

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 CRYPTO FED
DAO LLC'S MOTION TO REQUEST THE
DIVISION OF ENFORCEMENT TO
PRODUCE A WITNESS

The Securities and Exchange Commission (“SEC” or “Commission”) instituted this proceeding by an Order Instituting Proceedings (OIP) on November 18, 2022. The OIP ordered American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”) to file an Answer within ten days after service of the OIP and ordered that a hearing before Administrative Law Judge Carol Fox Foelak commence at 10:00 a.m. EST on December 1, 2022. On December 2, 2022, at the end of Day Two of the hearing, American CryptoFed was ordered by Judge Foelak to file a motion for this matter.

I

Transparency is Mandated by the SEC’ Filing Review Process

The SEC publishes the following public policy of the **Filing Review Process** in the SEC’s public facing website attached as Exhibit 1 (captured on November 28, 2022).

To increase the transparency of the review process, the Division makes its comment letters and company responses to those comment letters public on the SEC’s EDGAR system no sooner than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective. (*see*, Exhibit 1, p.4).

As a result, the Division of Corporation Finance must make its comment letters and American CryptoFed's responses to those comment letters public.

II

The Division of Enforcement as an Extension of, not a Separation from, the Division of Corporation Finance and the SEC's Filing Review Process

Below is one example that The Division of Enforcement acted as an Extension of, not a Separation from, the Division of Corporation Finance and the SEC's Filing Review Process.

On August 28, 2022, American CryptoFed sent a letter attached as Exhibit 2 to **the Division of CORPORATION FINANCE** ("August 28, 2022"), directly addressed to Mr. Justin Dobbie, Acting Office Chief, Office of Finance, Division of Corporation Finance, to discuss the American CryptoFed's Filing Review Process. The letter specifically requested Mr. Dobbie's response at the bottom of the document above the signature. In order to avoid any misunderstandings, the entire letter is also cited below in *Italic*.

American CryptoFed's August 28, 2022 Letter starts here:

Dear Mr. Dobbie,

*This letter is the **sixth** letter which specifically requests you to provide American CryptoFed **with a proper mechanism** so that American CryptoFed can 1) complete the initial registration statements of the Form 10 and Form S-1 filed with the SEC on September 15 and 16, 2021 respectively and 2) continue to furnish information for ongoing disclosures, when the information requested by the Form 10 and S-1 does not exist and shall never exist within the American CryptoFed DAO's structure. The previous **five** letters were sent to your attention, as the Acting Office Chief of the Office of Finance, Division of Corporation Finance for the Securities and Exchange Commission ("SEC" or "Commission") on July 22, 2022 (two letters), July 31, August 4, 2022 and August 17, 2022.*

Today, as in each of my earlier letters to you, I emphasize to you that American CryptoFed's request is pursuant to the Supreme Court's opinion below:

*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. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (emphasis added).*

American CryptoFed is not alone in its request that the SEC provide the necessary “precision and guidance” as required by the Supreme Court opinion above. On July 21, 2022, Coinbase Global Inc also asked the SEC to provide clear guidance via “Petition for Rulemaking – Digital Asset Securities Regulation” which stated the following at page 5 and 15 (emphasis added)¹:

*The issuer registration, disclosure, and listing requirements for securities are currently **tailored to the issuers of debt and equity** in public companies. But most digital assets—coins and tokens that trade on exchanges like Coinbase—do not represent ownership stakes in complicated public companies or pay a return to investors through dividends or interest. (page 5).*

*For example, even if these assets have value primarily based on the promoter's efforts, they generally do not provide holders any rights over the residual value of the issuer, or a claim on the issuer's assets. **They are neither equity nor debt.** (page 15).*

Recently, the SEC's Chairman Gary Gensler not only recognized the differences between traditional securities and crypto tokens as outlined by Coinbase above, but also emphasized the SEC's exemptive authority to tailor disclosure for crypto tokens in his July 14, 2022 interview with Yahoo Finance below (emphasis added)².

*JENNIFER SCHONBERGER: Chair Gensler, given that you've said that nearly all tokens, with the exception of Bitcoin and perhaps Ethereum, would be classified as securities based on their use cases, **how do you feel about applying the disclosure regime under current securities laws for equities to crypto?***

¹ <https://www.sec.gov/rules/petitions/2022/petn4-789.pdf>

² <https://finance.yahoo.com/video/sec-chair-investors-know-someone-153326153.html>

GARY GENSLER: So it's really an age old concept. If you're raising money from the public and the public's anticipating profits based on the efforts of that common enterprise, that's a security. It's kind of a logical thing. And we at the SEC have a disclosure regime, as you said. I've said to the industry, to the lending platforms, to the trading platforms, come in, talk to us.

We do have robust authorities from Congress also to use their exemptive authority so that we can tailor investor protection, and in your specific question about the tokens themselves, even tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token. But I would note, we don't have the same disclosures for an asset-backed security that we do for a stock offering. So it's a thoughtful way to sort of tailor things.

Mr. Dobbie, American CryptoFed urges you to abide by Chairman Gensler's instruction above and provide American CryptoFed with tailored disclosure requirements on or before September 5th, 2022. Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal.

*As Acting Office Chief of the Office of Finance, within the SEC's Division of Corporation Finance, Mr. Dobbie you have the responsibility, obligation and authority to provide the American CryptoFed with **a proper mechanism** to complete the registration statements. This responsibility is especially cogent given that you not only recommended the denial of American CryptoFed's Form S-1 withdrawal on June 13, 2022, but further stated in your July 15, 2022 letter regarding our Form 10, "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".*

*Mr. Dobbie, if you have difficulties to abide by Chairman' Gensler's instruction above to provide American CryptoFed with tailored disclosure requirements, please let me know immediately. I will write Chairman Gensler directly to ask him and all SEC Commissioners to provide you with necessary instructions to fulfill your duties. The public requires, and the entire crypto industry is actively demanding the SEC to provide the necessary "precision and guidance" as required by the Supreme Court opinion above in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). American CryptoFed is the first historic case to test whether Chairman Gensler's public statements as quoted above are true or false. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", is*

unable to complete its Form S-1 and Form 10 registration, all the pending litigation actions that the SEC has brought against the entities and individuals in crypto industry under the name of “Unregistered Securities” could be proved unlawful, pursuant to “the void for vagueness doctrine” upheld by the Supreme Court in F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) above, because there is no way to complete the registrations with the SEC, whatsoever. Given that the SEC has no necessary “precision and guidance” to complete registrations, the SEC has no legal basis to bring any legal actions against any entity and against any individual with allegations of “Unregistered Securities”, when the actual pathway to registration with the Commission did not and does not exist. I will emphasize this point to Chairman Gensler and all Commissioners in my letter to them and remind them of the March 11, 2022 order in SEC v. Ripple Labs, issued by Judge Analisa Torres of the Southern District of New York, who allowed Ripple Labs’ Fair Notice affirmative defense, citing F.C.C. v. Fox Television Stations, Inc. 567 U.S. 239, 253 (2012) below (emphasis added)³.

*“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).*

Mr. Dobbie, I look forward to your response.

Sincerely,

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

³ <https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf>

American CryptoFed's August 28, 2022 Letter ends here.

However, Mr. Dobbie never responded to American CryptoFed's August 28, 2022 Letter cited above. Instead, on September 1, 2022, Mr. Christopher Bruckmann, **the Division of Enforcement**, responded to American CryptoFed's August 28, 2022 Letter, emphasizing "a pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1". The entire letter from Mr. Bruckmann to American CryptoFed ("September 1, 2022 Letter") is cited in italic below (emphasis added):

Mr. Bruckmann's September 1, 2022 Letter attached as Exhibit 3 starts here:

Mr. Moeller,

*Your August 28, 2022 letter to **Justin Dobbie of the SEC's Division of Corporation Finance**, which you also sent to us, states in part: "Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal." We write to remind you that there is a pending Order of Examination under Section 8(e) [15 U.S.C. §77h(e)] of American CryptoFed's Form S-1, and that Section 5(c) [15 U.S.C. §77e(c)] reads in part "It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security . . . while the registration statement is the subject of . . . any . . . examination under section 77h of this title." Additionally, your continuing refusal to cooperate with the Section 8(e) Examination by refusing to provide subpoenaed documents and refusing to answer questions asked of you during your testimony hampers the Division of Enforcement's ability to bring that examination to a prompt conclusion.*

*Regards,
Chris Bruckmann*

Mr. Bruckmann's September 1, 2022 Letter attached as Exhibit 3 ends here.

To the extent that **the Division of Enforcement** acted as an Extension of, without Separation from, the Division of Corporation Finance and the SEC's Filing Review Process, i) **the Division of Enforcement** should also be subject to the same SEC's Filing Reviewing Process cited again below, and as such, ii) no privileges whatsoever should be allowed, in order to preserve the integrity of the transparency mandated by the SEC's Filing Reviewing Process.

To increase the transparency of the review process, the Division makes its comment letters and company responses to those comment letters public on the SEC's EDGAR system no sooner than 20 business days after it has completed its review of a periodic or current report or declared a registration statement effective. (*see*, Exhibit 1, p.4).

One day after Mr. Bruckmann's September 1, 2022 Letter, American CryptoFed was forced to write a letter on September 2, 2022, to the Division of Enforcement ("September 2, 2022 Letter) regarding the SEC's Filing Reviewing Process related to the Fair Notice issue of "precision and guidance". At page 2-3 of the September 2, 2022 Letter attached as Exhibit 4, American CryptoFed stated the following, cited below in italic, which can demonstrate that the Division of Enforcement has effectively taken over the SEC's Filing Reviewing Process and the communication with Mr. Dobbie, Acting Office Chief, Office of Finance, Division of Corporation Finance, was completely disrupted and deterred:

This process will occur unless Mr. Dobbie at the Division of Corporation Finance, on or before September 5th, 2022, provides the necessary "precision and guidance" as required by the Supreme Court opinion below in F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012).

*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. F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) (emphasis added).

III

The Non- privileged Portion of the SEC’s Investigative File and Rule 230 Production

In the “DIVISION OF ENFORCEMENT’S OMNIBUS RESPONSE TO AMERICAN CRYPTOFED’S RECENT MOTIONS” dated November 28, 2022 attached as Exhibit 5, the Division of Enforcement stated the following:

“Moreover, although not required to begin its **Rule 230 production** until 7 business days after service of the OIP, here the Division produced **the entire non- privileged portion of its investigative file** on the same day that the OIP was instituted and served. And even though American CryptoFed did not file a motion under Rule 231, the Division also voluntarily produced an affidavit outlining the anticipated testimony of one of the Division’s witnesses.” (Emphasis Added, *see*, Exhibit 5, page 3).

American CryptoFed’s questions for the witness produced by the Division of Enforcement will not exceed the “non- privileged portion of its investigative file” and “Rule 230 production” which already have a large volume of data.

IV

Conclusion.

For all the reasons set forth above, American CryptoFed respectfully requests Judge Foelak order that the Division of Enforcement to produce one witness with personal knowledge in this matter. By doing so, Judge Foelak’s order will also uphold Mr.Gurbir S. Grewal’s personal views as the SEC’s Director of Division of Enforcement, which he expressed in his speech below on November 8, 2021.

This is not “regulation by enforcement.”
This is not “regulation by enforcement.”
This is not “regulation by enforcement.”
There. I have said it thrice and what I tell you three times is true.⁴

Dated: December 5, 2022

Respectfully submitted

DocuSigned by:
Scott Moeller
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By /s/ Scott Moeller

Scott Moeller, President

Xiaomeng Zhou, Chief Operating Officer

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⁴ 2021 SEC Regulation Outside the United States - Scott Friestad Memorial Keynote Address,
<https://www.sec.gov/news/speech/grewal-regulation-outside-united-states-110821>

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this, RESPONDENT AMERICAN CRYPTO FED
DAO LLC'S MOTION TO REQUEST THE DIVISION OF ENFORCEMENT TO PRODUCE
A WITNESS, was filed by eFAP and was served on the following on this 5th day of December
2022, in the manner indicated below:

By Email:
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Trial Counsel, Division of Enforcement – Trial Unit
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bruckmannc@sec.gov

By /s/ Scott Moeller

DocuSigned by:

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A82E97EDD0C44FD...

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