

**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 ANSWER TO THE ORDER  
INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO SECTION  
8(d) OF THE SECURITIES ACT OF 1933**

COMES NOW Respondent American CryptoFed DAO LLC (“American CryptoFed” or “Respondent”), and files as follows this Answer of Respondent (“Answer”) to the Securities and Exchange Commission (“Commission”) ORDER FIXING TIME AND PLACE OF PUBLIC HEARINGS AND INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933 (“OIP”). Pursuant to Rule 220 (d), along with this Answer, Respondent has filed a Motion for More Definite Statement which shares the attached Exhibit list. Pursuant to Rule 250 (a) and (b), Respondent will file a Motion for a Ruling on the Pleadings and a Motion for Summary Disposition to request dismissal of the OIP. To the extent not explicitly admitted in this Answer, all allegations of the OIP are denied. The headings in the Respondent Answer correlate to the headings of the OIP’s Section II which lists 32 allegations.

**A. RESPONDENT**

**No. 1.** Respondent admits American CryptoFed DAO LLC was established in Wyoming on July 1, 2021, as a “Decentralized Autonomous Organization” (“DAO”) pursuant to Wyoming Statue § 17-31-10 Wyoming Decentralized Autonomous Organization Supplement (“Wyoming DAO Law”). To the extent that Wyoming DAO Law is so flexible i) that Respondent can establish a DAO operated by smart contracts with **No Management, No Fund Raising, No Revenue, No Costs, No Profits and No Assets**, and ii) that accordingly, Respondent will never have a conventional balance sheet equation of **Assets = Liabilities + Shareholder’s Equities**, the remaining allegation is denied. As a matter of law, Respondent cannot be the successor entity to American CryptoFed, Inc.

**No. 2.** Respondent admits partially the allegation set forth in this Paragraph 2, to the extent that the Form S-1 Registration Statement was filed on September 17, 2021. Respondent lacks sufficient information to admit or deny the remaining allegation due to issue complexities.

**No. 3.** Respondent admits partially the allegation set forth in this Paragraph 3 that Ducat and Locke tokens is under the heading “Title of Each Class of Securities to be Registered.” To the extent that Respondent’s Registration Statement includes the statements “Filing Form S-1 does not mean CryptoFed concedes that Locke and Ducat are securities.” (p.4) and “If the SEC does not agree with CryptoFed’s position and characterizes the Locke and Ducat tokens as securities, CryptoFed should be able to grant these tokens to service providers, free of charge, as an equity incentive plan for the CryptoFed community, pursuant to the CryptoFed Constitution, as long as these tokens are restricted, untradeable and non-transferable.” (p.7), Respondent lacks sufficient information to admit or deny the implication of the allegation due to issue complexities.

**B. Material Omissions and Misstatements in Respondent’s Registration Statement**

**No. 4 – No. 12.** Respondent lacks sufficient information to admit or deny the allegations set forth in Paragraphs from No. 4 through No. 12. To the extent that the Division of Enforcement was unable to challenge and oppose the following factual and legal arguments in Respondent’s November 6, 2022 letter attached as Exhibit 6 (*see*, November 6 2022 Letter, p.9-12), cited in *italic* below, these allegations are false.

*[In your November 3, 2022 Email, you stated the following:*

*Third, the SEC has provided precision and guidance regarding what is required in the Form S-1. The SEC’s rules and regulations clearly spell out that audited financial statements, and the other items you have been informed are missing from American CryptoFed’s Form S-1, are required to be included. You apparently want the SEC to go further and provide you with legal and accounting advice regarding how to complete the Form S-1, and the SEC is not required to do that. It is the issuer’s responsibility, not the SEC’s, to ensure that the Form S-1 is completed fully and accurately.*

*Again: the facts, the SEC’s Filing Review Process and the law do not support your argument above.*

#### ***A. The Facts***

*On October 8, 2021, Ms. Erin Purnell, Acting Legal Branch Chief, Division of Corporation Finance, sent American CryptoFed two letters regarding American CryptoFed’s Form S-1 filing and Form 10 filing respectively and raised the issues of “serious deficiencies” in these registration statements (“October 8, 2021 Letters”). On October 12, 2021, American CryptoFed responded to Ms. Erin Purnell’s two October 8, 2021 Letters point-by-point (American CryptoFed’s letter was addressed to SEC Chairman Gensler, all Commissioners and Ms. Erin Purnell, “October 12, 2021 Letter”), deriving the following conclusion, to which Ms. Purnell never responded. Because the substance of the American CryptoFed Form S-1 filing and Form 10 filing were identical, American CryptoFed’s response focused primarily on the Form 10 filing. However, the conclusion below should apply equally to the Form S-1 filing.*

*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. We believe that Ms. Purnell emphasizes form rather than substance.*

*On October 29, October 30 and November 3, 2021, three consecutive letters, were addressed and sent to Ms. Deborah Tarasevich, Assistant Director of the Division of Enforcement’s Cyber Unit (these letters were also copied to SEC Chairman Gensler, all Commissioners and Ms. Erin Purnell). In each of these letters, American CryptoFed requested a written response to our October 12, 2021 Letter. Ms. Tarasevich never responded to our requests. Furthermore, in our August 4, 2022 letter to Mr. Justin Dobbie, as Acting Office Chief of the Division of Corporation Finance, and in our October 23, 2022 Letter and October 27, 2022 to you, we also requested both Mr. Dobbie and you respond to this October 12, 2021 Letter. However, both Mr. Dobbie and you failed to respond. Given that Ms. Erin Purnell’s two October 8, 2021 Letters are the sole comments received from the Division of Corporation Finance during the Filing Review Process, given that American CryptoFed’s October 12, 2021 Letter already addressed point-by-point all the issues of “serious deficiencies” explicitly raised by Ms. Erin Purnell in her October 8, 2021 Letters, given that the Division of Corporation Finance and the Division of Enforcement have still chosen not to rebut or respond to American CryptoFed’s October 12, 2021 Letter, despite tireless and repeated requests by American CryptoFed in the past 12 months, it is reasonable for American CryptoFed to conclude that the Division of Corporation Finance and the Division of Enforcement no longer have additional comments for our Form S-1 registration statement, and thereby both Divisions no longer need*

*the Form S-1 Delaying Amendment in order to provide further comments related to American CryptoFed's Form S-1 registration statement.*

*Furthermore, as we outlined in Section I in this letter, you rejected to provide questions regarding American CryptoFed's Assertion of No Assets and No Liabilities. Therefore, we can conclude that you are unable to challenge American CryptoFed's Assertion of No Assets and No Liabilities.*

*Given that you have refused to respond to American CryptoFed's October 12, 2021 Letter, which was responsive to all the allegations of Ms. Purnell, your claim ("the SEC has provided precision and guidance regarding what is required in the Form S-1. The SEC's rules and regulations clearly spell out that audited financial statements, and the other items you have been informed are missing from American CryptoFed's Form S-1, are required to be included") is false. You are required to respond to American CryptoFed's October 12, 2021 Letter by the SEC's Filing Review Process and laws below.*

### ***B. The SEC's Filing Review Process***

*The SEC's Filing Review Process published in the SEC's website states the following:*

#### ***Company Response to Comments***

*If a company does not understand a comment or the staff's purpose in issuing it, it should seek clarification from the examiner before it responds. If the company does not understand the comment after discussing it with the examiner, it may wish to speak with the staff member who approved the comment...*

*A company generally responds to each comment in a letter to the staff and, if appropriate, amends its filing(s). **A company's explanation or analysis of an issue will often resolve a comment.** Depending on the nature of the issue and the company's response, the staff may issue additional comments following its review of the company's response and any related amendments. (Emphasis added)...*

*A company should direct a reconsideration request to the Chief of the office conducting the filing review. The company or its representatives **should feel free** to involve the Disclosure Program Director, the Division's Deputy Director or Director **at any stage** in the filing review process.*

*The Commission's Office of the Chief Accountant addresses questions concerning the application of generally accepted accounting principles while the Division resolves matters concerning the age, form and content of financial statements required to be included in a filing. A company or its representatives may involve the Commission's Office of the Chief Accountant at any stage of a filing review following the standard consultation procedures.*

*When a company has resolved all Division comments on a Securities Act registration statement, the company may request that the Commission declare the registration statement effective so that it can proceed with the transaction.*

*In accordance with the SEC's Filing Review Process, your refusal to respond American CryptoFed's October 12, 2021 Letter means that American CryptoFed "has resolved all Division comments on a Securities Act registration statement, the company may request that the Commission declare the registration statement effective so that it can proceed with the transaction". In order to do so, we will "involve the Disclosure Program Director, the Division's Deputy Director or Director" and "the Commission's Office of the Chief Accountant". "The Commission's Office of the Chief Accountant addresses questions concerning the application of generally accepted accounting principles while the Division resolves matters concerning the age, form and content of financial statements required to be included in a filing."*

*Your argument ("You apparently want the SEC to go further and provide you with legal and accounting advice regarding how to complete the Form S-1, and the SEC is not required to do that."), not only directly, knowingly and willfully violates the Filing Review Process above as published in the SEC's website, but also is in direct conflict with Chairman Gary Gensler's sworn testimony in the US Senate and his public policy announcement in Yahoo Finance interview ( "I've asked the SEC staff to work directly with entrepreneurs to get their tokens registered and regulated, where appropriate, as securities. Given the nature of crypto investments, I recognize that it may be appropriate to be flexible in applying existing disclosure requirements"<sup>1</sup>, "even tailoring what the disclosures might be."<sup>2</sup>)*

### **C. The Law**

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<sup>1</sup> <https://www.sec.gov/news/testimony/gensler-testimony-housing-urban-affairs-091522>

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

*The SEC must provide American CryptoFed with the necessary “precision and guidance” as mandated by **both** the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (“**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**”), and the Section 8(b) of the Securities Act (“**When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.**”)*

*Your refusal to respond American CryptoFed’s October 12, 2021 Letter can prove that you willfully and knowingly violate the Supreme Court opinion and the Section 8(b) of the Securities Act above. Furthermore, your refusal to respond American CryptoFed’s October 12, 2021 Letter means that all comments from the SEC’s staff has been resolved, and thereby that American CryptoFed “may request that the Commission declare the registration statement effective.”]*

### **C. Respondent’s Failure To Cooperate With The Section 8(e) Examination**

**No. 13 – No. 32.** Respondent lacks sufficient information to admit or deny the allegations set forth in Paragraphs from No. 13 through No. 32. To the extent that the Division of Enforcement was unable to challenge and oppose the following factual and legal arguments in Respondent’s November 6, 2022 Letter (*see Exhibit 6, p.6-8*) cited in *italic*, these allegations are false.

*[The Authority of the SEC’s Filing Review Process mandates “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”. This mandate completely and indisputably denies any legitimate role of the 8 (e) Order and the 8(e) Examination which are Non-Public. On June 15, 2022 and June 30, 2022, you even filed two motions to seal two notices containing reference to*

*the Non-Public 8 (e) Order and the 8(e) Examination. From the SEC's own Filing Review Process, the Non-Public 8 (e) Order and the 8(e) Examination are unlawful.*

*The phrase “**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.**” in the Statue **Authority** of Section (b) of the Securities Act is decisive and undisputable, which is also cited by the Case Law Authority of Jones v. Securities and Exchange Commission, 79 F.2d 617 (2d Cir. 1935). In contrast, you have failed to provide any statute and case law to support your legal arguments that Section (d) and (e) can be applied to cases “**prior to the effective date of registration**”, before removal of the American CryptoFed's Delaying Amendment. Therefore, American CryptoFed has the following seven (7) questions related to your interpretation of the statutes and your application of Section (d) and (e) to American CryptoFed, given that American CryptoFed's Form S-1 is “**prior to the effective date of registration**”, before removal of the Delaying Amendment.*

- i. *Do you claim that the Non-Public 8 (e) Order and the 8(e) Examination can comport with the SEC's public policy of Filing Review 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.”), given that on June 15, 2022 and June 30, 2022, you even filed two motions to seal two notices containing reference to the Non-Public 8 (e) Order and the 8(e) Examination?*
- ii. *Do you claim that Section (d) (“at any time... the Commission may,...issue a stop order suspending **the effectiveness of the registration statement**”) has no limits of*



- “the timing and circumstances”, and thereby the existence of “the effectiveness of the registration statement” is not the precondition for Section(d) to be applied to any cases “at any time”?*
- iii. *Do you claim that the phrase “at any time” in the Section 8(d) allows the Commission to “issue a stop order suspending the effectiveness of the registration statement”, even if the Section 8(d) Stop Order’s subject of “the effectiveness of the registration statement” has not yet existed, such as the non-existence of the effectiveness of American CryptoFed’s Form S-1 registration statement, because the phrase “at any time” can even cover the time period in which the 8(d) Stop Order’s subject of “the effectiveness of the registration statement” has not yet existed?*
  - iv. *Do you claim that “at any time” phrase in the Section 8(d) allows the Commission to issue a **Stop Order** to cover the time period “**prior to the effective date of registration**”, even if Section (b) already specifies its governing time period and application condition by stating “the Commission may, ... issue an order **prior to the effective date of registration** refusing to permit such statement to become effective ...”?*
  - v. *Do you claim that Section 8(d) can supersede Section 8(b) in application to American CryptoFed’s case, even if Section (b) specially states “the Commission may, ... issue an order **prior to the effective date of registration** refusing to permit such statement to become effective ...”, when American CryptoFed’s Form S-1 registration statement has not yet become effective and the Delaying Amendment in American CryptoFed’s Form S-1 has not yet been removed?*

- vi. *Do you claim that the “in any case” phrase in Section (e) (“The Commission is empowered to make an examination **in any case** in order to determine whether a stop order should issue **under subsection (d).**”) has no limits, and thereby the “under subsection (d)” is not the precondition for Section(e) to be applied to any cases?*
- vii. *Do you claim that the phrase “in any case” in the Section 8(e) allows the Commission to make an examination beyond the scope of Section (d), even if the Section 8(e) specially limits the examination “to determine whether a stop order should issue **under subsection (d)**”?*

*Please answer the seven (7) questions above point-by-point, **on or before November 8th, 2022**, in accordance with the SEC’s Filing Review Process (“If a company does not understand a comment or the staff’s purpose in issuing it, it should seek clarification from the examiner before it responds. If the company does not understand the comment after discussing it with the examiner, it may wish to speak with the staff member who approved the comment.”)]*

Dated: November 28, 2022

Respectfully submitted

DocuSigned by:  
**Scott Moeller**  
A82E97EDD0C44FD...  
By /s/ Scott Moeller  
Scott Moeller, President  
Xiaomeng Zhou, Chief Operating Officer  
American CryptoFed DAO LLC  
1607 Capitol Ave Ste 327  
Cheyenne, WY. 82001  
Phone (307) 206-4210  
[scott.moeller@americancryptofed.org](mailto:scott.moeller@americancryptofed.org)  
[zhouxm@americancryptofed.org](mailto:zhouxm@americancryptofed.org)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this, **RESPONDENT AMERICAN CRYPTO FED DAO LLC'S ANSWER TO THE ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933**, was filed by eFAP and was served on the following on this 28th day of November 2022, in the manner indicated below:

By Email:  
Christopher Bruckmann,  
Trial Counsel, Division of Enforcement – Trial Unit  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-5949  
202-551-5986  
[bruckmannc@sec.gov](mailto:bruckmannc@sec.gov)

By /s/ Scott Moeller

DocuSigned by:

*Scott Moeller*

A82E97EDD0C44FD...

Scott Moeller

President, American CryptoFed DAO LLC  
1607 Capitol Ave Ste 327  
Cheyenne, WY. 82001  
Phone (307) 206-4210  
[scott.moeller@americancryptofed.org](mailto:scott.moeller@americancryptofed.org)