

**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 179 TO 271**

The Division of Enforcement ("Division"), by counsel, respectfully submits these objections to additional exhibits 179 to 271 proposed by Respondent American CryptoFed DAO LLC's ("Respondent" or "American CryptoFed").

General Objections

Respondent has repeatedly sought to introduce irrelevant, extraneous, duplicative, and improper material into the record. The Division previously attempted to efficiently deal with some of these requests by agreeing that Respondent's exhibits could be admitted into the record, with the Division reserving its right to argue that they were irrelevant in post-hearing briefing. It is now abundantly apparent that Respondent is taking advantage of the Division's approach by seeking to introduce hundreds of completely irrelevant exhibits.

Although Respondent is represented by its non-lawyer officers, it still must comply with the Commission's Rules of Practice, as Respondent was repeatedly admonished by the Commission in the Section 12(j) proceeding: "[W]e expect even unrepresented parties to comply with our rules, to file all required papers, and to comply with all orders: 'Parties, including those appearing *pro se*, are obligated to familiarize themselves with the Rules of Practice.'" *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93806, 2021 WL 5966848, at *1 n.3: (citations omitted) *see also Am. Cryptofed DAO LLC*, Exchange Act Release No. 93905 (Jan. 5, 2022) 2022 WL 44323 at *2 (same).

The Commission's Rules of Practice make clear that ***relevant*** items should be admitted into evidence, but that a hearing officer "shall exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unreliable." Rule 320(a); 17 C.F.R. 201.320(a). Respondent has been repeatedly reminded in this proceeding that legal arguments are not proper exhibits. *See, e.g.,* Dec. 1, 2022 Tr. at 70-78.

The issues in this matter are straightforward: Respondent's Form S-1 Registration Statement lacks required items including audited financial statements and contains materially misleading statements, and Respondent also failed to cooperate with the Section 8(e) Examination. The proposed exhibits do not shed light on any of the allegations or defenses. With a few exceptions, they should be excluded as irrelevant.

Additionally, exhibits to be admitted into evidence should generally be identified ***before*** the hearing commences. Accordingly, here, the Court required the

parties to submit a Joint Report identifying each party's proposed exhibits. *See* AP Rulings Release No. 6882 (Nov. 22, 2022). During the hearing session on December 6, 2022, the Court gave Respondent additional time to propose more exhibits from *within the Division's Rule 230 production*, with a deadline to do so by December 20, 2022. *See* Dec. 6, 2022 Tr. at 438 to 440. None of the proposed exhibits 179 to 271 are from within the Division's Rule 230 production.

Moreover, Respondent stated by email at 12:02 AM (ET) on December 21, 2022 that there may be *yet more* exhibits coming:

Mr. Bruckmann and Ms. Shields,

We have sent you most documents derived from the Investigative File and the Rule 230 Production. There could be some hidden citations and links embedded in the Investigative Files and the Rule 230 Production, which we may find later. At that point, we will send them to you. We have done a lot of searching and have tried to find out as many as possible.

The Division objects to any additional exhibits that allegedly come from links or citations within the Rule 230 production. As the Court has explained, by rule, the Rule 230 production must include all non-privileged documents the Division gathered in the investigation (or here, Section 8(e) examination) that led to the proceeding. Just because something was included (or cited) in that production does not provide a basis for it to be admitted into evidence. Respondent has been given more than ample time to review the relatively small Rule 230 production in this case, consisting nearly entirely of correspondence between Respondent and the Division that Respondent already possessed. If they have not, by the extended

deadline imposed by the Court, put forth a document and explained why it is relevant, it should not be admitted.

Specific Objections

The Division objects to Respondent's proposed Exhibits 179 through 262, each of which are Motions, Oppositions, Orders or other filings from the Section 12(j) administrative proceeding *In the Matter of American CryptoFed DAO LLC*, AP File No. 3-20650. These filings are not proper exhibits for this hearing, Respondent has provided no explanation why they are needed, and even if there were a reason to cite one or two of these filings, Respondent could cite them as legal citations without them being introduced as evidence in this hearing. There is simply no basis to move into evidence in this proceeding what appears to be the entire docket of filings from another administrative proceeding. Additionally, proposed Exhibits 179 to 262 are unduly repetitious. As just two examples, they include three more copies of Respondent's May 30, 2022 letter to the Division—which would bring the total number of copies of this document in Respondent's exhibits to ***nine***. (See Exhibits 250, 260, and 262). They also include four more copies of the Division's June 3, 2022 letter to Respondent—which would bring the total number of copies of this document in Respondent's exhibits to ***ten***. (See Exhibits 242, 246, 250, and 262). Stuffing the record with duplicative and irrelevant exhibits is improper. See Rule 320(a); 17 C.F.R. 201.320(a).

The Division does not object to Exhibit 263, description from the SEC's Investor.gov website of Ponzi schemes, including red flags that may indicate that an investment is a Ponzi scheme.

The Division objects to the following exhibits on the grounds that they were not included in Respondent's Form S-1, nor do they make any allegation or defense in this proceeding more or less likely. They are therefore irrelevant and should be excluded:

- Exhibit 264, a two-hundred-and-sixteen page copy of John Locke's *Two Treatises of Government*.
- Exhibit 265, which purports to be an interview of a person unaffiliated with Respondent or the Division about economic theory.
- Exhibit 266, which purports to be an article by Ben Bernanke titled *Federal Reserve Policy in an International Context*.
- Exhibit 267, which purports to be an article from a person apparently affiliated with the Federal Reserve Bank of San Francisco on fiscal policy.
- Exhibit 268, which purports to be an article from a person apparently affiliated with the Federal Reserve Bank of Dallas on monetary policy.

The Division also objects to Exhibit 270¹, which purports to be a chart from the website OurWorldInData.org regarding Gross Domestic Product. There has been no foundation laid for this exhibit regarding its authenticity or the data used to compile it. It appears to be hearsay whose reliability is unknown or unknowable. And in any event, the exhibit was not part of Respondent's Form S-1 and does not explain or justify why Respondent failed to include audited financial statements in

¹ The Division does not object at this time to Exhibit 269, which purports to be a paper on revenue recognition from Deloitte but whose provenance is unknown. The Division reserves the right, however, to object to this exhibit, including on authenticity and relevance grounds, depending on how Respondent uses it.

its Form S-1 or make any other allegation or defense in this proceeding more or less likely. It should be excluded.

The Division objects to Exhibit 271, which purports to be an interview with Chair Gensler. First, at the bottom of the article, there is a comment from an unknown person stating that “I find the SEC to be an agency with as [sic] reputation for misleading the investing public,” which is extraneous, unreliable, and irrelevant hearsay. Second, even focusing on the portion of the article that purports to be an interview with Chair Gensler, the Division cannot vouch for the authenticity of this document or the accuracy of the transcription. Should the article come into evidence, it should do so with the caveat that it may not accurately reflect what Chair Gensler said.

CONCLUSION

Accordingly, the Court should not allow Respondent's Exhibits 179 to 262, 264 to 268, and 270 into evidence, and should only allow Exhibit 271 into evidence with the caveat discussed above.

Dated: December 22, 2022

Respectfully submitted,

/s/ Christopher Bruckmann

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**COUNSEL FOR
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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 22nd day of December 2022, in the manner indicated below:

By Email:

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/s/ Christopher Bruckmann
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