

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 93551 / November 10, 2021

ADMINISTRATIVE PROCEEDING

File No. 3-20650

In the Matter of

American CryptoFed DAO LLC,

Respondent.

RESPONDENT AMERICAN CRYPTOFED DAO

LLC’S STATEMENT WITHDRAWING ITS

OPPOSITION TO THE DIVISION OF

ENFORCEMENT’S MOTION TO DISMISS THE OIP

On September 16, 2021, American CryptoFed DAO LLC (“American CryptoFed”) filed a Form 10 with the Securities and Exchange Commission (the “SEC” or “Commission”) seeking to register two tokens of Locke and Ducat. On November 10, 2021, the Commission issued an Order Instituting Proceedings (“OIP”). On August 9, 2022, the Division of Enforcement filed the “NOTICE OF MOOTNESS, MOTION TO DISMISS, AND INCORPORATED MEMORANDUM OF LAW” to dismiss the OIP (“Motion to Dismiss”). On August 10, 2022, American CryptoFed filed “RESPONDENT AMERICAN CRYPTOFED DAO LLC’S OPPOSITION TO THE DIVISION OF ENFORCEMENT’S MOTION TO DISMISS WITH A FAIR NOTICE AFFIRMATIVE DEFENSE” (“Opposition to Motion to Dismiss”). Today, American CryptoFed respectfully submits this statement to withdraw the Opposition to Motion to Dismiss (“Withdrawal Statement”).¹

¹ The Commission's January 6, 2022 Order which requires parties to meet and confer before filing a motion for leave, should not apply to the Withdrawal Statement which is not a motion.

On September 15, 2022, the Commission issued the “ORDER DENYING MOTION FOR LEAVE TO FILE A MOTION TO SET AN EXPEDITED BRIEFING SCHEDULE ON SUMMARY DISPOSITION” (“September 15, 2022 Order”). In the Order at page 1-2, it states the following:

“Because both parties indicated an intent to file motions for summary disposition, the Commission stated that a briefing schedule for such motions would be set by separate order in due course.”

However, the September 15, 2022 Order mischaracterizes American CryptoFed’s position on summary disposition. In the December 25, 2021 “RESPONDENT’S REPLY TO DIVISION OF ENFORCEMENT’S MEMORANDUM IN OPPOSITION TO RESPONDENT’S MOTION TO LIFT THE ORDER THAT STAYS THE EFFECTIVENESS OF RESPONDENT’S FORM 10” (“Reply”), American CryptoFed clearly stated its position with regards to summary disposition at page 6 below:

Thus, for a hearing “on the record” explicitly required by a statute such as Section 12(j), the Supreme Court in *Steadman v. SEC*, provides a chain of statutes from **5 U. S. C. § 554 to 5 U. S. C. § 556** which inevitably leads to cross-examination at an oral hearing, prohibiting summary disposition:

A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such **cross-examination** as may be required for a full and true disclosure of the facts (5 U. S. C. § 556(d)) (Emphasis added).

Therefore, American CryptoFed’s position is that summary disposition is unlawful when a hearing “on the record” is explicitly required by a statute such as Section 12(j). In addition, in the September 15, 2022 Order, the Commission further provided the following guidance at its footnote 21 at page 6 (emphasis added):

We note that Respondent’s pending motion to lift the OIP’s stay of effectiveness of Respondent’s Form 10 is simply a request, which remains to be acted upon by the

Commission. In the meantime, the last word on the Form 10's effectiveness is the OIP's directive that it be stayed. This order should not be construed as expressing a view as to the disposition of that motion, which the Commission intends to resolve as expeditiously as possible. **To provide guidance to the parties regarding further proceedings, it is ORDERED that, pending any further order of the Commission, any motion for summary disposition shall be filed within 30 days of the issuance of the order resolving that motion; any opposition shall be filed within 30 days of the motion for summary disposition; and any reply may be filed within 14 days of the opposition.**

Independent of the Commission's final ruling as to who will prevail in the unlawful summary disposition, the guidance given above will not help towards American CryptoFed's request for reinstating its Form 10 filing and answer the issue of Fair Notice as outlined by American CryptoFed in its Opposition to Motion to Dismiss below:

For the reasons set forth above, the Commission should deny the Division of Enforcement's Motion to Dismiss so that American CryptoFed can reinstate the Form 10 filing and keep the dialogue active with the Divisions of Corporation Finance and Enforcement to resolve the Constitutionally required Fair Notice issue under the supervision of the Commission. (Page 5, emphasis added).

After considering all the factors above, American CryptoFed has decided to file this Withdrawal Statement. As the result, the OIP will be dismissed, and the summary disposition process will no longer be needed. It is disappointing that the Commission took the path of unlawful summary disposition and did not immediately make efforts to address the Constitutionally required Fair Notice issue by providing American CryptoFed with the **"precision and guidance"** to complete its Form 10 registration. The **"precision and guidance"** are specifically required by the US Supreme Court Opinion in *F.C.C. v. Fox Television Stations, Inc.* 567 U.S. 239, 253 (2012) below (emphasis added):

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.

See *Connally v. General Constr. Co.*, 269 U. S. 385, 391 (1926) ("[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law"); *Papachristou v. Jacksonville*, 405 U. S. 156, 162 (1972) ("Living under a rule of law entails various suppositions, one of which is that '[all persons]

are entitled to be informed as to what the State commands or forbids’ ” (quoting *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939); alteration in original)). **This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment.** See *United States v. Williams*, 553 U. S. 285, 304 (2008). It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Ibid.* As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved. See *id.*, at 306.

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.

Dated: September 18, 2022

Respectfully submitted,

DocuSigned by:

Scott Moeller

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By /s/ Scott Moeller

Scott Moeller

President, American CryptoFed DAO LLC

1607 Capitol Ave Ste 327

Cheyenne, WY. 82001

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Motion was filed by eFAP and was served on the following on this 18th day of September 2022, in the manner indicated below:

By Email:

Christopher Bruckmann, Trial Counsel

Division of Enforcement – Trial Unit
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-5949
202-551-5986
bruckmannc@sec.gov

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

By /s/ Scott Moeller

Scott Moeller
President, American CryptoFed DAO LLC
1607 Capitol Ave Ste 327
Cheyenne, WY. 82001