

**A UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 11134 / November 18, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21243**

**In the Matter of**

**The Registration Statement of**  
**American CryptoFed DAO LLC**

**Respondent**

**RESPONDENT AMERICAN CRYPTOFED**  
**DAO LLC’S REPLY IN SUPPORT OF ITS**  
**MOTION TO REQUEST THE PUBLIC**  
**HEARING SCHEDULE TO BE POSTED ON**  
**THE SEC WEBSITE UPON SCHEDULING**  
**OF THE HEARING**

American CryptoFed DAO LLC’s (“American CryptoFed” or “Respondent”) respectfully submits this reply in support of its Motion to Request the Public Hearing Schedule to Be Posted on the SEC Website upon Scheduling of the Hearing (“Motion”).

**I**

**The Complete Absence of an Established System to Timely Make the Hearing Schedule**  
**Public Has a Risk to Effectively Turn a Public Hearing into a Closed Hearing**

The Division of Enforcement’s Response to American CryptoFed’s Motion gives no evidence to prove that the Webcast schedule even for the public hearing of Day 1 through Day 3 was actually published in advance at the SEC’s website, <https://www.sec.gov>. There was a public hearing commencement day and time stated in the OIP. There was a Hearing Officer’s order regarding remote means of the public hearing via Webex. However, nowhere could the

general public even know in advance the schedule for a live and public webcast of the hearing. “Notably, the Division does not control such arrangements, but can only makes requests to staff in other offices and divisions.”, the Division of Enforcement (“Division”) emphasized. The manner in which the Division responded only serves to highlight the complete absence of an established system to timely make a hearing schedule public upon scheduling of the hearing. “Anyone who wishes to watch the hearing can easily do so.”, the Division argued. However, these people “who wishes to watch the hearing” even did not know in advance the existence of such a live Webcast.

## **II The Unlawful, Secret Searches, Seizures and Inquisitorial Investigations Are Coupled with a Closed Hearing**

Instead of taking action to ensure the incoming Day 4 (potentially Day 5 and Day 6 if necessary) hearing which was scheduled by Judge Carol Fox Foleak on January 18, 2023 through January 20, 2023 is published, the Division criticized American CryptoFed’s efforts to make the “public hearing” public, and characterized the efforts as wasting time:

The Division also notes that Respondent requested more time to review the small discovery file in this case (consisting entirely of documents they previously possessed), and requested more time to propose additional exhibits, but then wastes time on meritless motions.

Obviously, the Division does not understand the true and realistic fear that American CryptoFed has. From American CryptoFed’s experience with the Division, the one-year long unlawful, secret searches, seizures and inquisitorial investigations could be coupled with a closed

hearing ostensibly presented as a public hearing. Here are undisputable facts and legal arguments supporting American CryptoFed's fear.

1. American CryptoFed's Form S-1 Registration Statement ("Form S-1") includes a Delaying Amendment at page 3, in order to incorporate the Division of Corporation Finance's comments. "Respondent's Registration Statement is pending and is not yet effective." (OIP p.1).

2. "On October 8, 2021, the Office of Finance sent a letter to American CryptoFed which stated that a preliminary review of the Form S-1 indicated that it failed to comply with the requirements of the Securities Act, the related rules and regulations, and the requirements of the form." according to the Declaration of Justin T. Dobbie, the Acting Office Chief in the Office of Finance within the Division of Corporation Finance ("Corporation Finance"). The Declaration and the October 8, 2021 letter are attached as Exhibit 1 and Exhibit 2 respectively.

3. Given that Corporation Finance could easily identify the "serious deficiencies" (Exhibit 2) of Form S-1 without any investigation, the Form S-1 perfectly meets the condition for a Refusal Order specified in 15 U.S.C. § 77h(b) which is Section 8(b) of Securities Act of 1933 ("Section 8(b)"), stating the following:

If it appears to the Commission that a registration statement is **on its face incomplete or inaccurate** in any material respect, the Commission may, ... issue an order **prior to the effective date of registration refusing** to permit such statement to become effective until it has been amended in accordance with such order. (Emphasis added).

Even the Commission's opinion in *Red Bank Oil Company*, 20 SEC 863, October 11th, 1945, attached as Exhibit 3 (which was cited to deny American CryptoFed's Motion for a Ruling on the Pleadings) explicitly supports American CryptoFed's position that 15 U.S.C. § 77h(b) rather than 15 U.S.C. § 77h(d) which is the Section 8(d) of Securities Act of 1933 ("Section

8(d)”), should apply to the Form S-1, because in *Red Bank Oil Company*, the Commission stated the following:

It is clear from the Act that the procedure of Section 8 (b), to determine whether to **issue an order refusing effectiveness to a statement**, was intended to be used only **when the inadequacy or incompleteness is plain on the "face" of the statement**. (Emphasis added).

4. However, the Division and the Commission, pursuant to Section 8(b) and Section 8(e) of the Securities Act, on November 9, 2021, still issued a Non-Public Order (“Section (d)/(e) Examination Order”), attached as Exhibit 4, stating the following:

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; (Emphasis added).

5. The Section (d)/(e) Examination Order not only violates both Section 8 (b) of the Securities Act and the Commissioner’s own opinion in *Red Bank Oil Company*, but also violates the U.S. Supreme Court’s opinion in *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) at 229 stating the following:

We think it is clear that § 1391 (c) is a general corporation venue statute, whereas § 1400 (b) is a special venue statute applicable, specifically, to all defendants in a particular type of actions, i. e., patent infringement actions. In these circumstances the law is settled that **"However inclusive may be the general language of a statute, it `will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.'** *Ginsberg & Sons v. Popkin*, 285 U. S. 204, 208." *MacEvoy Co. v. United States*, 322 U. S. 102, 107. (Emphasis added).

However inclusive the Section 8(d) of the Securities Act may be, it will not be held to apply to a matter specially dealt with in Section 8(b) of the same Securities Act. The specific language in Section 8 (b) of the Securities Act stating, “on its face incomplete or inaccurate” and “prior to the effective date of registration”, left no room for Section 8(d) of the Securities Act to be applied to American CryptoFed’s Form S-1.

6. Although the law has been settled since *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957), the Division continues enforcing the unlawful Section (d)/(e) Examination Order for its unlawful secret searches, seizures and inquisitorial investigations .

On June 15, 2022, the Division issued a subpoena to Respondent, attached as Exhibit 5, which “requires American CryptoFed to produce documents to the SEC by June 29, 2022.” (page 1).

On June 28, 2022, the Division issued a subpoena to Scott Moeller, attached as Exhibit 6, which “requires you to testify via Webex video conference at 11 a.m. ET on July 7, 2022 under oath in the matter identified on the subpoena” (page 1).

On August 4, 2022, the Division sent a letter to further request for documents and information from the Respondent, attached as Exhibit 7, which stated the following:

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. (Exhibit 7, page 4).

7. The Division has filed two motions to seal all the information related to all the unlawful, secret searches, seizures and inquisitorial investigations of the Section (d)/(e) Examination Order. American CryptoFed had to strongly oppose the Division’s Motions to Seal

which was documented by the Commission's Order (Release No. 95812 / September 16, 2022), attached as Exhibit 8, stating the following:

On June 15 and 30, 2022, the Division of Enforcement filed motions requesting the filing under seal of two separate notices— each containing “reference to a Non-Public Order” of the Commission—and accompanying attachments (“Covered Documents”). Respondent opposed each motion, asserting that the Covered Documents should not be filed under seal because it is “**entitled to a public hearing**” and that the Division has “waived [any] objection to public disclosure” of the Covered Documents. (Emphasis added).

In its Opposition to the Division's two Motions to Seal, American CryptoFed had to emphasized that it is entitled to a **public hearing** which is the subject of this Motion.

8. On November 18, 2022, the Commission issued the OIP pursuant to Section (d) of Securities Act which is also unlawful due to the same legal arguments outlined above. The OIP only allowed 10 calendar days for American CryptoFed to answer the 32 allegations and only 11 calendar days for the commencement of the public hearing (page 6). American CryptoFed was stunned by Judge Carol Fox Foelak's order (Release No. 6884/November 25, 2022), attached as Exhibit 9, stating “The OIP does not authorize the undersigned to postpone the commencement of the hearing.”

9. It is obvious that American CryptoFed has been deprived of its Constitutional due process rights codified in the SEC's own Rules of Practice. These rules allow American CryptoFed more time to prepare for an effective defense. Rule 250 (a) (Motion for a ruling on the pleadings) allows 14 days. Rule 250 (b) (Motion for summary disposition) allows longer time. Rule 221 (d) Requires at least one prehearing conference. All of these due processes protected by the Constitution have been skipped, because as Judge Foelak has stated, the Honor has no authority “to postpone the commencement of the hearing.”

### III

#### **The Systematic Abuse of Power by the Division of Enforcement Must Be Stopped**

As outlined above, the abuse of power by the Division is systematic, institutional and structural. It is highly possible that the complete absence of an established system to timely make a hearing schedule public is, by design, to intentionally facilitate the systematic, institutional and structural abuse of power, by hiding the public hearing in the administrative proceeding from the general public. This possibility is highlighted by the argument of Division's Response "Respondent's claim that further efforts to publicize the upcoming hearing sessions are legally required is meritless". However, the Division's argument contradicts the public facing statement in the SEC website "The judges conduct public hearings in a manner similar to federal bench trials at locations throughout the United States.", according to the SEC website<sup>1</sup>. The Division failed to provide any legal authorities which explicitly exempt the SEC's public hearings from what is required by "federal bench trials at locations throughout the United States" regarding schedule notice for public hearing. In *Waller v. Georgia*, 467 U.S. 39 (1984), the U.S. Supreme Court has found the right to Public Trial and Hearing to be so fundamental to the fairness of the adversarial system that it is independently protected.

The Division argued in its Response "Respondent's Form S-1 admittedly lacks audited financial statements and other required information; for this and other reasons, a stop order must be issued." However, this Division's argument also contradicts the fact. On June 17, 2022, in order to enforce the unlawful Section (d)/(e) Examination Order, and to continue the unlawful, secret searches, seizures and inquisitorial investigations, the Commission issued an order

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<sup>1</sup> <https://www.sec.gov/page/aljsectionlanding>

(Release No. 11074 / June 17, 2022), attached as Exhibit 10, denying American CryptoFed's Form S-1 withdrawal ("Denial Order"). The Denial Order states the following:

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**.

A Stop Order sought by the Division is completely unnecessary, if the American CryptoFed's Form S-1 withdrawal was not denied. As early as 1936, in *Jones v. SEC*, 298 U.S. 1 (1936), the U.S. Supreme Court already anticipated this type of systematic abuse of power, stating the following:

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, emphasis added).

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, emphasis added).

#### IV Conclusion and Petition for Relief

For all the reasons set forth above, American CryptoFed respectfully requests Judge Foelak ensure that Day 4 Hearing of American CryptoFed DAO as scheduled on January 18, 2022 is immediately posted on the “Upcoming Events” of the SEC website page which has a notice function for “PUBLIC HEARINGS IN ADMINISTRATIVE PROCEEDINGS” so that the Day 4 of this hearing in administrative proceedings is truly an open and public hearing.

Dated: December 19, 2022

Respectfully submitted

DocuSigned by:

*Scott Moeller*

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By /s/ Scott Moeller

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this RESPONDENT AMERICAN CRYPTOFED DAO LLC'S REPLY IN SUPPORT OF ITS MOTION TO REQUEST THE PUBLIC HEARING SCHEDULE TO BE POSTED ON THE SEC WEBSITE UPON SCHEDULING OF THE HEARING was filed by eFAP and was served on the following on this 19th day of December 2022, in the manner indicated below:

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By /s/ Scott Moeller

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