

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-21243

In the Matter of

The Registration Statement of

American CryptoFed DAO LLC,

Respondent.

**DIVISION OF ENFORCEMENT'S OMNIBUS RESPONSE TO AMERICAN
CRYPTOFED'S RECENT MOTIONS**

The Division of Enforcement ("Division"), by counsel, respectfully submits this omnibus response to the following motions recently filed by Respondent American CryptoFed DAO LLC ("Respondent" or "American CryptoFed"):

- 1) Motion to Hold Prehearing Conference Pursuant to Rule 221(d) Required Prehearing Conference;
- 2) Motion to Request Clarification on Authorized Decision Maker and Timely Decision Regarding Motion for Time Scheduling Extension; and
- 3) Motion to Stay Order of Release No. 6882 by Administrative Law Judge Carol Fox Foelak Requiring "To Confer and File a Joint Report by November 29, 2022."

Preliminary Statement

American CryptoFed's motions are meritless, duplicative, and confusing. American CryptoFed has been admonished before not to file such vexatious motions. In the related Section 12(j) proceeding *In the Matter of American*

CryptoFed DAO LLC, AP File No. 3-20650, where the Commission itself was serving as the hearing officer, the Commission repeatedly admonished American CryptoFed not to file meritless, duplicative motions, before ultimately issuing an order that no motions could be filed without first seeking permission to file a motion. *See Exhibit 1 at 2-3.*¹ Here, the expedited schedule set forth by the Commission in the Order Instituting Proceedings (“OIP”) is entirely appropriate for this proceeding under Section 8 of the Securities Act of 1933, and all of the above motions recently filed by American CryptoFed should be denied in their entirety.

BACKGROUND

A. Respondent Has Had Sufficient Notice and Time to Prepare in This Matter.

American CryptoFed’s motion to delay the hearing in this matter has already been denied. American CryptoFed nonetheless continues to assert that they are entitled to delay the proceeding given their misreading of the rules governing administrative proceedings and their claim that there is insufficient time to prepare. The Division will therefore briefly note for the record the copious amount of time American CryptoFed has had to prepare in this matter.

The Commission issued the OIP in this matter on November 18, 2022, but the issues in the OIP have been known to American CryptoFed for far longer. More than a year ago, on November 10, 2021, the Commission issued an OIP under Section 12(j) of the Securities Exchange Act of 1934 regarding American CryptoFed’s Form 10 registration statement. *See Exhibit 2.* That OIP raised many

¹ Relevant portions of all Exhibits have been highlighted for ease of reference.

of the same issues that are raised in this proceeding. *Id.* at 2-3. Also, the Division took investigative testimony from Scott Moeller on July 7, 2022 pursuant to the Section 8(e) Order of Examination which led to this proceeding. That testimony again covered many of the same topics set forth in the OIP.

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.

B. Respondent Has Threatened to Pull the Form S-1 Delaying Amendment.

In multiple motions, American CryptoFed asserts that there is no urgency in this matter because the Form S-1 contains a delaying amendment. This statement is disingenuous and designed to mislead this tribunal. American CryptoFed misleadingly omitted from its motions the fact that it has repeatedly threatened to pull that delaying amendment and proceed with offering tokens. *See* Exhibit 3 (October 27, 2022 letter from American CryptoFed) at 13 “American CryptoFed is planning to file the ‘Amendment No. 1 to Form S-1’ to remove the delaying amendment, ***right after we receive your response to this letter . . .***” (emphasis added); Exhibit 4 (November 1, 2022 letter from American CryptoFed) at 6: “When, and only when both Divisions have no more legal arguments (or refuse to provide legal arguments), to further justify the need of the Delaying Amendment, will we

remove the Delaying Amendment. ***We are close to that critical moment.***

(emphasis added).

Additionally, American CryptoFed has previously threatened to proceed with distributing the Ducat and Locke Tokens even if the Form S-1 was not effective. *See* Exhibit 5 (May 30, 2022 letter from American CryptoFed) at 1:

While waiting for the Securities and Exchange Commission (“SEC”, “Commission”) to rule on the three pending motions below, American CryptoFed DAO LLC (“American CryptoFed”) will proceed with implementing its business plan as described in the Form 10 and the Form S1 filed with the SEC on September 16 and 17, 2021 respectively. Starting from Q3 2022, we will distribute to contributors, in paper contracts, free of charge, Locke governance tokens which are restricted, untradeable and non-transferable. Starting from Q3, 2022 through December 31, 2022, we will conduct Locke token refundable auctions.

Thus, there is in fact an urgent reason to resolve this proceeding on an expedited basis.

ARGUMENT

I. Respondent’s Motion to Hold a Prehearing Conference Should Be Denied.

American CryptoFed’s claimed need for an order to hold a prehearing conference is based on an incorrect reading of the SEC’s Rules of Practice. Although Rule 221 typically requires a prehearing conference, it contains an exception for instances where “where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate.” 17 C.F.R. 201.221(d). Additionally, Rule 103(b) requires that “[i]n any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.” Here,

Section 8(d) sets forth that the hearing should take place within 15 days, and the Commission has thus ordered that the hearing take place on December 1, 2022. Accordingly, a prehearing conference addressing all of the topics in Rule 221 is neither necessary nor appropriate. Nevertheless, the Division is endeavoring to schedule a time to speak with Respondent's officers regarding the joint report required by the November 22, 2022 order, and is amenable to discussing the items typically discussed in a prehearing conference at that time, to the extent that they are relevant to the 8(d) hearing. Other items, such as a schedule for dispositive motions, are clearly inapplicable here, as discussed below. Accordingly, an order requiring a prehearing conference is neither necessary nor appropriate here.

II. Respondent's Motion to Request Clarification on Authorized Decision Maker and Timely Decision Regarding Motion for Time Scheduling Extension Should Be Denied.

American CryptoFed's motion regarding the hearing officer's authority is vague and does not make clear what relief it seeks. It should be summarily denied. The motion also misrepresents the Division of Enforcement's position regarding the hearing officer's authority, stating that "Both the Division and American CryptoFed truly believed that Judge Foelak has the authority to make a decision on the schedule extension proposal" and then quotes a letter in which the Division of Enforcement suggested that American CryptoFed file a motion seeking relief rather than repeatedly sending disjointed letters to the Division. The Division never authorized American CryptoFed to make the representation above on behalf of the Division and never waived its right to oppose any motion American CryptoFed would file. Additionally, although the broad grant of authority in Rules 111 and

161(a) could arguably permit the hearing officer to extend the schedule for the hearing, the Division would strenuously oppose any such request in this proceeding. As discussed above, American CryptoFed has threatened to pull the delaying amendment in its Form S-1 or proceed with offering tokens even if the registration statement is not effective. Accordingly, the Division strongly believes that a prompt public hearing and decision regarding the gross deficiencies and material misrepresentations in the Form S-1 is necessary to protect investors who might otherwise be lured into purchasing the Ducat and Locke tokens. Moreover, nothing in any of American CryptoFed's motions comes close to meeting the required showing for an extension in Rule 161(b)(1), especially as American CryptoFed has been aware of the issues with its registration statements for over a year. Rule 161(b)(1) reads:

In considering all motions or requests pursuant to paragraph (a) or (b) of this section, the Commission or the hearing officer should adhere to a policy of ***strongly disfavoring*** such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would ***substantially prejudice*** their case.

17 C.F.R. 201.161(b)(1) (emphasis added).

Further, American CryptoFed's motions recite various questions that American CryptoFed posed to the Division in letters and claims that the Division was "unable" to answer them. This tactic has been frequently employed by American CryptoFed. It sends the Division (and other divisions within the Commission) lists of questions and demands that we answer them. When we choose not to respond to the queries in the exact manner in which American CryptoFed

requests, or choose—as is our prerogative—not to preview our legal strategy and thinking, American CryptoFed claims we are unable to answer their questions. The questions here perfectly illustrate that point. Each of the questions seeks to have the Division justify why the *Commission* ordered the proceedings in this matter to take place on an expedited basis and to explain why the proceedings should not be moved. This approach gets it exactly backwards. As previously explained, to the extent the Commission-ordered proceedings could be postponed, it is American CryptoFed, not the Division, that must carry the burden for demonstrating that it would be “substantially prejudiced” if the proceedings are not moved. Here, as set forth above, delay in this case would prejudice the both Division and potential investors who may be duped into purchasing tokens that American CryptoFed has repeatedly threatened to offer for sale.

III. Respondent’s Motion to Stay Should Be Denied.

American CryptoFed’s Motion to Stay Order of Release No. 6882 by Administrative Law Judge Carol Fox Foelak Requiring “To Confer and File a Joint Report by November 29, 2022” is meritless and based on an inaccurate reading of the SEC’s Rules of Practice. American CryptoFed does not have an “absolute right” to a prehearing conference. Rather, as discussed above, Rule 221 must be read in conjunction with Rule 103 and Section 8(d). The Motion also makes similar arguments regarding American CryptoFed’s desire to file a motion for judgment on the pleadings and a motion for summary disposition. Again, the rules regarding these motions must be read in conjunction with Rule 103 and Section 8. The end

result is clear: where the provision of the SEC's Rules of Practice are in conflict with the expedited timing of Section 8, the rules must yield to the statute.

The Division will continue to attempt to work with American CryptoFed to compile a joint report, but is also prepared to submit a report solely on behalf of the Division should that prove necessary.

CONCLUSION

For the reasons stated above, Respondent's motions should be denied.

Dated: November 28, 2022 Respectfully submitted,

/s/ Christopher Bruckmann

Christopher Bruckmann (202) 551-5986

Christopher Carney (202) 551-2379

Martin Zerwitz (202) 551-4566

Michael Baker (202) 551-4471

Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549-5949

bruckmann@sec.gov

carney@sec.gov

zerwitz@sec.gov

bakermic@sec.gov

COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Division of Enforcement's Omnibus Response to American CryptoFed's Recent Motions was served on the following on this 28th day of November 2022, in the manner indicated below:

By Email:

Scott Moeller
scott.moeller@americancryptofed.org
President
American CryptoFed DAO LLC

Zhou Xiaomeng
zhouxm@americancryptofed.org
Chief Operating Officer
American CryptoFed DAO LLC

/s/ Christopher Bruckmann
Christopher Bruckmann