



January 15, 2022

Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit
Division of Enforcement, U.S. Securities and Exchange Commission
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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

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

Dear Mr. Bruckmann,

In your response to my letter dated January 13, 2022, you said “We decline to provide anything further at this time.”

Your response is not acceptable, given that you’ve made serious allegations against American CryptoFed DAO as an organization, as well as against named individuals below in the Division of Enforcement’s Opposition to Respondent’s Motion for Exemption from Section 12(g) of the Securities Exchange Act of 1934 in p. 2 and p.8 (Emphasis added).

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).



The Division's allegations above relate to a future Form 10 registration by American CryptoFed after implementing a mass distribution plan, which is not the current OIP. American CryptoFed does not believe you could make such serious criminal allegations without first performing a substantial analysis by the Howey Test to support your allegations. American CryptoFed is entitled to receive a copy of your analysis to prepare an effective defense.

American CryptoFed has requested you to substantiate your allegations above twice before, but the Division has been adamant in its refusal to provide its Howey Test analysis in accordance with the Supreme Court's ruling in SEC v. W.J. Howey Co., 328 U.S. 293 (1946). As a result, in order to prepare for an effective defense, American CryptoFed finds it must file a motion to compel you to produce the Howey Test analysis and other related documents you used to arrive at the allegations. Pursuant to the Commission's order below (emphasis added, Release No. 93922 / January 6, 2022), American CryptoFed requests to schedule a meeting in the week of January 17, 2022 to meet and confer regarding this matter, prior to filing the motion..

In the interim, it would serve the interests of justice to prescribe procedures for regulating the filing of all other, non-dispositive motions.¹⁰ Accordingly, it is ORDERED that the Division's motion is denied; and **it is further ORDERED that the parties must meet and confer prior to filing any motion;** and it is further ORDERED that the parties must seek and receive leave from the Commission prior to filing it. A request for leave must be in the form of a separate motion, not to exceed two pages in length, and concisely set forth the underlying relief sought, a statement of the basis for that relief, and a justification for why the underlying motion must be considered and determined prior to summary disposition. The request for leave must not attach or incorporate by reference the motion as to which permission for filing is sought.

I look forward to receiving your date and time availability for this meeting by the end of January 18, 2022. We will be available at your earliest availability.

Thank you.

Sincerely,

DocuSigned by:
Scott Moeller
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Scott Moeller

President, American CryptoFed DAO