



October 16, 2022

Via Electronic Email

Justin Dobbie, Acting Office Chief,
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U.S. Securities and Exchange Commission
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**Re: American CryptoFed DAO LLC's Fair Notice Affirmative Defense
Form S-1 File No.: 333-259603**

Dear Mr. Dobbie,

This is a follow-up letter to my letter dated August 28, 2022 ("August 28, 2022 Letter") to which, as of today, more than one and half month has passed, you have not yet responded. In my August 28, 2022 Letter to you, I specifically requested the following:

Mr. Dobbie, American CryptoFed urges you to abide by Chairman Gensler's instruction above and provide American CryptoFed with tailored disclosure requirements on or before September 5th, 2022. Then American CryptoFed will remove the Form S-1 delaying amendment so that the Form S-1 filing can become effective 21 days after the removal.

Today, this letter is to formally notify you that American CryptoFed will soon file an amendment to remove the Form S-1 delaying amendment, pursuant to 17 CFR § 230.473 (b) under the Securities Act of 1933 ("Securities Act"), thereby rendering the Form S-1 registration statement automatically effective in 20 days by operation of Section 8(a) of the Securities Act. The beneficial purpose of the Form S-1's delaying amendment is for American CryptoFed to accommodate the comments and guidance from the Securities and Exchange Commission



(“SEC” or “Commission”) so that SEC does not need to issue a stop order pursuant to 15 U.S. Code § 77h (b) or (d), the plain text of which is 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).

(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).

Even if a stop order is issued by the Commission, the plain text of 15 U.S. Code § 77h (b) or (d) cited above, requires the Commission to include guidance in the stop order in order for American CryptoFed to amend the Form S-1 registration statement so that the stop order can be timely lifted. Therefore, the Form S-1 delaying amendment pursuant to 17 CFR § 230.473 (a) is **not** for the SEC to unlawfully delay or stop or obstruct American CryptoFed’s legitimate disclosure to the public. Now, it is time for American CryptoFed to remove the Form S-1 delaying amendment to make the Form S-1 effective, given that you do not provide the necessary “precision and guidance” required by the Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) for American CryptoFed to complete the Form S-1 filing, despite multiple repeated requests for such. By refusing to provide American CryptoFed with the necessary “precision and guidance” before the Form S-1 delaying amendment is removed, logically you will not be able to justify a stop order issued pursuant to 15 U.S. Code §



77h (b) or (d) above, if a stop order is issued by the Commission after the Form S-1 delaying amendment is removed.

To avoid any misunderstanding and further demonstrate American CryptoFed's good faith, before removing the Form S-1 delaying amendment, I hope that this letter can serve as the **seventh and last** letter which specifically requests you to provide American CryptoFed **with a proper mechanism**, on or before October 19th, 2022, so that American CryptoFed can 1) complete the initial registration Form S-1 filed with the SEC on September 17, 2021 and 2) continue to furnish accurate information for ongoing disclosures, when the information requested by the Form S-1 *does not exist and shall never exist within the American CryptoFed DAO's structure*.¹ The previous **six** letters were sent to your attention, on July 22, 2022 (two letters), July 31, 2022, August 4, 2022, August 17, 2022 and August 28, 2022.

Today, as in each of my earlier letters to you, I emphasize that American CryptoFed's request is pursuant to the Supreme Court's opinion 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).

American CryptoFed is not alone in its request that the SEC provide the necessary “precision and guidance” as required by the Supreme Court opinion above. On July 21, 2022, Coinbase Global Inc had also asked the SEC to provide clear guidance via their “Petition for Rulemaking – Digital Asset Securities Regulation” which stated the following on pages 5 and 15 (emphasis added)²:

¹ This seventh letter only focuses on Form S-1, because the Division of Enforcement misled American CryptoFed to withdraw its Form 10 filing, while the Division of Corporation Finance failed to provide American CryptoFed with the “precision and guidance” required by Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) to complete the Form 10 filing.

² <https://www.sec.gov/rules/petitions/2022/petn4-789.pdf>



The issuer registration, disclosure, and listing requirements for securities are currently **tailored to the issuers of debt and equity** in public companies. But most digital assets—coins and tokens that trade on exchanges like Coinbase—do not represent ownership stakes in complicated public companies or pay a return to investors through dividends or interest. (p. 5).

For example, even if these assets have value primarily based on the promoter's efforts, they generally do not provide holders any rights over the residual value of the issuer, or a claim on the issuer's assets. **They are neither equity nor debt.** (p. 15).

Recently, the SEC's Chairman Gary Gensler not only recognized the differences between traditional securities and crypto tokens as outlined above in Coinbase's petition, but also he emphasized the SEC's exemptive authority to tailor disclosure for crypto tokens, in his July 14, 2022 interview with Yahoo Finance below (emphasis added)³.

JENNIFER SCHONBERGER: Chair Gensler, given that you've said that nearly all tokens, with the exception of Bitcoin and perhaps Ethereum, would be classified as securities based on their use cases, **how do you feel about applying the disclosure regime under current securities laws for equities to crypto?**

GARY GENSLER: So it's really an age old concept. If you're raising money from the public and the public's anticipating profits based on the efforts of that common enterprise, that's a security. It's kind of a logical thing. And we at the SEC have a disclosure regime, as you said. **I've said to the industry, to the lending platforms, to the trading platforms, come in, talk to us.**

We do have robust authorities from Congress also to use their exemptive authority so that we can tailor investor protection, and in your specific question about the tokens themselves, even tailoring what the disclosures might be, because maybe not all of the disclosures for somebody issuing equity are the same as a crypto token. But I would note, we don't have the same disclosures for an asset-backed security that we do for a stock offering. So it's a thoughtful way to sort of tailor things.

Furthermore, on September 15, 2022, in his "Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs" (emphasis added)⁴, Chairman Gensler stated the following under oath:

Of the nearly 10,000 tokens in the crypto market, I believe the vast majority are securities. Offers and sales of these thousands of crypto security tokens are covered by the securities laws, which require that these transactions be registered or made pursuant to an

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

⁴ <https://www.sec.gov/news/testimony/gensler-testimony-housing-urban-affairs-091522>



available exemption. **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.**

As Acting Office Chief of the Office of Finance, within the SEC's Division of Corporation Finance, Mr. Dobbie, you have the responsibility, obligation and authority to provide American CryptoFed with a **proper mechanism** to complete the registration statements. This responsibility to provide American CryptoFed with the "precision and guidance" required by Supreme Court opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) to complete its Form S-1 registration statement, is especially cogent given that you not only recommended the denial of American CryptoFed's Form S-1 withdrawal on June 13, 2022, but further stated in your July 15, 2022 letter regarding our Form 10, "the withdrawal of the registration statement does not mean that the staff agrees with your assertion in the withdrawal request that the Locke token and Ducat token are not securities".

Mr. Dobbie, if you have difficulties to abide by Chairman' Gensler's instruction above (**"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"**), to provide American CryptoFed with the "precision and guidance" required by Supreme Court Opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), please let me know immediately. I will write Chairman Gensler directly to ask him and all SEC Commissioners to provide you with necessary instructions to fulfill your duties.

The public requires, and the entire crypto industry is actively demanding the SEC to provide the necessary "precision and guidance" as required by the Supreme Court opinion above in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). American CryptoFed is the first historic case to test whether Chairman Gensler's public statements and testimony under oath in the US Senate as quoted above are true or false and misleading. If American CryptoFed, despite its tireless efforts and countless requests for the SEC's "precision and guidance", is unable to complete its Form S-1, all the pending litigation actions that the SEC has brought against the entities and individuals in crypto industry under the name 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 above. 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 registrations, 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 Commission did not ever, and does not currently exist. I will emphasize this point to Chairman Gensler and all Commissioners in my letter to them and remind them of the March 11, 2022 order in *SEC v. Ripple Labs*, issued by Judge Analisa Torres of the Southern District of New York, who allowed Ripple Labs’ Fair Notice affirmative defense, citing *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012) below (emphasis added, p. 6-7)⁵.

“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).

Mr. Dobbie, I look forward to your response.

Sincerely,

DocuSigned by:

Scott Moeller

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/s/ Scott Moeller

Scott Moeller

President, American CryptoFed DAO

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⁵ <https://www.nysd.uscourts.gov/sites/default/files/2022-03/Ripple%20Strike%20Order.pdf>