

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

ADMINISTRATIVE PROCEEDING

File No. 3-21243

In the Matter of

The Registration Statement of

American CryptoFed DAO LLC,

Respondent.

**DIVISION OF ENFORCEMENT'S OBJECTIONS TO RESPONDENT'S
ADDITIONAL PROPOSED EXHIBITS**

The Division of Enforcement ("Division"), by counsel, respectfully submits these objections to the additional exhibits proposed by Respondent American CryptoFed DAO LLC's ("Respondent" or "American CryptoFed") on December 20, 2022.

During the December 6, 2022 session of the hearing in this matter, the Court instructed American CryptoFed to file, by December 20, 2022, a list of the additional proposed exhibits, *from the Division's Rule 230 production*, that it wished to enter into evidence in this matter. The Court made clear the additional exhibits should be from the Rule 230 production and did not give American CryptoFed leave to attempt to stuff the record with extraneous materials:¹

"Now, Mr. Zhou, what I'm looking for is for you to file a list in a week of the exhibits -- *of the actual items from the Rule 230 Production*,

¹ The Division can provide the transcript to the Court upon request if needed.

which Mr. Bruckmann says is mostly stuff he either got from you or correspondence, but anyway, you'll see which ones you want.”

Dec. 6, 2022 Tr. at 438:18-23 (emphasis added).

“JUDGE FOELAK: Okay. Okay. Sir -- Sir, *their Rule 230 Production*, they have to give you everything they've gathered. That doesn't mean they think it's all rela[vent]² or -- or, you know, if there was a lot of letters back and forth between you -- between you and them covering the same topics. What I'm asking you to do is to select *which of those items* that you want to enter as exhibits and we'll -- and -- and list that specifically *so we don't waste time with some enormous mountain of stuff*. Because their might -- chances that -- the idea that you go through -- you take a look *at this stuff and see which ones you want*.”

Dec. 6, 2022 Tr. at 439:19 to 440:8 (emphasis added).

“JUDGE FOELAK: Okay. Sir. Sir, I'm just asking you -- the Division may be way off base. I'm just asking you to specify *the particular materials from these files* that you want to enter as exhibits.”

Dec. 6, 2022 Tr. at 440:17-21 (emphasis added).

Notwithstanding the Court’s clear direction, American CryptoFed has submitted more than 100 additional exhibits, including irrelevant materials outside the Rule 230 production. Indeed, nearly all of the proposed additional exhibits are irrelevant, duplicative, or not proper items to be admitted into evidence as exhibits. The Court has previously informed Respondent that similar exhibits were improper, but Respondent persists in trying to enter them into evidence anyway.

Despite American CryptoFed’s improper submission, the Division suggests, as it has before, that the best course of action may be to admit many (but notably not all) of the exhibits into evidence with the Division reserving its right to argue in

² The transcript says “relative.” The context makes clear that “relevant” is what the Court either said or meant to say.

briefing that they are not relevant. Though this would allow irrelevant, improper, and duplicative items into evidence, it is simply more efficient than taking the time to sort through the mess of exhibits American CryptoFed has submitted.

Below, the Division notes several general objections below to preserve the record. Critically, the Division also notes specific objections to certain documents, including on authenticity grounds, which should not be allowed into the record.

General Objections

American CryptoFed has sought to make this proceeding seem more complicated than it is and claims that the case involves more documents than it actually does. In fact, the issues in this proceeding are straightforward, and have been known to American CryptoFed since 2021: their Form S-1 registration statement lacks audited financials and other required items, and contains materially misleading statements.

Respondent seeks to distract from this with their proposed additional exhibits, which include both irrelevant and duplicative materials. The Division objects to this effort to distort the record here.

For example, despite previously being admonished by the Court that it should not move entire academic papers into evidence, but rather should simply cite the relevant portion of an academic article in its briefing, American CryptoFed seeks to admit entire lengthy academic articles and book excerpts, totaling in excess of 500 pages, into evidence. (*See* proposed Exhibits 55, 131, 133, 134, 135, 139, 143 and 172).

Other exhibits are duplicative. This is due in part to American CryptoFed's practice of repeatedly attaching past motions and letters to its more recent motions and letters, and then seeking to admit those motions and letters (with all their attachments) into evidence. *See, e.g.*, Exhibit 60. Repeating the same meritless arguments does not make them sound, it only creates a duplicative record. As just some examples, Respondent's Exhibits (admitted and proposed) include:

- At least six copies of American CryptoFed's October 12, 2021 letter to the Chair, Commissioners, and Erin Purnell, which is already in evidence as Division Exhibit 19 (*See Exhibits 4, 12, 23, 26, 27, and 159*);
- At least six copies of American CryptoFed's May 30, 2022 letter to the Division (which is already in evidence as Division Exhibit 13) (*See Exhibits 12, 17, 26, 27, 60, 159, and 162*);
- At least six copies of the Division's June 3, 2022 letter to American CryptoFed (*See Exhibits 12, 16, 26, 27, 159, and 162*);
- At least six copies of American CryptoFed's June 8, 2022 letter to the Division (*See Exhibits 12, 21, 26, 27, 159 and 162*);
- At least three copies of the Division of Enforcement's Filing Review Process posted on the SEC's website (*See Exhibits 3, 4, and 60*); and
- Three copies of the March 11, 2022 decision in *SEC v. Ripple Labs, Inc. et al.*, 20-cv-10832-AT-SN (S.D.N.Y.), despite previously being admonished that court decisions should not be filed as exhibits (*See Exhibits 7, 12, and 27*).

This list is not exhaustive, there are numerous other examples of duplicative exhibits.

The Division also objects to the proposed exhibits on the grounds of relevance, and reserves the right to explain in post-hearing briefing why any particular exhibit is not relevant. The overwhelming majority of the exhibits consist of correspondence between the parties that does not establish or rebut the allegations in this matter.

There is no reason the entire history of the correspondence between the parties needs to be admitted. Notably, none of the proposed exhibits are audited financial statements the absence of which is at the crux of the case.

Specific Objections

The Division further objects to the Exhibits below, which should not be admitted into evidence for the reasons stated:

Exhibit 66: The font on this exhibit is too small to be legible. The Division objects to this document being admitted into evidence in its present form.

Exhibits 99, 104, 106, 108, 111, 113, 115, 118, 119, 121, and 125 are inauthentic documents. They each purport to be “archived” versions of emails. They are incomplete versions of the emails and are therefore inauthentic, misleading, and unreliable. Exhibits 160-161 and 163-168 purport to be full versions of some of these same emails. It is incomprehensible to the Division why American CryptoFed would seek to admit both partial and complete versions of the same exhibits at the same time unless they were deliberately trying to create confusion in the record. The Division objects to Exhibits 99, 104, 106, 108, 111, 113, 115, 118, 119, 121, and 125 being admitted into evidence. *See* Rule 320(a), which directs that a hearing officer “shall exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unreliable.” 17 C.F.R. 201.320(a).

Exhibit 159 is an inauthentic exhibit. Exhibit 159 is described on the Exhibit List as “Supporting Exhibits for CryptoFed Exhibit 46.” But Respondent previously stated that there was no Exhibit 46, and that it was intentionally skipping this

number. The Division therefore does not know what this Exhibit refers to or purports to be, and it is therefore unreliable. It also appears to be duplicative and irrelevant.

Exhibit 162 is a misleading exhibit. Exhibit 162 purports to be the supporting documents for Exhibit 105. But Exhibit 105 is an incomplete and inauthentic exhibit. It is therefore misleading and unreliable to admit the alleged supporting exhibits into evidence. The Division objects to Exhibit 162 being admitted into evidence.

CONCLUSION

Accordingly, the Court should not allow Respondent's Exhibits 66, 104, 108, 115, 118, 119, 125 and 159 into evidence, and should allow the remainder into evidence with the Division's reserving the objections above.

Dated: December 20, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Division of Enforcement's Objections to Respondent's Additional Proposed Exhibits was served on the following on this 20th day of December 2022, in the manner indicated below:

By Email:

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