April 23, 2023

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

Mr. Dobbie,

On April 18, 2023, the Division of Enforcement filed the DIVISION OF ENFORCEMENT'S REPLY BRIEF IN SUPPORT OF ISSUING A STOP ORDER ("Reply"), which has circled back to the outstanding issues, instead of solving them for you and the examiner whom you have still not yet assigned to our case.

A. The Impossibility of Filing Audited Financial Statements

Given that no token economy can start and no audited financial statements for the token economy are possible before the Form S-1 Registration Statement ("Registration Statement") is declared effective by the Commission, can you tell us how financial statements for a future token economy of American CryptoFed audited by a PCAOB accounting firm are now possible?

In its Reply, the Division of Enforcement incorrectly characterized this issue as "hypothetical, non-existent financial statements" (p. 15). However, audited financial statements

which are required for registration prior to the S-1's effectiveness before the DAO begins operations, are a realistic and inevitable **Catch-22 issue** as recognized by Administrative Law Judge Carol Fox Foelak, multiple times from different angles during the hearing as below. You and the examiner have to address and handle this paradox in order that we can complete the Registration Statement.

- December 1, 2022, Day 1 Hearing Transcript, Page 165, Line 2-5.

"I'm not saying you're not getting through now, but -- all I'm saying is, you can certainly argue that -- that -- basically, that you're in a Catch 22 situation or whatever."

- January 18, 2023, Day 4 Hearing Transcript, Page 682, Line 20-22

"Sir -- sir -- okay. You've made that point. You asked them multiple times and you're still left with a Catch 22."

- January 19, 2023, Day 5 Hearing Transcript, Page 770, Line 13-17.

"Okay. I understand -- sir, I understand that you sort of perceive a Catch 22 where the government is telling you -- telling you to register and then they make it impossible for you to register."

- January 19, 2023, Day 5 Hearing Transcript, Page 815, Line 13-17.

"That's a yes or no answer. Sir, I understand that you're referring to the Catch 22 situation where if you're a security you want to register and if you're not, you're going to move forward, but –"

Given that American CryptoFed has been trapped in *"a Catch 22 where the government is telling you -- telling you to register and then they make it impossible for you to register",* as Judge Foelak recognized, American CryptoFed lacks the fair notice as to how to comply with the Securities Act of 1933 ("Security Act") and the Securities and Exchange Act of 1934 ("Exchange Act"). As the US Supreme Court has stated, the fair notice doctrine is intended to ensure that regulated parties "know what is required of them so they may act accordingly," and furnish "precision and guidance" "so that those enforcing the law do not act in an arbitrary or discriminatory way." *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012).

In a March 11, 2022 Order in *SEC v. Ripple Labs,* Judge Analisa Torres of the Southern District of New York, United States District Court, citing the same US Supreme Court opinion above, allowed Ripple Labs' Fair Notice affirmative defense and stated the following:

> Because the Court is reviewing an "as applied" challenge, the Court shall consider "the application of the challenged statute to the person challenging the statute based on the charged conduct." *United States v. Smith*, 985 F. Supp. 2d 547, 592–93 (S.D.N.Y. 2014), *aff'd sub nom*. *United States v. Halloran*, 664 F. App'x 23 (2d Cir. 2016). **Such a consideration requires the Court to evaluate whether a law can be constitutionally applied to the challenger's individual circumstances**. *Copeland v. Vance,* 893 F.3d 101, 110 (2d Cir. 2018). **This assessment cannot be conducted in the abstract; rather, the Court must consider whether the party claiming a lack of notice has shown "that the statute in question provided insufficient notice that his or her behavior at issue . . . was prohibited**." *Id.* at 117 (quotation marks omitted).

Like *SEC v. Ripple Labs* above, American CryptoFed brings an as-applied challenge to the statutes of the Securities Act and the Exchange Act (not a facial challenge) and argues that it is impossible to apply these to the individual circumstances of Locke and Ducat tokens, unless you can answer our question as to how financial statements for a future token economy of American CryptoFed audited by a PCAOB accounting firm are possible.

American CryptoFed has been making its best and tireless efforts to seek for fair notice from you, which can be demonstrated in our October 16, 2022 letter addressed to you, cited below:

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*. 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.

Therefore, today's letter is the 8th (eighth) letter over a span of two calendar years that American CryptoFed actively seeks for fair notice from you.

B. The Burden of Proof Obligation

The Division of Enforcement's Reply, within a section entitled "Filing the Registration Statement Established the Commission's Jurisdiction, Even if the Tokens Are Not Securities", also argued "Thus, here, the Division need not prove that the tokens are securities for a stop order to issue." (page 9).

Given that the Division of Enforcement did not want to help you fulfill the obligation which is mandated by the Administrative Procedure Act coded as 5 U.S. Code § 556, you **must prove** that Locke token and Ducat token are securities, because it was you who recommended the Commission issue the Order (Release No. 11074 / June 17, 2022, "Denial Order") denying American CryptoFed's withdrawal request of the Registration Statement. The first sentence of 5 U.S. Code § 556 (d) (*Except as otherwise provided by statute,* ***the proponent of a rule or order has the burden of proof*** *(emphasis added))* unmistakably created an absolute right for American CryptoFed to request you and the Commission to fulfill the Burden of Proof obligation. Once you recommended, and the Commission did issue, the Order denying the withdrawal request of the Registration Statement, both your obligation and the Commission's obligation to prove that Locke and Ducat tokens were securities, were established, because the only reason we gave for the withdrawal request was that "Locke token and Ducat token are not securities."

On June 13, 2022, you requested American CryptoFed withdraw the Form RW voluntarily, and stated "If you do not withdraw the Form S-1 withdrawal request, we intend to recommend that the Commission deny the withdrawal request". That same day, in response to your request, American CryptoFed had already requested you to prove that Locke and Ducat tokens were securities, citing 5 U.S. Code § 556(d) regarding the burden of proof as below:

> American CryptoFed seeks withdrawal of the Form S-1, because, as we have attested in the S-1, CryptoFed's Locke token and Ducat token are not securities. We will seriously consider your request for withdrawing "the June 6 request for withdrawal of the Form S-1", if you can apply the Howey Test to American CryptoFed's Locke and Ducat tokens to prove that Locke and Ducat are securities, and subject to the SEC's jurisdiction…
>
> Mr. Dobbie, as Acting Office Chief, does your Division or does the Commission have any legal justification to classify Locke and Ducat tokens as Securities other than by American CryptoFed's filing of a Form S-1 with the Commission per se?
>
> In accordance with the plain text of 5 U.S. Code § 556 as shown below, your Division and the Commission have the burden of proof to show that Locke token and Ducat token are

securities, given that you stated today in both voicemail and email formats that you will seek an order from the Commission to deny American CryptoFed's June 6 request for withdrawal of the Form S-1.

5 U.S. Code § 556 - Hearings; presiding employees; powers and duties; **burden of proof; evidence**; record as basis of decision

(d)Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof**. (Emphasis added).

Without proving that Locke token and Ducat token are securities, your office and the Commission have no jurisdiction to issue the Denial Order. Therefore, in addition to the June 13, 2022 letter sent to your attention, on July 6th, July 10th and July 22nd, 2022, we continued to send you three letters in a row emphasizing your obligation to prove that Locke token and Ducat token are securities, while asking for a Meet and Confer in order to file a motion to lift the Denial Order. You never responded. Therefore, today's letter is our 5th (fifth) letter over a span of two calendar years to request you to fulfil your obligation mandated by 5 U.S. Code § 556(d).

We have already made it easier for you to fulfill your legal obligation by explaining from a GAAP perspective why American CryptoFed has **No Revenue, No Profits, No Assets, No Fundraising, No Liability (both Actual and Contingent) and No Costs** in RESPONDENT AMERICAN CRYPTOFED DAO LLC'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS AND BRIEF IN SUPPORT OF ISSUING A STOP ORDER ("American CryptoFed's Brief", p.22-28), a courtesy copy of which was sent to you on April 3, 2023. You can fulfil your burden of proof obligation by simply providing an effective rebuttal from a GAAP perspective.

Although the Division of Enforcement's Reply completely ignored the Administrative Procedure Act ("APA") coded as 5 U.S. Code § 556, we hope you honestly abide by APA, about which Senate Judiciary Committee Chairman, Pat McCarran, stated in the foreword to the compiled legislative history in 1946:

"Although it is brief, it is a comprehensive charter of private liberty and a solemn undertaking of official fairness. It is intended as a guide to him who seeks fair play and equal rights under law, as well as to those invested with executive authority. It upholds law and yet **lightens the burden of those on whom the law may impinge**. It enunciates and emphasizes the tripartite form of our democracy and **brings into relief the ever essential declaration that**

this is a government of law rather than of men."(emphasis added, *see* link below, page III, 1946)[1].

C. The Failure to Assign an Examiner as Specified by SEC's Filing Review Process

This is also a follow-up letter to our earlier **9 (nine)** letters directed to your attention in 2023 alone[2]. In these **9 (nine)** earlier letters, we specifically requested that you tell us **who** is American CryptoFed's examiner and contact information (email and phone number) as specified in the SEC's Filing Review Process below, published on the SEC website[3].

> **Company Response to Comments**
>
> **If a company does not understand a comment or the staff's purpose in issuing it, it should seek clarification from the examiner before it responds. If the company does not understand the comment after discussing it with the examiner, it may wish to speak with the staff member who approved the comment.** To make it easier for a company to identify the appropriate people to contact about a filing review, the Division includes the name of the office conducting the review as well as the names and phone numbers of the staff members involved in that review in each of its comment letters…..
>
> **A company should direct a reconsideration request to the Chief of the office conducting the filing review. The company or its representatives should feel free to involve the Disclosure Program Director, the Division's Deputy Director or Director at any stage in the filing review process.** (Emphasis added).

Mr. Dobbie, as of today, you have neither yet acknowledged receipt of nor responded to these **9 (nine)** prior letters.

Regarding the SEC's Filing Review Process, the Division of Enforcement's Reply stated the following:

Although some issuers hopefully find that information useful, general information provided on the Commission's website cannot supersede statutes or regulations. Respondent cites no authority for the proposition that a general description of the staff's typical process can

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[1] https://coast.noaa.gov/data/Documents/OceanLawSearch/Senate%20Document%20No.%2079-248.pdf

[2] The previous letters were dated February 17, 2023 ("February 17, 2023 Letter"), February 26, 2023 ("February 26, 2023 Letter") March 5, 2023 ("March 5, 2023 Letter") March 12, 2023 ("March 12, 2023 Letter"), March 18, 2023 ("March 18, 2023 Letter"), March 27, 2023 ("March 27, 2023 Letter"), April 1, 2023 ("April 1, 2023 Letter"), April 8, 2023 ("April 8, 2023 Letter") and April 16, 2023 ("April 16, 2023 Letter").

[3] https://www.sec.gov/divisions/corpfin/cffilingreview

override the statutory text of Sections 8(d) and (e), and any contention that it could do so is absurd. (Reply, p.7).

We were surprised by the Division of Enforcement's legal position that the SEC's Filing Review Process published on the SEC public facing website is inconsistent with "the statutory text of Sections 8(d) and (e)". The Division of Enforcement's Reply further surprised us by willfully distorting the spirit of the US Supreme Court opinions as shown below:

> Respondent's citation to **an old Supreme Court opinion** about an entirely different district court venue provision does not compel a different result. (Emphasis added, page 6).
>
> Moreover, in the more than 80 years since the *Jones* decision was issued, there have been significant changes in the law that **call into question the validity of** *Jones*' holding that there is an unqualified right to withdraw a pre-effective registration statement.(Emphasis added, page 11).

The US Supreme Court opinions are ***living documents*** and govern all disputes under the US Constitution. The US Supreme Court opinions should not be characterized as "an old Supreme Court opinion". Also, no changes in law can "call into question the validity of" the US Supreme Court opinions, no matter how significant the changes in law are, unless the US Supreme Court itself overturns its own previous opinions.

Mr. Dobbie, as the Acting Office Head of the Division of Corporation Finance, if you agree with the Division of Enforcement's legal position that the SEC's Filing Review Process published on the SEC public facing website is inconsistent with "the statutory text of Sections 8(d) and (e)", please let us know. We disagree with the Division of Enforcement's attempted distortion of statutes and the US Supreme Court's opinions, and do not think that the SEC's Filing Review Process is inconsistent with any statutes. The SEC's Filing Review Process is governed by Section 8(a) and (b) of the Securities Act, not Section 8(d) and (e). The Division of Enforcement's legal position has intentionally distorted and misapplied the statutes, as they attempted to do so to the opinions of the US Supreme Court. Therefore, pursuant to both the spirit and letter of the law, we still hold **you** responsible and accountable for complying with the SEC's Filing Review Process, which is a formal notice to the general public as to what the SEC's Filing Review Process is for filers.

In accordance with the SEC's Filing Review Process above, I will reiterate **again** that it is **your office** that is responsible to provide American CryptoFed with the examiner and contact

information (email and phone number). Therefore, today, we repeat the same request made to your attention in our prior **9 (nine)** letters as below:

Mr. Dobbie, can you tell us who is American CryptoFed's examiner and contact information (email and phone number) as specified in the SEC's Filing Review Process by the close of business April 26, 2023, three business days from today?

This letter now represents the **10th (tenth) request in 2023** for this information, and this and all prior requests are specifically directed to **your attention** as the Acting Office Chief of the Division of Corporation Finance. Please confirm your receipt of this letter.

As you are well aware, we filed the Form S-1 Statement Registration on September 17, 2021, more than one and half years ago. Constitutional due process and fair notice require that laws and regulators give a person of ordinary intelligence a reasonable opportunity and guidance in the process to know how to comply with the laws and regulations. In this case, the failure of due process is shown through the failure of the Division of Corporation Finance to abide by the SEC's Filing Review Process which explicitly specifies an Examiner to whom American CryptoFed can seek clarification. The ongoing lack of an Examiner for more than one and half years, **now 584 days, or 1 year, 7 months and 7 days since our Form S-1 filing**, despite our repeated requests, clearly evidences the lack of Due Process and Fair Notice.

Although the result of the existing ORDER FIXING TIME AND PLACE OF PUBLIC HEARINGS AND INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933 (OIP) is still pending, because the OIP was issued pursuant to Section 8(d) of the Securities Act of 1933 ("Section 8(d)") which includes the fair notice mandate emphasized below, we have to discuss with your office and the examiner to amend and complete the Form S-1 Registration Statement anyway, independent of the result of the proceedings.

> …the Commission may, …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).

You and your office have delayed our Form S-1 Registration Statement by engineering administrative proceedings one after another for more than the past one and half years. However, even if a stop order is issued pursuant to the Section 8(d), Mr. Dobbie, **you and your office are still required** by the SEC's Filing Review Process, to provide American CryptoFed with the examiner and his/her contact information (email and phone number) for discussing, amending and completing the Form S-1 Registration Statement. The spirit of Section 8(d) is to **promote clear and open disclosure**, not for discouraging and suppressing American CryptoFed's disclosure through administrative proceedings one after another. Despite the delay and interruption by the administrative proceedings one after another in the past one and half years, as long as American CryptoFed has determination, courage, persistence and insistence to disclose as much as possible, you and your office are still required by Section 8(d) to go back to the original point of the S-1 filing which is to provide American CryptoFed with the examiner and his/her contact information (email and phone number). Your refusal to provide American CryptoFed with the examiner and his or her contact information (email and phone number) violates the spirit of the Section 8(d) and the SEC's own Filing Review Process.

As we advised you through our previous **9 (nine)** letters, we request **again** that you please read Chairman Gary Gensler's guidance as provided by his sworn testimony in the US Senate in which he stated, *"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."* [4]

Mr. Dobbie, as the Acting Office Chief of the Division of Corporation Finance, we hope you can comply with Chairman Gensler's sworn testimony in the US Senate. Chairman Gensler's testimony is especially cogent given that American CryptoFed DAO is the first legally recognized Decentralized Autonomous Organization seeking to register with the Commission, and further, given that you stated the following during your sworn testimony:

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

> "Well, I mean, I can't speak to this specific testimony which I obviously haven't read today, but -- but can certainly say that what we -- what we did in engaging with American CryptoFed was consistent with our filing review process." (December 1, 2022, Transcript page 111: 17-21).

It is critical for American CryptoFed DAO to discuss our filing with the examiner specified in the SEC's Filing Review Process in the context of Chairman Gensler's sworn testimony above, **so that American CryptoFed can complete our Form S-1 Registration Statement pursuant to the Filing Review Process**. We will be unable to do so, if you continue refusing to provide American CryptoFed DAO with the examiner and his or her contact information (email and phone number) as specified in the SEC's Filing Review Process. The lack of your compliance with Chairman Gensler's sworn testimony provides further evidence of chronic lack of fair notice required by Constitutional Due Process Clause, because we, as persons of ordinary intelligence, have been given untrue information by Gary Gensler's sworn testimony in the US Senate. American CryptoFed has due process rights to discuss the registration with its designated examiner to obtain "**precision and guidance"** specified by the US Supreme Court's opinion below in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), in context of Chairman Gensler's sworn testimony quoted above:

> 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.

The "void for vagueness doctrine" "requires the invalidation of laws that are impermissibly vague." *Ibid.* Accordingly, the lack of "**precision and guidance"** due to the absence of the examiner for clarification discussion will ultimately and logically lead to the conclusion that it is impossible for the Securities Act of 1933 and Securities Exchange Act of 1934 to be constitutionally applied to the individual circumstances of American CryptoFed.

We are looking forward to your response by **April 26, 2023**.

A courtesy copy of this letter is also sent to the Division of Enforcement and the Administrative Law Judge's Office, **as we continue to seek a viable path to complete American CryptoFed's S-1 Registration Statement**, under the context of Chairman Gary Gensler's testimony above. We are not seeking to include this letter on the record for the pending OIP.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer/President

/s/ Xiaomeng Zhou

DocuSigned by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer/COO