conduct is limited to facts pleaded in Ripple's answer, the undisputed facts in the amended complaint, and any fact of which the Court may properly take judicial notice. As discussed above, Ripple states that XRP's price bears no relation to Ripple's activities. Answer, Preliminary Statement ¶ 13. It also asserts that it has not sold XRP as an investment, and that it has no relationship with the vast majority of XRP holders. *Id*. ¶ 9. At the very least, these facts, if true, would raise legal questions as to whether Ripple had fair notice that the term "investment contract" covered its distribution of XRP, and the Court may need to consider these questions more deeply. *Cf. SEC v. W.J. Howey Co.*, 328 U.S. 293, 299, 301 (1946). Thus, accepting all of Ripple's pleaded facts as true and drawing all reasonable inferences in Ripple's favor, as the Court must do at this stage, it concludes that the SEC has not met its burden of demonstrating that there are no questions of fact or law that might allow the defense to succeed. *See Town & Country Linen*, 2020 WL 3472597, at *5; *see also GEOMC*, 918 F.3d at 96–99.

None of the cases cited by the SEC support a contrary result. In some of these cases, the courts assessing a fair notice defense did so when ruling on a motion to dismiss, where the court was obligated to draw presumptions and inferences in favor of the SEC. *See United States v. Zaslavskiy*, No. 17 Cr. 647, 2018 WL 4346339, at *8 (E.D.N.Y. Sept. 11, 2018); *SEC v. Fife*, No. 20 Civ. 5227, 2021 WL 5998525, at *7 (N.D. Ill. Dec. 20, 2021); *United States v. Bowdoin*, 770 F. Supp. 2d 142, 146–49 (D.D.C. 2011). Other courts analyzed this issue in ruling on motions for summary judgment, with the benefit of a fully developed factual record. *See SEC v. Keener*, No. 20 Civ. 21254, 2022 WL 196283, at *13–14 (S.D. Fla. Jan. 21, 2022); *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 182–84 (S.D.N.Y. 2020). And, a couple of courts addressed facial challenges to the term "investment contract," where the courts' analysis did not depend on the particular facts of the case. *See SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1052 n.6 (2d Cir. 1973)[4]; *Bowdoin*, 770 F. Supp. 2d at 149. Moreover, the cases cited by the SEC in which courts did strike affirmative defenses at the pleadings stage dealt with equitable defenses that generally cannot be brought against the SEC. *See* SEC Reply Mem. at 7–8, ECF No. 205; *see also*, *e.g.*, *SEC v. KPMG LLP*, No. 03 Civ. 671, 2003 WL 21976733, at *2–4 (S.D.N.Y. Aug. 20, 2003) (striking estoppel, waiver, and unclean hands defenses); *SEC v. McCaskey*, 56 F. Supp. 2d 323, 327 (S.D.N.Y. 1999) (striking laches defense). In short, the SEC

[4] The SEC appears to contend that the statements in *Brigadoon* were made during the Second Circuit's assessment of an as-applied challenge, and that the Second Circuit, therefore, made a broad statement prohibiting a party from ever being able to bring a vagueness challenge to the term "investment contract." *See* SEC Mem. at 24. The Court does not find that *Brigadoon* stands for that proposition. Because of the procedural posture of the case—an appeal from decisions granting and denying enforcement of subpoenas—the Second Circuit specifically disclaimed any assessment of the regulated parties' activities. *See Brigadoon*, 480 F.2d at 1052. And, the Second Circuit characterizes the regulated parties' challenge to the term "investment contract" as an argument that the term "is void for vagueness," without any reference to their conduct. *See id*. at 1052 n.6.

has cited no caselaw where a court has stricken a fair notice affirmative defense at the pleadings stage, and the Court is not persuaded that doing so is appropriate here.[5]

Moreover, the SEC has not shown that it will suffer undue prejudice as a result of the continuation of Ripple's fair notice defense. An increase in the time, expense and complexity of a trial may constitute sufficient prejudice to warrant granting a plaintiff's motion to strike. *Thrasher*, 1995 WL 456402, at *5. However, a sufficiently pleaded defense "should always be allowed if timely filed even if it will prejudice the [SEC] by expanding the scope of the litigation." *GEOMC*, 918 F.3d at 98. The SEC does not contend that Ripple's affirmative defense is untimely, and the Court shall not conclude, at this early stage of the case, that Ripple's defense is invalid.

Accordingly, the SEC's motion to strike Ripple's fair notice affirmative defense is DENIED.

CONCLUSION

For the foregoing reasons, the SEC's motion is DENIED. The Clerk of Court is directed to terminate the motion at ECF No. 128.

SO ORDERED.

Dated: March 11, 2022
New York, New York

ANALISA TORRES
United States District Judge

[5] Because these factual and legal questions are relevant to any form of as-applied fair notice- or vagueness-based legal challenge, this result would be the same under both sides' proposed articulation of the fair notice test. The Court, therefore, need not reach the issue of how Ripple's fair notice defense should be assessed at a later stage in the litigation. The Court, however, notes that the evaluation of any fair notice defense is objective—it does not require inquiry into "whether a particular [party] actually received a warning that alerted him or her to the danger of being held to account for the behavior in question." *Smith*, 985 F. Supp. 2d at 587.

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 11

Am. CryptoFed DAO Exhibit 12

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

October 8, 2021

Marian Orr
Chief Executive Officer
American CryptoFed DAO LLC
1607 Capitol Avenue Suite 327
Cheyenne, WY 82001

Re: American CryptoFed DAO LLC
Registration Statement on Form S-1
Filed September 17, 2021
File No. 333-259603

Dear Ms. Orr:

Our preliminary review of your filing indicates that it fails to comply with the requirements of the Securities Act of 1933, the related rules and regulations, and the requirements of the form. Because of these serious deficiencies, you should not assume that your filing may be relied upon for the purposes of Section 5(c) or for compliance with any other rule or regulation.

We will not perform a detailed examination of the filing and we will not issue comments on the filing at this time. We suggest that you consider filing a substantive amendment to correct the deficiencies. If you were to request acceleration of the effective date of the filing in its present form, we would likely recommend that the Commission deny your request.

Please contact Erin Purnell, Acting Legal Branch Chief, at (202) 551-3454 with any questions.

Sincerely,

Division of Corporation Finance
Office of Finance

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 12

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

October 8, 2021

Marian Orr
Chief Executive Officer
American CryptoFed DAO LLC
1607 Capitol Avenue Suite 327
Cheyenne, WY 82001

Re: American CryptoFed DAO LLC
Registration Statement on Form 10
Filed September 16, 2021
File No. 000-56339

Dear Ms. Orr:

Our initial review of your registration statement indicates that it fails in numerous material respects to comply with the requirements of the Securities Exchange Act of 1934, the rules and regulations thereunder and the requirements of the form. More specifically,

- you have not included the financial information required by Items 303 and 305 of Regulation S-K and audited and interim financial statements required by Article 3 or Article 8 of Regulation S-X, as applicable;
- your disclosure on pages 6-29 does not present a clear and complete description of the general development of the business of the registrant or the terms, rights and obligations of the securities to be registered, as required by Items 101 and 202 of Regulation S-K, respectively;
- your registration statement does not include numerous other disclosure items that are required by Form 10, such as 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, and exhibits that are required to be filed by Item 601 of Regulation S-K;
- you state your intention to file a Form S-8 upon the effectiveness of the Form 10 in 60 days, but you do not appear eligible to conduct the distributions you describe on such form; and
- you state throughout the registration statement that the Ducat and Locke tokens are not securities, which is inconsistent with your statement on the cover page and your use of this Form 10 to register the tokens as securities under Section 12(g) of the Exchange Act.

This registration statement will become effective on November 15, 2021. If the registration statement were to become effective in its present form, we would be required to consider what recommendation, if any, we should make to the Commission. We suggest that you consider filing a substantive amendment correcting the deficiencies or a request for withdrawal of the registration statement before it becomes effective.

Please contact Erin Purnell, Acting Legal Branch Chief, at (202) 551-3454 with any questions.

Sincerely,

Division of Corporation Finance
Office of Finance

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 13

October 12, 2021

Via Electronic Submission and Email

Chairman and Commissioners
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Gary Gensler, 202-551-2100, Chair@sec.gov
Allison Herren Lee, (202) 551-2800, CommissionerLee@sec.gov
Hester M. Peirce, (202) 551-5080, CommissionerPeirce@sec.gov
Elad L. Roisman, (202) 551-2700, CommissionerRoisman@sec.gov
Caroline A. Crenshaw, (202) 551-5070, CommissionerCrenshaw@sec.gov
and
Erin Purnell, Acting Legal Branch Chief, Division of Finance,
(202) 551-3454, PurnellE@sec.gov

Re: American CryptoFed DAO LLC
Form 10 Filing No. 000-56339
Form S-1 Filing No. 333-259603

Dear SEC Commissioners and Staff,

My name is Marian Orr, and I serve as the CEO of American CryptoFed DAO (CryptoFed). Prior to CryptoFed, I was the mayor of Cheyenne, Wyoming (January 2017- January 2021).

On October 8, 2021, Ms. Purnell sent us two letters entitled "American CryptoFed DAO LLC Registration Statement on Form S-1" attached to this correspondence as **Exhibit B** and "American CryptoFed DAO LLC Registration Statement on Form 10" attached as **Exhibit C**, following our letter to Commissioner Peirce one day prior entitled "American CryptoFed DAO's

Filings of Form 10 and Form S-1" attached as **Exhibit A.** These three letters can provide you the basic background as to why I am writing to you now to request your assistance.

Chair Gensler stated on August 3, 2021 at the Aspen Security Forum:
"We already live in an age of digital public monies — the dollar, euro, sterling, yen, yuan. If that wasn't obvious before the pandemic, it has become eminently clear over the last year that we increasingly transact online.
Such public fiat monies fulfill the three functions of money: a store of value, unit of account, and medium of exchange.
No single crypto asset, though, broadly fulfills all the functions of money."[1] (Emphasis added).

However, after CryptoFed's Form 10 filing on September 16, 2021, and Form S-1 on the September 16, 2021, **Chairman Gensler's statement above is no longer true.**

The dollar, the euro, the pound and the yen have all failed to create effective demand for more than a decade, even at negative real interest rates per their central banks' monetary policies. At the same time, when those governments recently started deploying fiscal policies in an attempt to stimulate their economies, their central banks no longer have the capacity to raise interest rates to deter and cure inflation without risking derailing their economies which are already heavily burdened by huge debt accumulation. The existing monetary system of the Federal Reserve, combining money supply function, lending function and fractional reserve banking, has reached its limits and is unable to fulfil its dual mandate of price stability and maximum employment. The existing monetary systems of central banks based on fractional reserve banking have not only ended in a liquidity trap, but also a debt trap, from which they have no way out.

In our Form 10 and Form S-1 filings, with a point-by-point comparison to the Fed, we have systematically and scientifically presented how CryptoFed, as a decentralized autonomous blockchain-based monetary system, can solve the institutional and functional flaws plaguing all existing monetary systems of major central banks which Chairman Gensler enumerated as "digital public monies — the dollar, euro, sterling, yen, yuan" above.

[1] https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03

If Ms. Purnell was guided by Chairman Gensler's statement "No single crypto asset, though, broadly fulfills all the functions of money", we understand why she would have concluded that our Form 10 and Form S-1 filing has "deficiencies".

However, if Ms. Purnell compares our Form 10 and Form S-1 filing to the "digital public monies — the dollar, euro, sterling, yen, yuan" Chairman Gensler listed above, the "deficiencies" she referred to, would disappear immediately. This is because the "deficiencies" she referred to were the lack of attributes inherent to securities. These are attributes that the two tokens (Locke and Ducat) of a decentralized blockchain-based CryptoFed monetary system will never have.

In her letter regarding Form S-1 (Exhibit B), Ms. Purnell did not provide specific arguments to support her position. Let me then focus on rebutting her written arguments point by point regarding Form 10 (Exhibit C) to further illustrate my explanation.

1. *"...you have not included the financial information required by Items 303 and 305 of Regulation S-K and audited and interim financial statements required by Article 3 or Article 8 of Regulation S-X, as applicable;"*

On pages 23-25, Section 2.5 of Form 10 filing, we clearly explain CryptoFed does not have and will never have any revenue or costs. As Bitcoin uses its own native token BTC to reward miners for doing work to maintain its network, so does CryptoFed. From the perspective of both the Bitcoin network and the CryptoFed network, there is no revenue or costs borne by the networks. The revenue and costs are on the recipient side of token rewards, not on the side of the Bitcoin or CryptoFed networks. For both Bitcoin and CryptoFed there are no financial information or statement to be provided or audited.

2. *"...your disclosure on pages 6-29 does not present a clear and complete description of the general development of the business of the registrant or the terms, rights and obligations of the securities to be registered, as required by Items 101 and 202 of Regulation S-K, respectively;"*

On page 10, we state "To the extent that no entity has a similar mission, CryptoFed does not have direct competition. Central banks, including the Federal Reserve System, are close competitors, but CryptoFed fundamentally differentiates from central banks in the following aspects outlined below." Then, we compare CryptoFed with the Fed point by point in detail in all the major aspects of a monetary system: **Inflation Target, Fiscal Policy Tools, Money Supply Mechanism, Monetary Policy Tools, Inflation Control for Stable Price Mandate, Effective Demand for Maximum Employment, Boom and Bust Business Cycles (Economic Expansion and Contraction), Money Supply Automation and Open Market Operations.**

As a matter of fact, the CryptoFed money supply mechanism is akin to "The Chicago Plan" which was proposed and supported by a large number of leading U.S. macroeconomists, including professor Henry Simons of the University of Chicago and Irving Fisher of Yale University, following the Great Depression in the 1930's. The primary difference is that CryptoFed pursues a denationalization of its money supply mechanism, while The Chicago Plan pursues the nationalization of a money supply mechanism, just not through banks. The "The Chicago Plan" was revisited by IMF after the housing bubble collapse in 2008. In 2012, IMF published a paper entitled "The Chicago Plan Revisited" which validates CryptoFed's 100% reserve banking model for decoupling money supply function from bank lending function. [2]

We have provided all these detailed descriptions with academic supporting papers in our Form 10 filing. Ms. Purnell failed to specify what is missing in order to "present a clear and complete description of the general development of the business of the registrant" as a monetary system.

The CryptoFed Constitution attached as Exhibit 1 of the Form 10 filing, is specially mentioned four times (page 8, 10, 18 and 21) outlining the rights and obligations of Locke and Ducat. Furthermore, on page 31, Section 6, [Item 4: Security Ownership of Certain Beneficial Owners and Management], we clearly state "As the founding organization, MShift is the sole member of

[2] Jaromir Benes and Michael Kumhof, 2012, page 4 - 5, The Chicago Plan Revisited, IMF Working Paper, https://www.imf.org/external/pubs/ft/wp/2012/wp12202.pdf

CryptoFed whose powers and rights will completely and irreversibly become delegated to Locke token holders as defined in the CryptoFed Constitution."

Ms. Purnell did not identify what specific rights and obligations are missing. We should have freedom to define the rights and obligations of tokens via the CryptoFed Constitution. By providing the CryptoFed Constitution, we should meet the disclosure purpose of Form 10 filing.

3. *"...your registration statement does not include numerous other disclosure items that are required by Form 10, such as 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, and exhibits that are required to be filed by Item 601 of Regulation S-K;"*

The facts do not support Ms. Purnell's statement. From page 31-33, we disclose:

i. Executive Compensation Table

We disclosed that I am the only executive, and my compensation is disclosed on page 32, Form 10, Section 8. Item 6: Executive Compensation and on page 3-4, Section 4.4, the CryptoFed Constitution (Exhibit 1).

As a DAO (Decentralized Autonomous Organization), by design, there is no hierarchy, such as an executive branch, board of directors, or advisory board at CryptoFed. For the time being, the current Chief Executive Officer (CEO) is the only executive, a symbolic position held by me, to communicate with regulators, together with MShift, because regulators, such as SEC, may still require contact people and the founding company to be responsible for document filings.

ii. Beneficial Ownership Table

We disclosed that MShift Inc is the sole Beneficial Owner as of the time of filing on page 31, Form 10, Section 6. Item 4: Security Ownership of Certain Beneficial

Owners and Management. and on page 3, Section 4.1, the CryptoFed Constitution (Exhibit 1).

CryptoFed is a Wyoming DAO LLC and does not issue any securities. As the founding organization, MShift is the sole member of CryptoFed whose powers and rights will completely and irreversibly become delegated to Locke token holders as defined in the CryptoFed Constitution. However, the delegation of powers and rights will become automatically effective after CryptoFed completes its Form S-1 filing with the SEC for Locke and Ducat token registration. MShift has not formally started executing the initial allocation plan for the Locke token discussed in Item1: Business yet.

iii. Exhibits Required by Item 601 of Regulation S-K

We filed Exhibit 1 the CryptoFed Constitution (Bylaws), Exhibit 3 Articles of Organization and Exhibit 2 the Ducat Economic Zone which is a material contract which we will discuss with important partners, such as merchants, banks, compliant exchanges, and local governments.

4. *"...you state your intention to file a Form S-8 upon the effectiveness of the Form 10 in 60 days, but you do not appear eligible to conduct the distributions you describe on such form;"*

Ms. Purnell did not provide any supporting legal arguments as to why CryptoFed is not eligible to file a Form S-8 upon the effectiveness of the Form 10, although we have disclosed on page 12-13, Section 14.6, of the CryptoFed Constitution as below:

"This Constitution will serve as the Equity Incentive Plan for CryptoFed to issue non-qualified stock options and incentive stock options (ISO) to service providers defined as directors, employees, and consultants pursuant to related laws and regulations." After the Form 10 filing becomes effective, all stock options will be subject to laws and regulations regarding equity incentive plans for a public company. Within one week after the Form 10

filing, CryptoFed will file Form S-8 and thereby extend the equity incentive plan to service providers beyond 500-person threshold limitation of related securities laws."

5. *"…you state throughout the registration statement that the Ducat and Locke tokens are not securities, which is inconsistent with your statement on the cover page and your use of this Form 10 to register the tokens as securities under Section 12(g) of the Exchange Act."*

Currently, SEC does not provide a better form than the Form 10 for CryptoFed to disclose information to the SEC and the general public. If we had not filed Form 10 for disclosure, the SEC could possibly prosecute CryptoFed under the leadership of Chairman Gensler who publicly stated on August 3, 2021 "**No single crypto asset**, though, broadly fulfills all the functions of money."[3] (Emphasis added). In other words, it is apparent that Chairman Gensler believes that every single asset is subject to the SEC's jurisdiction.

CryptoFed had no choice but to file Form 10 to avoid prosecution.

Ms. Purnell failed to identify and specify one single item of important information, which does exist, but we did not disclose. Ms. Purnell concluded our Form 10 filing has "deficiencies" by asking us to provide information which does not exist. We believe that Ms. Purnell emphasizes form rather than substance. If she followed the SEC's own [Framework for "Investment Contract" Analysis of Digital Assets], Note 6 below to first find out whether the information does exist, but we have failed to provide, and then analyze whether there are deficiencies, she would agree with us that we have met all the disclosure requirements.

[Rather, under the Howey test, **"form [is] disregarded for substance and the emphasis [is] on economic reality."** Howey, 328 U.S. at 298. The Supreme Court has further explained that that the term security **"embodies a flexible rather than a static principle"**…...][4] (emphasis added).

[3] https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03
[4] https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets

From the perspective of disclosing all existing material and substantial information, CryptoFed has met the disclosure requirements. If we are asked to disclose information which does not exist and will never exist, it is highly possible that the Securities Laws were not designed for the CryptoFed monetary system and should not apply to CryptoFed.

If the SEC is not ready to make a declaration that CryptoFed is out of the SEC's jurisdiction, to meet the spirit of Securities Laws' transparency and disclosure, please allow our Form 10 filing to become effective in time so that we can continue disclosing material and substantial information to related parties and the general public. If SEC identifies any material and substantial information which does exist, but we have failed to disclose, please do not hesitate to let us know exactly what it is. We fully intend to comply with the SEC's requirements. What we are unable to do is to disclose information to the SEC and the general public, which does not exist and will never exist. Also, for the same reason, we believe that the SEC should continue reviewing our Form S-1 and declare its effectiveness without unreasonable delay.

I look forward to hearing from you.

Sincerely yours,

DocuSigned by:
Marian Orr
AE52AD38E6AC4EC...

Marian Orr
CEO, American CryptoFed DAO

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 14

October 29, 2021

Via Electronic Submission and Email

Deborah Tarasevich, Assistant Director, Cyber Unit,
Division of Enforcement, U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone, (202) 551-4726, Email: TarasevichD@sec.gov

CC: Chairman and Commissioners
Gary Gensler, 202-551-2100, Chair@sec.gov
Allison Herren Lee, (202) 551-2800, CommissionerLee@sec.gov
Hester M. Peirce, (202) 551-5080, CommissionerPeirce@sec.gov
Elad L. Roisman, (202) 551-2700, CommissionerRoisman@sec.gov
Caroline A. Crenshaw, (202) 551-5070, CommissionerCrenshaw@sec.gov
and
Erin Purnell, Acting Legal Branch Chief, Division of Finance,
(202) 551-3454, PurnellE@sec.gov,
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov

Re: Response to "In the Matter of American CryptoFed, MHO-14399"

Dear Ms. Tarasevich

Thank you very much for your yesterday's letter entitled "In the Matter of American CryptoFed, MHO-14399", in which you state, "The Company's filings relating to the registration of these digital assets, however, as you know, were materially deficient. In addition, we have concerns that the Form 10 contains materially misleading statements or omissions…". However, the facts do not support your statement.

On October 12, 2021, American CryptoFed DAO ("CryptoFed") replied point-by-point to Ms. Erin Purcell's two October 8th, 2021 letters regarding all of the purported deficiency issues related to our Form 10 filing. In addition to our reply directed to Ms. Erin Purcell's attention, the reply was also sent to Chairman Gary Gensler and all Commissioners. Our reply has provided sufficient evidence and reasoning to prove that our Form 10 filing has zero deficiency. Ms. Erin Purcell has not responded to our reply.

In order for us to seriously consider withdrawing our Form 10 filing as you requested in your letter, we need you to respond in writing point-by-point directly to our October 12th point-by-point reply provided by CryptoFed to Ms. Erin Purcell's October 8th letters so that we are able to assess whether we have any material and substantial gaps which will need to be closed by us.

For your convenience, please find the referenced October 12th reply to Ms. Purcell which was also sent to the SEC Chair and Commissioners, shown in the link of our website below.
https://www.americancryptofed.org/sec-disclosure
Please go to the sub-tab entitled "SEC Discourse on Form 10 and S-1 Filing".

We disclose all our communications with the SEC, including this letter to you and your letter to us, on the www.americancryptofed.org website, in compliance with the spirit of transparency and disclosure which is the underlying rationale for the United States securities related laws, regulations, and the creation of the SEC as a disclosure agency. For the same reason, for our ongoing and future communication, please use regular email. There is no need to use secure email as you used yesterday.

I look forward to your written reply.

Sincerely yours,

DocuSigned by:
Marian Orr
AE52AD38E6AC4EC...
Marian Orr
CEO, American CryptoFed DAO

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 15

October 30, 2021

Via Electronic Submission and Email

Deborah Tarasevich, Assistant Director, Cyber Unit,
Division of Enforcement, U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone, (202) 551-4726, Email: TarasevichD@sec.gov

CC: Chairman and Commissioners
Gary Gensler, 202-551-2100, Chair@sec.gov
Allison Herren Lee, (202) 551-2800, CommissionerLee@sec.gov
Hester M. Peirce, (202) 551-5080, CommissionerPeirce@sec.gov
Elad L. Roisman, (202) 551-2700, CommissionerRoisman@sec.gov
Caroline A. Crenshaw, (202) 551-5070, CommissionerCrenshaw@sec.gov
and
Erin Purnell, Acting Legal Branch Chief, Division of Finance,
(202) 551-3454, PurnellE@sec.gov,
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov

Re: American CryptoFed, HO-14399

Dear Ms. Tarasevich

Thank you for your offer sent in your secure email below stating, “If you would like, we can schedule a call with you, and your counsel should you retain counsel, and staff in the Division of Corporation Finance to further discuss the deficiencies previously cited to you.”

We accept your offer of the SEC staff’s time in the Division of Corporate Finance and reserve their time. However, instead of a call, we request that they use the reserved time to respond in writing point-by-point directly to our October 12th point-by-point reply to Ms. Erin Purnell’s

October 8th letters, so that we are able to clearly assess whether we have any material and substantial gaps which will need to be closed by us. We have asked multiple times, but both you and Ms. Erin Purnell are unable to provide any responses in writing yet. The unwillingness of both you and Ms. Erin Purnell to provide a written response further demonstrates that our October 12th reply provided sufficient evidence and reasoning to prove that our Form 10 filing has zero deficiency. Therefore, we do need your response to seriously consider your request for withdrawing our Form 10 filing.

To avoid any misunderstandings and to transparently comply with the spirit of disclosure of the SEC, securities related laws and regulations, I have copied your secure email underneath my signature which we will post in our website together with this email response.

I look forward to your written reply.

Sincerely yours,

DocuSigned by:
Marian Orr
AE52AD38E6AC4EC...

Marian Orr
CEO, American CryptoFed DAO

****

Received: Oct 29, 2021 1:50 PM
Expires: Jan 27, 2022 2:50 PM
From: tarasevichd@sec.gov
To: marian.orr@americancryptofed.org
Cc: zhouxm@americancryptofed.org, scott.moeller@americancryptofed.org, bakermic@sec.gov, zerwitzm@sec.gov
Subject: smail American CryptoFed, HO-14399
This message was sent securely using Zix ®

Ms. Orr –

Thank you for your email. The material deficiencies in American CryptoFed DAO LLC's Form 10 were spelled out, point-by-point, in the letter from Division of Corporation Finance staff, dated October 8, 2021, and discussed with you and other representatives from the Company on October 4, 2021. The Company's responses have not remedied the deficiencies in any way. If you would like, we can schedule a call with you, and your counsel should you retain counsel, and staff in the Division of Corporation Finance to further discuss the deficiencies previously cited to you.

Finally, we understand your email response to mean that the Company does not intend to withdraw the Form 10 in a timely fashion. As such, we intend to recommend that the Commission take appropriate enforcement action. Deb Tarasevich

Deborah A. Tarasevich
Assistant Director, Cyber Unit
Division of Enforcement
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Phone: (202) 551-4726

RESPONDENT

AMERICAN CRYPTOFED DAO LLC

EXHIBIT 16

November 3, 2021

Via Electronic Submission and Email

Deborah Tarasevich, Assistant Director, Cyber Unit,
Division of Enforcement, U.S. Securities and Exchange Commission
100 F Street, N.E., Washington, D.C. 20549
Phone, (202) 551-4726, Email: TarasevichD@sec.gov

CC: Chairman and Commissioners
Gary Gensler, 202-551-2100, Chair@sec.gov
Allison Herren Lee, (202) 551-2800, CommissionerLee@sec.gov
Hester M. Peirce, (202) 551-5080, CommissionerPeirce@sec.gov
Elad L. Roisman, (202) 551-2700, CommissionerRoisman@sec.gov
Caroline A. Crenshaw, (202) 551-5070, CommissionerCrenshaw@sec.gov
and
Erin Purnell, Acting Legal Branch Chief, Division of Finance,
(202) 551-3454, PurnellE@sec.gov,
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov

Re: American CryptoFed, HO-14399

Dear Ms. Tarasevich

This is a follow-up to my email sent to you on October 30th, 2021.
I have three fundamental questions for you, which are legally and logically related:

1. Will SEC staff in the Division of Corporate Finance be able to respond in writing point-by-point directly to our October 12th point-by-point reply to Ms. Erin Purnell's October 8th letters, so that we are able to clearly assess whether we have any material and substantial gaps which will need to be closed by us?

Marian Orr, CEO
1607 Capitol Ave., Suite 327, Cheyenne, WY 82001
Phone: (307) 206 - 4210 | Email: marian.orr@americancryptofed.org

2. If Ms. Erin Purnell and the Division of Corporate Finance are unable to provide any written responses to our October 12th point-by-point reply to Ms. Purnell's October 8th letters, can you then let us know in writing what legal and factual basis have empowered you and your Division of Enforcement to initiate this investigation and to recommend an enforcement action against us?

3. From a due process perspective, shouldn't the SEC allow us to submit a written rebuttal (Wells Submission) to this legal and factual basis?

I look forward to your written reply.

Sincerely yours,

DocuSigned by:
Marian Orr
AE52AD38E6AC4EC...

Marian Orr
CEO, American CryptoFed DAO

Marian Orr, CEO
1607 Capitol Ave., Suite 327, Cheyenne, WY 82001
Phone: (307) 206 - 4210 | Email: marian.orr@americancryptofed.org