



DIVISION OF
ENFORCEMENT

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

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