



November 1, 2022  
Via Electronic Email

Christopher M. Bruckmann, Trial Counsel, Trial Unit  
Division of Enforcement, U.S. Securities and Exchange Commission  
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CC:

Christopher Carney, Division of Enforcement, CarneyC@sec.gov  
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Michael Baker, Division of Enforcement, BakerMic@sec.gov  
John Lucas, Division of Enforcement, LucasJ@sec.gov  
Justin Dobbie, Division of Corporation Finance, dobbiej@sec.gov

**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 October 31, 2022 ("October 31, 2022 Email"), attached at the bottom of this letter underneath our signatures, for ease of reference. Your October 31, 2022 Email did not directly respond to any specific request made or answer any question that was outlined in our letter dated October 27, 2022 ("October 27, 2022 Letter"). Let us review your October 31, 2022 Email against our October 27, 2022 Letter point-by-point which demonstrates you still lack operating in good faith.

**I.**

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

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.** Your continued refusal to



provide responsive answers to our questions and American CryptoFed's continued refusal to provide any documents in response to the subpoena demonstrates that American CryptoFed is not interested in providing the staff with the very information you claim to want to provide.

However, in your October 31, 2022 Email you failed to specify which questions **"go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**. To show that you are operating in good faith, Mr. Bruckmann, out of the total 39 subpoena questions (15 subpoena questions dated June 15, 2022 and 24 subpoena questions dated August 4, 2022), **on or before November 3rd, 2022**, can 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"**?

American CryptoFed should have answered completely and clearly, either through American CryptoFed's Form 10/S-1 filings or by our responses to your subpoenas, these questions which **"go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**. However, given that your October 31, 2022 Email is the first time you specified **"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"**, to avoid any misunderstandings and to further demonstrate American CryptoFed's good faith, before removing the Form S-1 delaying amendment, American CryptoFed would like to provide you with an additional opportunity to specify and present what exactly the top three questions are which **"go directly to the issue of whether American CryptoFed has assets, revenue, or liabilities"**.

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

We would like to combine Section **II. Unlawful 8 (e) Order** and Section **IV. The Mandate of Section (b) of the Securities Act** outlined in the October 27 Letter together, in this letter in order to effectively confirm your legal position regarding the operational relationship



evident among Section 8(a), (b), (d) and (e) of Securities Act. In your October 31, 2022 Email, you stated the following:

The Commission staff does not agree that Securities Act Sections 8(d) and 8(e) do not apply to American CryptoFed's Form S-1 registration statement or that the Commission's Section 8(e) order of examination and the subpoenas issued thereunder are unlawful. Further, the staff need not follow American CryptoFed's instructions as to how the staff should conduct the Section 8(e) examination.....

Your insistence that such requests be issued under a Section 8(b) order, rather than Section 8(e) is without legal support, and is not a basis for failing to cooperate with the Section 8(e) examination.

Our understanding of your legal position is that, you claim it is lawful for the Division of Corporation Finance and Division of Enforcement to skip the process mandated by Section 8(a) & 8(b), and directly jump to the examination proceedings of Section 8(d) & 8(e), even under these conditions:

- i) that American CryptoFed's Form S-1 registration statement already includes a Delaying Amendment to intentionally incorporate the comments from the staff of Division of Corporation Finance;
- ii) that American CryptoFed's Form S-1 registration statement has not yet become effective;
- iii) that the plain text of the Section 8(a) of the Securities Act makes it crystal clear that "the effective date of a registration statement **shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine...**";
- iv) that the plain text of the Section 8(b) of the Securities Act makes it crystal clear that "...the Commission may ... **issue an order prior to the effective date of registration refusing** to permit such statement to become effective....";
- v) that the plain text of the Section 8(d) of the Securities Act makes it crystal clear that "...the Commission may... **issue a stop order suspending the effectiveness of the registration statement**";



- vi) that the plain text of the Section 8(e) of the Securities Act makes it crystal clear that “The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue **under subsection (d).**”

Is our understanding of your legal position correct?

Please provide us with a simple Yes or No answer, **on or before November 3rd, 2022.**

You are welcome to support your position with relevant case law and additional explanations.

To avoid any misunderstanding and further demonstrate American CryptoFed is operating in good faith, before removing the Form S-1 Delaying Amendment, American CryptoFed would like to provide you with an additional opportunity to confirm whether our understanding of your legal position is correct.

As early as 1935, the U.S. Court of Appeals for the Second Circuit provided a clear interpretation (quoted below) as to when subsections (b), (d) and (e) of Section 8 should apply.

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).

The interpretation above supports American CryptoFed’s legal position, not yours. Your legal position has completely and unlawfully transformed the SEC from a Disclosure Agency to an Investigative Agency. Instead of facilitating American CryptoFed to complete its Form S-1 registration statements, by providing 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) stating “*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** Section 8(b) of the Securities Act stating “*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*”, instead, you have enforced a



secret investigation on alleged future violations with the non-public Section 8(e) Order, issued less than two months after American CryptoFed in good faith filed its Form S-1 registration statement for compliance and disclosure purposes. This secret investigative order was not revealed to American CryptoFed for close to seven months. For about a year, you have been investigating future violations by American CryptoFed which have not yet happened and will never happen.

## **VI.** **Conclusion**

Mr. Bruckmann, the deadline of October 31, 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**, as a show of good faith, we ask you to **on or before November 3rd, 2022**, 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"** as suggested by your October 31, 2022 Email.
- ii. Regarding **Section II: Unlawful 8 (e) Order** and **Section IV: The Mandate of Section (b) of the Securities Act**, please confirm, **on or before November 3rd, 2022**, whether your legal position is as American CryptoFed posits, which, if so, has completely and unlawfully transformed the SEC's mission as a Disclosure Agency to an Investigative Agency acting "in an arbitrary or discriminatory way" which the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) mandates to eliminate.
- iii. Regarding **Section: III Whether the Ducat and Locke Tokens Are Securities Will Be Moot**, you did not oppose American CryptoFed's position that 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.



- 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”<sup>1</sup>, “even tailoring what the disclosures might be.”<sup>2</sup>).**

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 III and V**. American CryptoFed is planning to file the “Amendment No.1 to Form S-1” to remove the Delaying Amendment, after we receive your responses (or non-responses) to this letter regarding the remaining **Sections I, II and IV** first specified in the October 23, Letter.

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<sup>3</sup> instruction below to complete the filing review.

#### 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

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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>

<sup>3</sup> <https://www.sec.gov/divisions/corpfin/cffilingreview>



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.

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. From the Securities Act's perspective, the Filing Review Process should be completely governed by Section 8(a) and 8(b), not by Section 8(d) and 8(e). 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." 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)<sup>4</sup>. 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 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 Chairman Gensler’s instructions and public policy


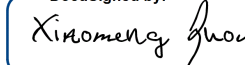
<sup>4</sup> <https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf>



statements. Therefore, this letter and your response to it, together with our October 23, 2022 Letter, October 27, 2022 Letter, may be attached as a supporting document 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,

/s/ Scott Moeller  DocuSigned by:  A82E97EDD0C44FD... Name: Scott Moeller Title: Organizer/President	/s/ Xiaomeng Zhou  DocuSigned by:  6F7F189BD770455... Name: Xiaomeng Zhou Title: Organizer/COO
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----- Forwarded message -----

From: **Bruckmann, Christopher** <bruckmannc@sec.gov>  
Date: Mon, Oct 31, 2022 at 5:46 AM  
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,

The Commission staff does not agree that Securities Act Sections 8(d) and 8(e) do not apply to American CryptoFed’s Form S-1 registration statement or that the Commission’s Section 8(e) order of examination and the subpoenas issued thereunder are unlawful. Further, the staff need not follow American CryptoFed’s instructions as to how the staff should conduct the Section 8(e) examination. 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. Your continued refusal to



provide responsive answers to our questions and American CryptoFed's continued refusal to provide any documents in response to the subpoena demonstrates that American CryptoFed is not interested in providing the staff with the very information you claim to want to provide. Your insistence that such requests be issued under a Section 8(b) order, rather than Section 8(e) is without legal support, and is not a basis for failing to cooperate with the Section 8(e) examination.

We disagree with the remaining factual and legal contentions in your letter. 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.

Regards,

Chris Bruckmann