



November 6, 2022
Via Electronic Email

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**Re: American CryptoFed DAO LLC's Fair Notice Affirmative Defense
Form S-1 File No.: 333-259603**

Dear Mr. Bruckmann,

Thank you for your email dated November 3, 2022 ("November 3, 2022 Email"), attached at the bottom of this letter underneath our signatures, for ease of reference. Your November 3, 2022 Email did not directly respond to any specific request made or answer any question that was outlined in our letter dated November 1, 2022 ("November 1, 2022 Letter"). Let us review your November 3, 2022 Email against our November 1, 2022 Letter point-by-point to demonstrate that you still lack operating in good faith.

To be clear; your statement in your November 3, 2022 Email ("**We are not required to provide a point-by-point rebuttal to each assertion you make in a letter just because you request it**") , and your statement in your October 31, 2022 Email ("**As we have repeatedly explained, we are not required to preview our legal theories to you upon demand, and decline to do so at this time.**"), directly, knowingly and willfully violate the following Filing Review Process published in the SEC's public facing website¹.

¹ <https://www.sec.gov/divisions/corpfin/cffilingreview>

**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. To make it easier for a company to identify the appropriate people to contact about a filing review, the Division includes the name of the office conducting the review as well as the names and phone numbers of the staff members involved in that review in each of its comment letters.....

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. (Emphasis added).

We believe, Mr. Bruckmann, that you are required to abide by the SEC's public policy for Filing Review Process which clearly obligates you to provide clarification on all your comments and to truthfully and clearly answer all our questions during this Filing Review Process. If you believe you are not required to abide by this SEC's public policy for Filing Review Process, please clarify. Then we will contact the **"Disclosure Program Director, the Division's Deputy Director or Director"** as specified in the Filing Review Process above to ask them to answer these questions that you refuse to respond, because we "should feel free" to involve them "at any stage in the filing review process".

We believe that any SEC public servants' action and/or inaction, including your actions and inactions, must be held accountable as specified in the SEC's public policy for the Filing Review Process.

I.**Examination on American CryptoFed's Assertion of No Assets and No Liabilities**

In this section, we address the first point raised in your November 3, 2022 Email.

In your November 3, 2022 Email, regarding American CryptoFed's Assertion of No Assets and No Liabilities, you stated the following:

First, all of the questions we asked during your testimony session and all of the documents we sought by subpoena from American CryptoFed are within the legitimate scope of the Section 8(e) Examination. We reject your request that **we narrow down our request to only the issue of whether American CryptoFed has assets, liabilities, or revenue, as that is not the only issue within the scope of the 8(e) Examination.** We will not bargain with you over



which questions you should answer. It is your obligation to answer all the questions and provide all the documents. Your refusal to do so demonstrates your failure to cooperate with the Examination (Emphasis added):

The facts do not support your arguments. American CryptoFed never had any **“request that we narrow down our request to only the issue of whether American CryptoFed has assets, liabilities, or revenue, as that is not the only issue within the scope of the 8(e) Examination.”** American CryptoFed’s position is that the 8(e) Examination is unlawful, but the illegality of the 8(e) examination has been discussed in a separate section of all our communications, the **II. Unlawful 8(e) Order**. Without waiving objection on the grounds that the 8(e) Order and the 8(e) Examination are unlawful, and to demonstrate that American CryptoFed has done its best in good faith, American CryptoFed repeatedly has offered the opportunity for examination with specific attention to American CryptoFed’s Assertion of No Assets and No Liabilities. This offer also is responsive to your two special requests below:

i. Your First request:

In your October 19, 2022 Email, you complained **“American CryptoFed claims that it has no assets and no liabilities”** and emphasized that American CryptoFed’s Assertion of No Assets and No Liabilities needs to be examined by stating the following:

We are not required to accept American CryptoFed’s assertions at face value. Rather, those assertions need to be tested through audit and/or examination for the protection of the investing public.

ii. Your Second Request:

In your October 31, 2022 Email, regarding American CryptoFed’s Assertion of No Assets and No Liabilities, you stated the following (Emphasis added):

As we have repeatedly noted, **many of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities.**



In response to your two requests above, in our November 1, 2022 Letter, as a demonstration of good faith, we requested that you select the top three **“of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities.”** However, you flatly rejected to do so. As of today, all documentation of our past communications demonstrates that you have no real interest in the examination of American CryptoFed’s Assertion of No Assets and No Liabilities. Therefore, it is reasonable for American CryptoFed to conclude that your true purpose of both the so-called examination of American CryptoFed’s Assertion of No Assets and No Liabilities, and your statement (**“many of the questions we asked you in your testimony and documents that we subpoenaed from American CryptoFed go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities.”**) is actually no more than an excuse to unlawfully delay or stop or obstruct American CryptoFed’s legitimate disclosure. Given that you failed to identify and specify any questions which **“go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities”**, we can conclude that you are unable to challenge American CryptoFed’s Assertion of No Assets and No Liabilities.

II.
Unlawful 8 (e) Order
&
IV.
The Mandate of Section (b) of the Securities Act

In this section, we address the second and third points you raised in your November 3, 2022 Email.

1. Response to Your Second Point in Your November 3, 2022 Email.

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



Second, we reject your characterization of the Section 8(e) Examination as illegal. Section 8(d) allows the Commission to bring a stop order “at any time.” Section 8(e) allows the Commission to institute an examination “in any case.” Nothing in either section limits them to the timing and circumstances you propose. You provide no authority that actually supports your strained interpretation of Section 8.

However, the facts do not support your argument. In the October 27, 2022 Letter and November 1, 2022 Letter, American CryptoFed cited authorities of both case law and specific statute to support our arguments. In this letter, we would like to also cite the SEC’s Filing Review Process published in the SEC’s public facing website as an additional authority.

i. The Authority of the SEC’s 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.

ii. The Authority of Case Law: *Jones v. Securities and Exchange Commission*, 79 F.2d 617 (2d Cir. 1935).

The orders of the commission referred to are to be found in sections 8(b), 8(d) and 8(e), 15 USCA § 77h, subds. (b, d, e), all preceding section 9, which provides for a review of the orders. **Section 8(b) authorized an order refusing to permit a registration statement to become effective** until it has been amended as required in the order. **Sections 8(d) and 8(e) provide for the entry of a stop order suspending the effectiveness of the registration statement** at any time. *Jones v. Securities and Exchange Commission*, 79 F.2d 617 (2d Cir. 1935). (Emphasis added).

iii. The Authority of Statute: Section 8(b)/(d)/(e) of the Securities Act.

(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).

(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 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.”)

2. Our Response to Your Third Point Raised in Your November 3, 2022 Email



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”², “even tailoring what the disclosures might be.”³**)

C. The Law

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.”

III.

Whether the Ducat and Locke Tokens Are Securities Will Be Moot.

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

Fourth, we disagree that the Form S-1 becoming effective moots the issue of whether you have misleadingly described the Ducat and Locke tokens as both being securities and not being securities.

² <https://www.sec.gov/news/testimony/gensler-testimony-housing-urban-affairs-091522>

³ <https://finance.yahoo.com/video/sec-chair-investors-know-someone-153326153.html>



In your October 19, 2022 Email, you also stated the following:

Similarly, American CryptoFed seeks to register the distribution of the Ducat and Locke tokens with the Securities and Exchange Commission as a securities offering, but continues to assert that they are not securities.

The fact does not support your allegation above. In the Form S-1 registration statement at page 7, American CryptoFed makes it clear below that American CryptoFed will accept the SEC's categorization of Ducat and Locke as securities.

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 if there were an equity incentive plan for CryptoFed community, pursuant to the American CryptoFed DAO LLC Constitution ("Constitution") attached as Exhibit 1, as long as these tokens are restricted, untradeable and non-transferable.

Once American CryptoFed's Form S-1 becomes effective after the removal of the delaying amendment, the issue as to whether the Ducat and Locke tokens are securities will be moot, because American CryptoFed accepted the SEC's categorization of Ducat and Locke as securities. American CryptoFed will make this point clear in its Amendment to Form S-1 for removal of the delaying amendment. To demonstrate that you are operating in good faith, please confirm, **on or before November 8th, 2022**, that you have already read the paragraph above disclosed in American CryptoFed's Form S-1 registration statement and you are aware that American CryptoFed will accept the SEC's categorization of Ducat and Locke as securities once the Form S-1 registration statement becomes effective.

American CryptoFed already asked your confirmation in our October 23, 2022 Letter, but you did not respond. Your lack of good faith is proved again by the fact that you did not respond to our request, while continuing to raise the same issue.

VI. **Conclusion**

Mr. Bruckmann, the deadline of November 3, 2022 has now passed. As of today, we can confirm the following regarding your point-by-point responses to the specific requests and questions which were outlined in Section I, II, III, IV and V of our October 23, Letter.



- i. Regarding **Section I: Examination on American CryptoFed's Assertion of No Assets and No Liabilities**, you refused to start the examination process of American CryptoFed's claim by failing to provide American CryptoFed with the questions which are needed to prove that American CryptoFed has assets from the perspective of Generally Accepted Accounting Principles (GAAP). Given that you failed to identify and specify any questions which **"go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**, we can conclude that you are unable to challenge **American CryptoFed's Assertion of No Assets and No Liabilities**.
- ii. Regarding **Section II: Unlawful 8 (e) Order** and **Section IV: The Mandate of Section (b) of the Securities Act**, please answer the seven (7) questions point by point, **on or before November 8th, 2022**, in according with the SEC's Filing Review Process.
- iii. Regarding **Section: III Whether the Ducat and Locke Tokens Are Securities Will Be Moot**, you are required confirm, **on or before November 8th, 2022**, that you have already read the paragraph disclosed in American CryptoFed's Form S-1 registration statement at page 7 and you are aware that American CryptoFed will accept the SEC's categorization of Ducat and Locke as securities once the Form S-1 registration statement becomes effective.
- iv. Regarding **Section V: Chairman Gary Gensler's Policy Statement and Testimony in the US Congress**, you did not oppose American CryptoFed's conclusion that the staff of the Division of Corporation Finance and/or the Division of Enforcement has not abided by Chairman Gensler's instructions to the staff, to which the Chairman testified in the US Senate under oath on September 15, 2022, as well as documented in his public policy announcement in his Yahoo Finance interview on July 14, 2022. **("Thus, 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", "even tailoring what the disclosures might be."**



As of today, out of Sections I, II, III, IV and V, specified originally in our October 23, Letter we now can reach conclusions for **Sections I and V**. American CryptoFed is planning to request that “the Commission declare the registration statement effective”, in accordance with the SEC’s Filing Review Process, after we receive your responses (or non-responses) to this letter regarding the remaining **Sections III, II & IV** discussed above.

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.”** Please, **on or before November 8th, 2022**, provide contact information of “the Disclosure Program Director, the Division’s Deputy Director or Director” and “the Commission’s Office of the Chief Accountant” specified in the SEC’s Filing Review Process. We may file the “Amendment No.1 to Form S-1” to remove the Delaying Amendment, after we discuss with them.

Our approach is to do our best in good faith, to let the Division of Corporation Finance and/or the Division of Enforcement exhaust all possible legal arguments, while the Delaying Amendment is still in place. 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. American CryptoFed follows the Division of Corporation Finance’s Filing Review Process instruction cited below to complete the filing review. We hope that the “Commission declare the registration statement effective” in accordance with the SEC’s Filing Review Process, when you no longer have comments and arguments (or we face your refusal to provide comments and legal arguments). If the Commission refuses to “declare the registration statement effective” without a convincing legal justification, we will remove the Delaying Amendment by ourselves.

Closing a Filing Review

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. When taking that action, the Division,

through authority delegated from the Commission, gives public notice on the SEC's EDGAR system that the registration statement is effective. When a company has resolved all Division comments on an Exchange Act registration statement, a periodic or current report, or a preliminary proxy statement, the Division provides the company with a letter to confirm that its review of the filing is complete.

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. (Emphasis added)

The Division of Corporation Finance's Filing Review Process published in the SEC website does not assign any legitimate roles to the Division of Enforcement. It also does not allow any Non-Public 8 (e) Order and the 8(e) Examination for a secret investigation which directly contradicts "**the transparency of the review process**". From the Securities Act's perspective, the Filing Review Process should be completely governed by Section 8(a) and 8(b) which emphasizes "**the transparency of the review process**", not by Section 8(d) and 8(e) which may allow the Non-Public 8 (e) Order and the 8(e) Examination. However, under the watch and encouragement of Mr. Justin Dobbie, Acting Office Chief of the Office of Finance, Division of Corporation Finance, the Division of Enforcement has been able to unlawfully hijack the entire Filing Review Process and has completely destroyed the integrity of the Division of Corporation Finance's Filing Review Process. It is hopeless to expect Mr. Dobbie to abide now by the well-established Filing Review Process in order to "declare the registration statement effective." This is also the major reason why we will involve "the Disclosure Program Director, the Division's Deputy Director or Director" and "the Commission's Office of the Chief Accountant". In the worst scenario, thanks to the spirit of disclosure of the Securities Act and the original intent of the US Congress as shown in the law, American CryptoFed can remove the Delaying Amendment itself, rendering the Form S-1 registration statement automatically effective in 20 days by operation of Section 8(a) of the Securities Act.

American CryptoFed is the first historic case to test whether Chairman Gensler's public statements in the Yahoo Finance interview and his testimony given under oath in the US Senate are true, or false and misleading. Our personal experiences as a registrant and the documented evidence in this process show that the actions of the staff of Division of Corporation Finance and/or the Division of Enforcement are in direct opposition to Chairman Gensler's public statements and sworn testimony. If American CryptoFed, despite its tireless efforts and countless

requests for the SEC’s “precision and guidance”, despite a lack of further legal arguments and legitimate comments and questions from the staff of both Divisions, is unable to complete its Form S-1 registration statement, all the pending litigation actions that the SEC has brought against entities and individuals in crypto industry under the basis 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) cited 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).

It will be evident to all that there is no practical path to complete these registrations with the SEC, whatsoever. Given that the SEC has no necessary “precision and guidance” to complete registration statements, 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 SEC did not ever and does not currently exist.

A different paragraph of the same Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) was cited below in the March 11, 2022 order in *SEC v. Ripple Labs*, issued by Judge Analisa Torres of the Southern District of New York, United States District Court, who allowed Ripple Labs’ Fair Notice affirmative defense (emphasis added, p. 6-7)⁴. Judge Analisa Torres emphasized that “the **void for vagueness doctrine**” is really a Constitutional issue of “**the Due Process Clause of the Fifth Amendment**”.

“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

⁴ <https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf>


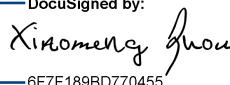


prohibited,” or **when they are so standardless that they authorize or encourage “seriously discriminatory enforcement.”** *Id.* (citation omitted).

We are in a historic moment to test whether the staff of Division of Corporation Finance and/or the Division of Enforcement willfully and knowingly chose to violate **“the Due Process Clause of the Fifth Amendment”** by twisting facts, misinterpreting and abusing the statutes of the Securities Act, and declining to abide by the SEC’s Filing Review Process, Chairman Gensler’s instructions and public policy statements. Therefore, this letter and your response to it, together with our other communications, may be attached as supporting documents to our “Amendment No.1 to Form S-1” to remove the Delaying Amendment, as needed.

Mr. Bruckmann, I look forward to your response.

Sincerely,

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|---|--|
| <p>/s/ Scott Moeller</p> <p>DocuSigned by:  A82E97EDD0C44FD...</p> <p>Name: Scott Moeller Title: Organizer/President</p> | <p>/s/ Xiaomeng Zhou</p> <p>DocuSigned by:  6F7F189BD770455...</p> <p>Name: Xiaomeng Zhou Title: Organizer/COO</p> |
|---|--|



----- Forwarded message -----

From: **Bruckmann, Christopher** <bruckmannc@sec.gov>

Date: Thu, Nov 3, 2022 at 3:03 PM

Subject: RE: American CryptoFed DAO LLC's Fair Notice Affirmative Defense Form 10 File No.: 000-56339 and Form S-1 File No.: 333-259603

To: Scott Moeller <scott.moeller@americancryptofed.org>

Cc: Carney, Christopher <CarneyC@sec.gov>, Zerwitz, Martin <ZerwitzM@sec.gov>, Baker, Michael <BakerMic@sec.gov>, Lucas, John <LucasJ@sec.gov>, Zhou Xiaomeng <zhouxm@americancryptofed.org>, Dobbie, Justin <DobbieJ@sec.gov>

Mr. Moeller,

We disagree with the legal and factual characterizations in your November 1, 2022 letter. We are not required to provide a point-by-point rebuttal to each assertion you make in a letter just because you request it. That said, to keep things clear, we wanted to note a few points.

First, all of the questions we asked during your testimony session and all of the documents we sought by subpoena from American CryptoFed are within the legitimate scope of the Section 8(e) Examination. We reject your request that we narrow down our request to only the issue of whether American CryptoFed has assets, liabilities, or revenue, as that is not the only issue within the scope of the 8(e) Examination. We will not bargain with you over which questions you should answer. It is your obligation to answer all the questions and provide all the documents. Your refusal to do so demonstrates your failure to cooperate with the Examination.

Second, we reject your characterization of the Section 8(e) Examination as illegal. Section 8(d) allows the Commission to bring a stop order "at any time." Section 8(e) allows the Commission to institute an examination "in any case." Nothing in either section limits them to the timing and circumstances you propose. You provide no authority that actually supports your strained interpretation of Section 8.

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.

Fourth, we disagree that the Form S-1 becoming effective moots the issue of whether you have misleadingly described the Ducat and Locke tokens as both being securities and not being securities.

We also disagree with the remaining characterizations and assertions in your letter, which do not warrant a further response at this time.

Regards,

Chris Bruckmann