

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

**SECURITIES ACT OF 1933**  
**Release No. 11134 / November 18, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21243**

**In the Matter of**

**The Registration Statement of**  
**American CryptoFed DAO LLC**

**Respondent**

**RESPONDENT AMERICAN CRYPTOFED**  
**DAO LLC'S RESPONSE TO DIVISION OF**  
**ENFORCEMENT'S TWO OBJECTIONS**  
**TO RESPONDENT'S ADDITIONAL**  
**PROPOSED EXHIBITS**

American CryptoFed DAO LLC's ("Respondent" or "American CryptoFed") respectfully submits this response to the two objections ("Two Objections")<sup>1</sup> filed by the Division of Enforcement ("Division") on December 20, 2022 ("December 20, 2022 Objection") and December 22, 2022 ("December 22, 2022 Objection"), with the following reasons.

**1. The fact does not support the Division's statement below.**

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. (December 22, 2022 Objection, p.2).

The 32 allegations in this OIP are extremely broad. Currently, in addition to the allegations in the Division's statement above, the OIP also covers:

- i. what a DAO is and why it is different from traditional organizations (#1);
- ii. how American CryptoFed DAO's structures of ownership, management,

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<sup>1</sup> The Two Objections are 13 pages in total excluding Certification of Service. American CryptoFed's combined response is 12 pages in total, excluding Certification of Service.

compensation and financial sustainability are different from traditionally centralized organizations, and how to report the DAO's structure through the existing Form S-1 filing to reflect the DAO's reality without causing misleading or untrue statements (# 4 through 8);

iii. how the business model of American CryptoFed Monetary System works and is different from Ponzi schemes (#9, December 2, 2022 Transcript p.391:20-21);

iv. whether Locke and Ducat tokens are securities (#12 through #15);

v. whether the Section 8(e) Order and its examination are unlawfully issued (#13, #17 through #32);

vi. whether American CryptoFed's assertion that "*American CryptoFed has No Fundraising, No Revenue, No Costs, No Profits and No Assets and therefore there is no traditional balance sheet equation of Assets = Liabilities + Shareholder's Equities to generate securities subject to the SEC's jurisdiction*", is true (#20).

The extremely broad OIP allegations cover issues not only how the Ducat Economic Zone can establish and maintain a decentralized autonomous political order and economic sustainability within the legal framework of the United States, but also cover issues as to how the Ducat Economic Zone interacts with the US Dollar Economic Zone via its foreign exchange regime, fiscal policy and monetary policy. To rebut such a broad set of allegations, all proposed additional exhibits 52 through 271 are needed and relevant. All these exhibits can pass the Federal Rules of Evidence:

Rule 401. Test for Relevant Evidence. Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

**2. The fact does not support the Division's statement below regarding Exhibits 64 through 178 in the December 20, 2022 Objection (p.2).**

“Notwithstanding the Court’s clear direction, American CryptoFed has submitted more than 100 additional exhibits, including irrelevant materials outside the Rule 230 production.”

All Exhibits 64 through 178 were derived from the Rule 230 production. The Division failed to point out one exhibit which was not derived from the Rule 230 production.

Furthermore, Judge Foelak’s instruction does not have any restrictions as to what American CryptoFed can select from Rule 230 production. It is American CryptoFed’s discretion to make the selection. The submission of more than 100 additional exhibits does not violate Judge Foelak’s instruction.

**3. The fact does not support the Division’s statement below regarding Exhibits 179 through 271 in the December 22, 2022 Objection (p.2-3).**

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.

Judge Foelak’s instruction only provided the December 20, 2022 deadline for proposed exhibits from the Division’s Rule 230 production. There is no deadline instruction for proposed exhibits outside the Rule 230 production. On November 25, 2022, American CryptoFed filed a motion for holding a prehearing conference to discuss the very issue of exhibits and evidence, among other things, but on November 28, 2022, the Division opposed the motion. Judge Foelak made it clear in AP Rulings Release No. 6884 (Nov. 25, 2022) “Further, the undersigned did not order a prehearing conference. Rather, the parties were ordered to file a report.” As a result, the Joint Report, due to the absence of a prehearing conference consensus, did not include any deadline for introducing exhibits and evidence. This can be proved by the fact that the Division already introduced at least one exhibit (Exhibit 20) after the Day 1 hearing on December 1, 2022

(December 2, 2022 Transcript p. 252:8-10). Furthermore, the Division still reserves its rights to move additional exhibits into evidence (December 2, 2022 Transcript p. 396:5-10).

**4. The fact does not support the Division's statement below regarding Exhibits 179 through 262 in the December 22, 2022 Objection (p.4).**

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.

The allegations in this OIP (#1, # 12 and # 4 through # 11) are identical to the allegations in the Section 12(j) administrative proceeding ("Form 10 OIP", #1, #7 and # 6) respectively.

The relationship between Respondent's Form S-1 and Form 10 filings are so deep that the allegations in this OIP have to mention Form 10 multiple times (#9, #23, #24). All the Motions, Oppositions, Orders or other filings from the Form 10 OIP are highly relevant to the major allegations in this OIP, such as allegations related to audited financial statements. The Division's own statement below in the December 22, 2022 Objection can also prove how deeply the allegations in this OIP are related to the allegations in the Form 10 OIP.

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).

"Respondent's May 30, 2022 letter to the Division" directly led to "the Division's June 3, 2022 letter to Respondent" in response, by which the Division disclosed for the first time to American CryptoFed, the existence of the Non-public Section 8(e) Order issued on November 9,

2021. This Non-public Section 8(e) Order is at the center of 20 allegations (# 13 through # 32) in this OIP. This is why “Respondent’s proposed Exhibits 179 through 262, each of which are Motions, Oppositions, Orders or other filings from the Section 12(j) administrative proceeding” repeatedly cited these two important documents.

Mr. Justin Dobbie testified, “And so, the communication about the deficiencies in most cases did apply to both the registration statement on Form 10, as well as, the registration statement on Form S-1.” (December 1, 2022 Transcript. p.61:21-25). As a result, this OIP is the extension of, rather than separation from the Form 10 OIP, and proposed Exhibits 179 through 262 should all be admitted, to demonstrate the factual development leading to this OIP, as well as the contradiction of withdrawal policies (discussed below) between Form S-1 and Form 10.

**5. The fact does not support the Division’s statement below in December 20, 2022**

**Objection (p.4).**

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:

As the Division admitted above, the duplicated documents are attachments of other independent exhibits. In order to maintain the integrity of these independent exhibits as evidence, their attachments should not be separated from them. To the extent that the duplicated documents are not independent exhibits per se, they do not exist alone and should not be categorized as duplicative exhibits. Furthermore, the number of times by which the same document is attached to multiple independent exhibits, can also prove very important facts. For example, the Division’s Exhibit 19 is American CryptoFed’s October 12, 2021 letter to the Chair, Commissioners, and Erin Purnell (“October 12, 2021 Letter”). The number of times by which

this October 12, 2021 letter is attached to multiple independent exhibits, can prove that American CryptoFed repeatedly asked the Divisions of Corporation Finance and Enforcement to respond to American CryptoFed's October 12, 2021 letter without success. The times of duplications tends to make it more probable to prove than it would be without them, that both Divisions failed repeatedly to answer American CryptoFed's multiple requests for response, despite that the SEC's own Filing Review Process, and Court decisions on Fair Notice (*F.C.C. v. Fox Television Stations, Inc.*, *SEC v. Ripple*) required their timely responses. As a result, the number of duplications of both the SEC's Filing Review Process and the American CryptoFed's October 12, 2021 letter attached to multiple independent exhibits are necessary to establish the facts that both Divisions violate the SEC's Filing Review Process and Court Decisions (Judge Foelak: "it's certainly unobjectionable to enter those as exhibits. December 1, 2022 Transcript, p.9:15-16).

As a result, all the proposed exhibits objected by the Division on the grounds of duplications, including but not limited to, Exhibits 60 and 162, should be admitted.

**6. The fact does not support the Division's statement below in December 20, 2022**

**Objection (p.4-5).**

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.

The correspondence between the parties is needed to establish the following facts.

**A. The Timeline of Transition from Section 8(b) to Section 8 (d)/(e)**

The timing of the issuance of the Non-public Section 8(e) Order was November 9, 2021, one month after the Division of Corporation Finance had already concluded and communicated to American CryptoFed that there were "serious deficiencies" in Respondent's Form S-1 registration, while the Delaying Amendment was still in effect, as Mr. Dobbie testified below.

Well, as I mentioned before, we -- you know, we started by conducting a screening. And then, after we completed our screening and identified these deficiencies, members of my team reached out to American CryptoFed and ultimately were able to set up a phone call with American Crypto -- principals of American CryptoFed in which they identified these particular deficiencies over the phone and -- and explained that there would be a need to file a substantive amendment to correct the deficiencies. (December 1, 2022 Transcript, p.59:12-22).

The correspondence between both parties established the factual foundation that Section 8(b) rather than Section 8 (d)/(e) should apply to American CryptoFed Form S-1 filing, leading to the undisputable conclusion that Section 8 (e) Examination and this Section (d) OIP are unlawful, pursuant to the Section 8(b), the Commissioner's opinion in *Red Bank Oil Company*, the U.S. Supreme Court's opinion in *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) at 229 ("However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling."), because the specific language in Section 8 (b) stating, "on its face incomplete or inaccurate" and "prior to the effective date of registration", left no room for Section 8(d)/(e) of the Securities Act to be applied to American CryptoFed's Form S-1.

#### **B. The Violation of Fair Notice Doctrine**

The fundamental principle that laws regulating persons or entities must give **fair notice of what conduct is required or proscribed**, *see, e. g., Connally v. General Constr. Co.*, 269 U. S. 385, 391, is essential to the protections provided by the Fifth Amendment's Due Process Clause, *see United States v. Williams*, 553 U. S. 285, 304, which requires the invalidation of impermissibly vague laws. 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.* **The void for vagueness doctrine addresses at least two connected but discrete due process concerns: Regulated parties should know what is required of them so they may act accordingly; and precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.** 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))

To extent that the Divisions of Enforcement and Corporation Finance



failed to i) provide a Howey Test analysis, ii) to respond to multiple requests for response to American CryptoFed's October 12, 2021 Letter, iii) to comply with the SEC's own Filing Review Process, and iv) to abide by Chairman Gensler's instructions to the staff, to which the Chairman testified in the US Senate under oath on September 15, 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", Exhibit 8), both Divisions have violated the US Supreme Court opinion regarding Fair Notice above. American CryptoFed needs all the correspondence exhibits to prove this point.

C. The Contradiction of Withdrawal Policy for Form S-1 and Form 10

The Commission and the Divisions of Corporation Finance and Enforcement contradicted themselves by denying the withdrawal of the Form S-1 filing, given that Form S-1 and Form 10 share the same business model of a monetary system, given that this OIP and the Form 10 OIP share a host of allegations, and given that the Form 10 withdrawal was allowed. Furthermore, they subsequently have created a second contradiction by issuing this OIP to stop the effectiveness of the Form S-1 filing. If they really want to stop Respondent's Form S-1 filing, they could have allowed Respondent's Form S-1 withdrawal to become effective and this OIP would not exist in the first place. They clearly acted in an arbitrary or discriminatory way by creating contradictions again and again. To this extent, this OIP is unlawful. American CryptoFed needs all the correspondence exhibits and all the Form 10 related filings (Motions, Motions, Oppositions, Orders, etc.) to prove this point.

In order to establish the facts outlined at A, B and C above, all proposed exhibits related to the correspondence between the parties should be admitted, with the following adjustments.



American CryptoFed will replace Exhibit 66 with a readable one. Regarding Exhibits 99, 104, 106, 108, 111, 113, 115, 118, 119, 121, and 125, American CryptoFed will replace 106, 111, 113 and 121 with full versions, and the numbers of 99, 104, 108, 115, 118, 119 and 125 will be skipped, because they already have their corresponding full versions (160, 161, 163, 164, 165, 166 and 168) respectively. The number 159 will be skipped, because Exhibit 159 was already included in Exhibit 12. Both Exhibits 105 and 162 are authentic documents, while Exhibit 162 is the attachment for Exhibit 105. American CryptoFed will merge Exhibit 162 into Exhibit 105 and resubmit the combined document as Exhibit 105, while the number of 162 will be skipped. Exhibit 271 will be replaced by a yahoo video link with the same transcript which were repeatedly cited in multiple communications (Exhibits 34, 35, 42 and 44).

**7. Expert witness, testimony and witness reports should have been discussed and decided through a prehearing conference pursuant to Rule 221 (c)/(d).**

The OIP and the Division completely deprived American CryptoFed of the 5th Amendment's Constitutional due process rights reflected in Rule 221 (c)/(d) to have a prehearing conference for discussing expert witness, although American CryptoFed filed a motion. As a result, academic articles and books are the only way for American CryptoFed to introduce expert opinions for preparing an effective defense of its Form S-1 filing for Section 1-(4) Federal Reserve System vs. CryptoFed (p. 18-22) and Ducat Economic Zone Plan (Exhibit 2 of the Form S-1 filing), and for establishing American CryptoFed as a monetary system to rebut OIP allegations (#12 and #20) and the Ponzi allegation.

It is obvious that the Division does not have even the basic knowledge about the mechanism of US dollar as a currency, because the Division asked the following wrong question (December 2, 2022 Transcript. p.392:3-12).

Mr. Moeller, let me stop you right there, all right.

Do you understand that the U.S. dollar is backed by the full faith and credit of the United States government which includes assets such as publicly owned land, mineral rights, the gold stored in Fort Knocks and has the ability to levy taxes on income and customs duties on imports among other ways that it can raise revenue and grow its assets?

The Division's assertion in their question is false. The Fed has made it clear that most of the US dollar is not US government liability, but a liability of commercial banks.

While Americans have long held money predominantly in digital form—for example in bank accounts, payment apps or through online transactions—a CBDC would differ from existing digital money available to the general public because a CBDC would be a liability of the Federal Reserve, not of a commercial bank.<sup>2</sup>

The Fed has also made it clear that the US dollar is not backed by gold.

At one time or another, many of the major countries around the world had monetary systems based on a gold standard—currency that could be redeemed, at least in part, for gold. But not a single country does so today. The U.S. and many other economies abandoned the gold standard more than 40 years ago.<sup>3</sup>

The Fed has made it clear that the Federal Reserve Banks are private corporations.

While the Board of Governors is an independent government agency, the Federal Reserve Banks are set up like private corporations. Member banks hold stock in the Federal Reserve Banks and earn dividends (Exhibit 59)<sup>4</sup>.

The US dollar is a liability of commercial banks, although the US government accepts it as tax payments. However, the US government's tax revenue is used to cover US government's own expenses. For decades though, the US government's tax revenue even cannot cover its own expenses and must borrow money by selling government bonds. None of the US government assets and revenues, whatsoever, including gold, land and tax, are used to back up the US dollar.

Despite this lack of basic knowledge as to how the US dollar currency system works, after adding Ponzi to its allegations by a question, "Can you explain to me how that doesn't

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<sup>2</sup> <https://www.federalreserve.gov/faqs/what-is-a-central-bank-digital-currency.htm>

<sup>3</sup> <https://www.stlouisfed.org/timely-topics/the-gold-standard>

<sup>4</sup> <https://www.stlouisfed.org/in-plain-english/who-owns-the-federal-reserve-banks>

describe a Ponzi scheme?” (December 2, 2022 Transcript. p.391:20-21), the Division continued asking the following ignorant questions (December 2, 2022 Transcript. p.392:14-15, 19, 22-23):

- Q So, let me ask you, does American CryptoFed own any gold?
- Q Does American CryptoFed own any land?
- Q And does the American CryptoFed have the ability to levy taxes?

The Division’s allegations remind of Pope Clement VIII’s Roman Inquisition of the seven-year trial (1593 through 1600), at the end of which Giordano Bruno was sentenced to death and burned alive. Therefore, to rebut the Division’s false allegations, American CryptoFed needs the help of necessary academic papers and books of economics and political science, so that American CryptoFed can outline the mechanism of Ducat Economic Zone, the relationship between Ducat and US Dollar Economic Zones, and the Foreign Exchange Rate regime (Ducat and US dollar exchange rate) linking both economic zones. If Your Honor or the Division requests, American CryptoFed can write up a sample of a brief paper to demonstrate how these academic papers and books are used to rebut the extremely broad allegations, in which multiple portions of the same books or papers may be cited.

As a result, all exhibits for academic books and papers, including but not limited to, Exhibits 55, 131, 133, 134, 135, 139, 143, 172, 264 through 268, should be admitted. Exhibit 269 from the website of Deloitte<sup>5</sup>, reflects the latest accounting standard for revenue recognition issued by Financial Accounting Standards Board (FASB) which the SEC recognizes as the accounting standard setter for public companies, and will be used to ensure that both parties are on the same page as to how the GAAP accounting standard for revenue recognition should be

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<sup>5</sup> <https://www2.deloitte.com/us/en/pages/audit/articles/a-roadmap-to-applying-the-new-revenue-recognition-standard.html>

applied to American CryptoFed. The number of 270 will be skipped, because Exhibit 270 was already included in Exhibit 84.

## **8. Conclusion**

Accordingly, there is no factual and legal basis to justify the Division's statements "Indeed, nearly all of the proposed additional exhibits are irrelevant, duplicative, or not proper items to be admitted into evidence as exhibits." (December 20, 2022 Objection, p.2), and "Respondent has repeatedly sought to introduce irrelevant, extraneous, duplicative, and improper material into the record." (December 22, 2022 Objection, p.1). The 6th Amendment's Confrontation Clause of the U.S. Constitution, as one of several constitutional safeguards for fairness in the US justice system, should prevail. That said, to demonstrate American CryptoFed's good faith, American CryptoFed will be open to the Division's challenge to any proposed exhibits individually on or before January 10, 2023.

For all the reasons set forth above, except Exhibits 99, 104, 108, 115, 118, 119, 125, 159 and 270, Respondent petitions the court to admit all the exhibits proposed by American CryptoFed into evidence, and should not allow the Division to reserve the rights of objections.

Dated: January 2, 2023

Respectfully submitted

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this **RESPONDENT AMERICAN CRYPTOFED DAO LLC'S RESPONSE TO DIVISION OF ENFORCEMENT'S TWO OBJECTIONS TO RESPONDENT'S ADDITIONAL PROPOSED EXHIBITS** was filed by eFAP and was served on the following on this 2nd day of January 2023, in the manner indicated below:

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