July 31, 2022

Via Electronic Email

Justin Dobbie, Acting Office Chief,
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U.S. Securities and Exchange Commission
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Re: American CryptoFed DAO LLC's Fair Notice Affirmative Defense
Form 10 File No.: 000-56339 and Form S-1 File No.: 333-259603

Dear Mr. Dobbie,

On July 22, 2022, I sent you two letters requesting you to provide clear guidance as to how to file the Form 10 (July 22, 2022 Form 10 Letter) and Form S-1 (July 22, 2022 Form S-1 Letter) respectively to register American CryptoFed's Locke token and Ducat token. As of today, I have not yet received your response. Therefore, this electronic communication is the follow-up letter to urge you to respond to my earlier July 22, 2022 letters.

In the two July 22, 2022 letters addressed to you as the Acting Office Chief of the Division of Corporation Finance and cc'd to individuals in the Commission's Division of Enforcement, I outlined the facts supporting American CryptoFed's assertion that American CryptoFed has lacked Constitutionally adequate fair notice from the Securities and Exchange Commission ("Commission") as well as from its Divisions of Corporation Finance and

Enforcement in particular. In the two July 22, 2022 letters, I cited the order in *SEC v. Ripple Labs* issued by Judge Analisa Torres of the Southern District of New York on March 11, 2022. ("Judge Analisa Torres's Order"). In the order, Judge Torres cited *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) to allow Ripple's fair notice affirmative defense. Please see the following link at page 6.

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

It is worth emphasizing that in *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012), in addition to requiring clarity of the compliance requirements, the Supreme Court also expressly required clear guidance as described below as a essential component of fair notice (emphasis added):

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.

I
Supreme Court Opinion in *F.C.C. v. Fox Television Stations, Inc* Requires: "first, that regulated parties should know what is required of them so they may act accordingly"

In accordance with the Supreme Court' opinions in *F.C.C. v. Fox Television Stations, Inc,* the Commission and its Divisions of Corporation Finance and Enforcement must not only prove to the American CryptoFed that the Locke and Ducat tokens are securities so that American CryptoFed "may act accordingly", but also provide American CryptoFed with "precision and guidance" so that the Commission and its Divisions of Corporation Finance and Enforcement "do not act in an arbitrary or discriminatory way." As of today, the Commission as a whole and its Divisions of Corporation Finance and Enforcement in particular have failed in both dimensions.

To the extent that:

i) the Commission and its Divisions of Corporation Finance and Enforcement could not provide American CryptoFed with a Howey Test Analysis or any other legal justification to prove that the Locke and Ducat tokens are securities,

ii) the Division of Corporation Finance (which stated "the withdrawal of the registration statement does not mean that the staff agrees with your assertion in the withdrawal request that the Locke token and Ducat token are not securities"), contradicts the Division of Enforcement (which stated "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"), and

iii) the Division of Corporation Finance and the Division of Enforcement, despite multiple requests, did not answer American CryptoFed's question "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?"

it is clear that the Commission as a whole and its Divisions of Corporation Finance and Enforcement in particular have failed to provide American CryptoFed, as the regulated party, with "what is required of them so they may act accordingly". (for factual background citations, please see July 22, 2022 Form 10 Letter and July 22, 2022 Form S-1 Letter).

II
Supreme Court Opinion in *F.C.C. v. Fox Television Stations, Inc* requires: "second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way."

To the extent that, despite multiple requests, Ms. Purnell at the Division of Corporation Finance did not respond to American CryptoFed's October 12, 2021 letter (which asserted "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)". Under your supervision, the Division of Corporation Finance has violated the Supreme Court's opinion stating "precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." (for the factual background citation, please see July 22, 2022 Form 10 Letter and July 22, 2022 Form S-1 Letter). As a matter of fact, rather than providing American CryptoFed with the necessary "precision and guidance", the Commission and its Divisions of Corporation Finance and Enforcement issued the Order Instituting Administrative Proceedings (OIP) instead to stop American CryptoFed's efforts to complete the Form 10 registration statement for compliance and disclosure purposes. What the Commission and its Divisions of Corporation Finance and Enforcement have effectively done, is the polar opposite to the Supreme Court' opinions in *F.C.C. v. Fox Television Stations, Inc.*. Together, the Commission and its Divisions of Corporation Finance and Enforcement have jointly and willfully abused the OIP process for the sole purpose of obstructing American CryptoFed's consistent efforts to comply with the related securities laws, while American CryptoFed has received no clarity from the Commission and its Divisions of Corporation Finance and Enforcement to know whether or not these securities laws are applicable to American CryptoFed DAO's business model. This obstruction was vividly demonstrated by the fact that the Commission violated Section 12(j) of the Securities Exchange Act of 1934 by including a Stay Order in the OIP, although the plain text of the statue below

explicitly prohibits the Commission from issuing such a Stay Order without a hearing conducted "on the record."

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, **to suspend the effective date of**, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, **on the record after notice and opportunity for hearing,** that the issuer, of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder." (15 U.S.C. § 78l(j)) (Emphases added).

Although more than seven (7) months has passed since American CryptoFed filed on December 15, 2021, a motion for a ruling on the pleadings to Lift the Stay Order pursuant to Rule 250 (a) below, which has a specific mandate "[t]he is hearing officer shall promptly grant or deny the motion, the Commission has not yet made any decision on the motion.

Rule 250. Dispositive motions. (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).

Therefore, it is fair to say that the Commission and its Divisions of Corporation Finance and Enforcement have knowingly and willfully violated not only Section 12(j) of the Securities Exchange Act of 1934, but also the Commission's own Rule 250 (a). The actions of the Commission and its Divisions of Corporation Finance and Enforcement are antithetical to the "precision and guidance" required by the Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc.*

III
As-applied Challenge via Summary Judgment (Disposition): American CryptoFed Is Entitled to Fair Notice Affirmative Defense

In accordance with the Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc* (which stated "**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**."), American CryptoFed through this

follow-up letter requests **once again** that the Division of Corporation Finance provides American CryptoFed with, i) a Howey Test Analysis or other legal justification to prove that the Locke and Ducat tokens are securities, and ii) the "precision and guidance" as to how to complete the registration filings of Locke token and Ducat token with the Commission. Please let us know in one week, on or by August 7, 2022, what information the Division of Corporation Finance still needs, in addition to the information which American CryptoFed has already furnished or promised to furnish to the Commission via the filings of Form 10 and Form S-1, both of which were filed in September 2021, more than ten (10) months ago. As long as the information does exist or will exist, American CryptoFed will furnish the information under the penalty of perjury. If you need more time to provide me with the list of information you need, please let me know with a written request. American CryptoFed is very flexible.

However, if you continue to fail to provide American CryptoFed with the "precision and guidance" as required by the Supreme Court opinions above as to how to complete the registration filings of Locke token and Ducat token with the Commission, American CryptoFed will be entitled to assert the following affirmative defenses as needed after launching its Locke and Ducat tokens in the near future:

- Locke token and Ducat Token are not securities.
- There is no violation.
- There is a lack of due process and fair notice.

As described in Judge Analisa Torres's Order below in *SEC v. Ripple Labs*, American CryptoFed will bring an "as applied" challenge, not a facial challenge to the statutes and regulations.

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. (Judge Analisa Torres's Order. Page 8, emphasis added).

Today, American CryptoFed already has more than enough undisputed evidence to allege, assert, and attest via Summary Judgment (Disposition) that the Commission and its Divisions of Corporation Finance and Enforcement in particular, i) have failed to provide fair notice, by refusing multiple requests from American CryptoFed for a Howey Test Analysis, as to whether American CryptoFed's business model is prohibited or not, and ii) have failed to provide fair notice of "precision and guidance" as to how American CryptoFed can file proper forms with the Commission, including but not limited to Form 10 and Form S-1(when the requested information by the Form 10 and S-1 does not exist and never shall exist within the American CryptoFed DAO's structure), to complete a required registration statement for compliance purposes. If Form 10 and Form S-1 are **NOT** the proper forms, **you must provide a proper mechanism** so that American CryptoFed can complete the initial registration statements and furnish information for ongoing disclosures. The two July 22, 2022 letters addressed to your attention and this follow-up letter are to provide the Commission and its Divisions of Corporation Finance and Enforcement in particular with additional opportunities to cure their willful ongoing violation of the Supreme Court's opinions in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) which was cited in Judge Torres's Order described in *SEC v. Ripple Labs*.

I look forward to your written response.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller
Scott Moeller
President, American CryptoFed DAO
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