

**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 FOR MORE  
DEFINITE STATEMENT**

Pursuant to Rule 220 (d), Respondent American CryptoFed DAO LLC ("American CryptoFed" or "Respondent") requests the Division of Enforcement ("Division") to provide a more definite statement to ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933 ("OIP").

**I**

**The Subject Matter of Section 8(d) and 8(e) Does not Exist**

The legal basis of the OIP is Section 8(d) ("Section (d)") and ("Section 8(e)") of the Securities Act of 1933 ("Securities Act") which states following:

**(d)Untrue statements or omissions in registration statement**

If it appears to the Commission **at any time** that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, **issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such**

**stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.** (Emphasis added).

**(e) Examination for issuance of stop order**

**The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d).** In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order. (Emphasis added).

The operation of the Section 8(e) depends on the Section (d) which requires the **existence** of **“the effectiveness of the registration statement”**. As a result, the very subject matter of both Section (d) and Section 8(e) is the **existence** of **“the effectiveness of the registration statement”**. However, by the OIP’s own admission, the very subject matter of both Section (d) and Section 8(e) which is **“the effectiveness of the registration statement”** has not yet to existed, because the OIP states “Respondent’s Registration Statement is pending and is not yet effective.” (OIP p.1). To the extent that the OIP applies to a subject matter of both Section (d) and Section 8(e) (**“the effectiveness of the registration statement”**) which has not yet to existed, the OIP is unlawful, and accordingly a more definite statement is necessary.

**II**  
**The Specific Statutory Provisions Will Be Given Effect over**  
**Conflicting General Provisions.**

Respondent’s Form S-1 registration statement filed on September 17, 2021, American CryptoFed attached as Exhibit 1 (“Form S-1 Registration Statement”) includes a delaying

amendment (“Delaying Amendment”) at page 3, pursuant to 17 CFR § 230.473, stating the following:

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

The “Delaying Amendment” has established the fact that Respondent’s Form S-1 Registration Statement meets the condition of “**prior to the effective date of registration**” set forth by Section 8(b) (“Section (b)”) of the Securities Act cited below.

**(b) Incomplete or inaccurate registration statement**

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, 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. 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. (Emphasis added).

Compared with the Section (d), the Section 8(b) of the Securities Act is a more specific provision of the Securities Act specially designed for subject matter “prior to the effective date of registration”. It is well-established that specific statutory provisions generally will be given effect over conflicting general provisions. *See Dobbins v. Terrazzo Machine & Supply Co.*, 479 S.W.2d 806, 809 (Tenn.1972), and *Woodroof v. City of Nashville*, 183 Tenn. 483, 192 S.W.2d 1013, 1015 (Tenn.1946)(‘... the reason and philosophy of the rule [giving effect to specific statutory provisions over general ones] is that where the mind of the legislature has been turned

to the details of a subject and they have acted upon it, a statute treating the subject in a general manner should not be construed as intended to affect the more particular provision.'). In *Dobbins*, an injured employee, who previously had received workers' compensation benefits, brought an action against the manufacturers of the machine that had caused his injuries. The Supreme Court held that the specific statute of limitations provisions now found at Tenn. Code Ann. § 50-6-112 controlled over the general statute of limitations for personal tort actions. *See Dobbins*, 479 S.W.2d at 809. *Lambert*, 985 S.W.2d at 448.

To the extent, the OIP does not apply Section 8(b) of the Securities Act to Respondent's Form S-1 Registration Statement to "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.", the OIP is unlawful, and accordingly a more definite statement is necessary.

### III

#### **The OIP Pursuant to Section 8(d) and Allegations Pursuant to Section 8(d) Are Inconsistent with the SEC's Filing Review Process**

The Delaying Amendment has established the fact that Respondent's Form S-1 Registration Statement is still in the SEC's **Filing Review Process** (*see*, Exhibit 2) which states the following at page 3.

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.

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 Non-public 8 (e) Order and the 8(e) Examination attached as Exhibit 3. On June 15, 2022 and June 30, 2022, the Division of Enforcement even filed two motions to seal two notices attached Exhibit 4 and Exhibit 5 containing reference to the Non-Public 8 (e) Order and the 8(e) Examination. The Non-Public 8 (e) Order depends on Section (d) because Section 8(e) states “The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d).”

To the extent that both Section (d) and Section 8(e) on which the OIP is based, are inconsistent with the SEC’s Filing Review Process, the OIP is unlawful, and accordingly a more definite statement is necessary.

#### IV **The OIP Violates the SEC’s Filing Review Process**

The Delaying Amendment has established the fact that Respondent’s Form S-1 Registration Statement is still in the SEC’s **Filing Review Process** which states the following (*see*, Exhibit 2, p. 2).

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.

To the extent that the Division of Enforcement was unable to challenge and oppose the following factual and legal arguments related to SEC’s **Filing Review Process** in Respondent’s November 6, 2022 letter attached as Exhibit 6 (*see*, November 6 2022 Letter, p.9-10), cited in *italic* below, the OIP is unlawful, and accordingly a more definite statement is necessary.

*[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.*

The two October 8, 2021 Letters from the Division of Corporation Finance and Respondent's October 12, 2022 Letter are attached as Exhibits 7, 8 and 9 respectively.

## **V** **Conclusion**

For all the reasons set forth above, a more definite statement is needed for the entire OIP and all its 32 allegations.

Dated: November 28, 2022

Respectfully submitted

DocuSigned by:  
**Scott Moeller**  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this, **RESPONDENT AMERICAN CRYPTO FED DAO LLC'S MOTION FOR MORE DEFINITE STATEMENT**, was filed by eFAP and was served on the following on this 28th day of November 2022, in the manner indicated below:

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By /s/ Scott Moeller

DocuSigned by:

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