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 REPLY BRIEF IN SUPPORT OF ISSUING A STOP ORDER

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The Division of Enforcement ("Division") respectfully submits this Reply Brief in support of the Division's request—under Section 8(d) of the Securities Act of 1933 ("Securities Act")—for a stop order suspending the effectiveness of the September 17, 2021 Form S-1 registration statement ("Registration Statement") that Respondent American CryptoFed DAO LLC ("Respondent" or "American CryptoFed") filed with the Securities and Exchange Commission ("Commission").[1]

PRELIMINARY STATEMENT

Respondent failed to rebut the Division's proposed findings of fact or conclusions of law. Instead, Respondent devoted the bulk of its brief to misguided arguments regarding the legality of these proceedings. Since those contentions have no merit and the Division's findings of fact and conclusion of law are well-founded, a stop order should issue for all the reasons and on all the bases requested in the Division's opening brief.

ARGUMENT

I. Respondent Essentially Concedes That the Law and Facts Support a Stop Order.

The Division's Proposed Findings and Brief in Support of Issuing a Stop Order set forth detailed reasons why a stop order should issue, supported by citations to the record and relevant authorities. This includes that the Registration Statement lacks audited financial statements, fails to include other required information such as an opinion of counsel, and that Respondent failed to cooperate with an examination made pursuant to the Commission's Order Directing Examination and Designating Officers Pursuant to Section 8(e) of the Securities Act of 1933 (the "8(e) Examination"). Respondent's Brief makes no serious attempt to rebut this reasoning.

[1] In this Reply Brief, "Br." Refers to the Division's February 17, 2023 Proposed Findings and Brief in Support of Issuing a Stop Order; "ACF" refers to Respondent American CryptoFed's April 2, 2023 Opposition Brief; "Dx." refers to the Division's exhibits; "Rx." refers to Respondent's exhibits; and "Tr." refers to the transcript of the hearing and is followed by an indication of which witness's testimony is cited (unless already apparent).

A. The Registration Statement Does Not Contain Audited Financial Statements.

The Division set forth in its opening brief that the Registration Statement was materially deficient because it did not contain audited financial statements. (Br. at 9-12, 23-26). Nowhere in Respondent's Reply Brief does Respondent claim that the Registration Statement includes audited financial statements. Nor does Respondent's Reply Brief cite any legal authority stating that a lack of audited financial statements is immaterial. And Respondent does not challenge the Commission's rules and regulations requiring Form S-1 registration statements to include audited financial statements. Thus, the Registration Statement is materially deficient and stop order should issue. *See, e.g.*, *Queensboro Gold Mines, Ltd.*, Rel. No. 33-1617, 1937 SEC LEXIS 893, at *2-3 (November 17, 1937) (suspending registration statement under Section 8(d) of the Securities Act for failure to include fully audited financial information).

1. Respondent's Self-Assessment That It Has No Revenue, Assets, or Liabilities Is No Substitute For Financial Statements Audited by an Independent Professional.

Rather than addressing its failure to include audited financial statements, Respondent merely attempts to show that it does not have revenue, assets, or liabilities. (ACF 20-28). This analysis is fundamentally flawed for three reasons. First, as conceded at the hearing, neither of Respondent's two officers are Certified Public Accountants, and neither have a degree in accounting. (Tr. 218:11-221:6 (Moeller); 663:19-20 (Zhou); 847:17-848:6 (Zhou)). They are therefore wholly unqualified to render an opinion about Respondent's financial condition. Second, Respondent's two officers are, by definition, not independent from Respondent and therefore cannot exercise the proper degree of disinterested professional skepticism required of an independent auditor. *See Anton & Chia, LLP*, Rel. No. 34-87033, 2019 SEC LEXIS 2864 at *56, (Sept. 20, 2019) ("[The auditor] was required to exercise due professional care, including professional skepticism, in planning and performing the audits. 'Professional skepticism is an

attitude that includes a questioning mind and a critical assessment of audit evidence' (PCAOB Standard AU § 230.07, Due Professional Care in the Performance of Work), and requires auditors to 'neither assume[] that management is dishonest nor assume[] unquestioned honesty' (AU § 230.09).").

Third, and highlighting the importance of the first two points, Respondent's self-assessment of cost and liabilities claims that Respondent will have no costs or liabilities because someone else will be responsible for paying them. (ACF at 25-28). Unless and until Respondent has an independent, PCAOB-registered accountant back its novel assertion that a liability is not a liability when the entity which incurred the cost and to whom the bill is sent plans to have someone else cover it, this claim warrants no further response.

To allow an issuer to avoid having to submit audited financial statements based solely on the assessment of its non-accountant officers that it did not have assets, revenue, or liabilities would eviscerate the protections put in place by this fundamental Form S-1 requirement. Registration statements submitted to the Commission must include audited financial information, and Respondent has shown no reason why it should be exempted from this requirement.

2. There Is No Factual Basis for Respondent's Claim That the Required Information "did not and will never exist."

The Division rejects Respondent's claim that it can avoid submitting audited financial information because the required information "did not and will never exist." (ACF at 6 n.2; 40). First, Respondent attempts a sleight of hand here to avoid the requirement to submit audited financial statements. Respondent claims it does not have and never will have revenue, assets, or liabilities. Even if this were true (and the Division doubts that to be the case, *see* Br. at 11-12), that does not preclude Respondent from preparing financial statements and hiring an independent accountant to audit the financial statements and express an opinion as to whether the financial

statements are presented in conformity with generally accepted accounting principles.[2] Put another way, even if Respondent will never have liabilities, it can have financial statements showing it does not have liabilities. Second, as discussed above, the claim that the required information "did not and will never exist" is based on the opinion of Respondent's officers, neither of whom are accountants, rather than that of an independent external auditor. The Division does not have to disprove this claim. Respondent has to hire external auditors who can offer an independent and professional judgment about Respondent's financial statements. Third, given the significant indications of Respondent's assets, revenue, and liabilities set forth in the Division's Brief (Br. at 11-12), the Division rejects the notion that it is a proven fact that Respondent will never have assets, revenue, or liabilities.

B. The Registration Statement Does Not Contain an Opinion of Counsel.

Respondent admits that "There is no dispute regarding the facts that…'The Registration Statement does not contain an opinion of counsel as to the legality of the securities being offered.'" (ACF at 5, quoting Br. at 18). Nowhere in its Reply Brief does American CryptoFed cite any authority that either excuses this omission or renders it immaterial. The failure to include this information renders the Registration Statement materially deficient.

C. Respondent Admits It Is Not Presently a DAO.

The Division's opening brief pointed out that the Registration Statement's claim that American CryptoFed was a decentralized autonomous organization was misleading. (Br. at 17). Respondent has essentially conceded this to be true, admitting that "the decentralization of American CryptoFed cannot begin prior to Locke token distribution." (ACF at 4).

[2] Of course, unless Respondent can find an auditor who will work for free, the cost of hiring the auditor would itself be a liability. This shows the inherent lack of logic in Respondent's claim that they can create a registered monetary system with zero costs, and further underscores why all the information that was missing from the Registration Statement is material.

D. A Stop Order Here Should Be Based on Numerous Findings.

The tribunal could issue a stop order based on the failure to include audited financial information alone. Or it could issue a stop order based on the other missing information discussed above and in the Division's opening brief. But the Division requests that the stop order also be based on Respondent's failure to cooperate with (and obstruction of) the Section 8(e) Examination, and on the materially misleading information contained in the Registration Statement. Respondent has not rebutted the Division's arguments on these issues.

II. This Proceeding Is Lawful.

Perhaps realizing that it cannot contest any of the Division's legal and factual arguments supporting a stop order, Respondent devotes the bulk of its brief to claims that this proceeding is unlawful. As shown below, that is not the case.

A. The Existence of Section 8(b) Does Not Prohibit the Commission from Proceeding Under Sections 8(d) and 8(e).

American CryptoFed asserts that because Section 8(b) of the Securities Act permits the Commission to act to block pre-effective registration statements that are defective on their face, the Commission may not act under Sections 8(d) or 8(e). This argument, which amounts to Respondent saying, "*our Registration Statement is so materially deficient you cannot stop it*," is meritless and has previously been rejected by the Commission.

Respondent's argument disregards the plain language of the statute. Section 8(b) of the Securities Act reads in relevant part:

> If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission ***may***…issue an order prior to the effective date of registration refusing to permit such statement to become effective.

15 U.S.C. § 77h(b) (emphasis added).

Section 8(d) of the Securities Act reads in relevant part:

> If it appears to the Commission ***at any time*** that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may…issue a stop order suspending the effectiveness of the registration statement.

15 U.S.C. § 77h(d) (emphasis added).

Section 8(e) of the Securities Act reads:

> The Commission is empowered to make an examination ***in any case*** in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

15 U.S.C. § 77h(e) (emphasis added).

Nothing about Section 8(b)'s permissive language that the Commission "***may***" act earlier deprives the Commission of the ability to exercise its jurisdiction "***at any time***" or "***in any case***" as provided in Sections 8(d) and 8(e). Respondent's citation to an old Supreme Court opinion about an entirely different district court venue provision does not compel a different result. Indeed, the Commission has previously addressed this precise issue, and despite Respondent's misreading of those cases, they did specifically reject the argument Respondent makes here. *See Registration Statement of Canso Enterprises Ltd.*, Initial Decision Release No. 1155, 2017 SEC LEXIS 2215 at *32-33 (July 26. 2017):

> Section 8(d) authorizes the Commission to "issue a stop order suspending the effectiveness of [a] registration statement." 15 U.S.C. § 77h(d). This could be read to apply only to registration statements that have become effective, and only Universal Movers received a notice of effectiveness. The Commission, however, has interpreted Section 8(d) to permit it to suspend registration statements that have not yet become effective because to interpret it otherwise "would lead to

> absurd and inequitable results from the point of view of decent administration and investor protection." *Red Bank Oil Co.*, Securities Act Release No. 3095, 1945 SEC LEXIS 204 (Oct. 11, 1945) ("We think it utterly repugnant to the objectives of the Act to interpret it to require us to sit by until a false and misleading registration statement becomes effective before commencing action under Section 8(d)."); *see* William R. McLucas, *Stop Order Proceedings Under the Securities Act of 1933: A Current Assessment*, 40 Bus. L. 515, 530-31 (1985) (noting that courts have implicitly upheld the Commission's position).

See also Petrofab International, Inc., Rel. No. 33-6769, 1988 SEC LEXIS 782 at *17 (April 20, 1988) (issuing stop order regarding registration statement that had never become effective); 15 U.S.C. § 77e(c) (explicitly noting that registration statement could be subject to proceedings under Section 8 prior to becoming effective).

B. The Division of Corporation Finance Acted Properly.

The Division of Corporation Finance ("Corporation Finance") has made available to the public on the SEC's website certain information about the process the staff generally follows when conducting reviews of Securities Act or Exchange Act filings.[3] 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 override the statutory text of Sections 8(d) and (e), and any contention that it could do so is absurd. Moreover, Corporation Finance acted consistently with the filing review process, as Justin Dobbie explained:

> I reviewed the response submitted on October 12th[4] which appeared primarily to be directed to -- to members of the Commission who were not participating in the filing review, but also copied the staff. None of the responses that were provided resulted in[5] any of the comments that we had issued. We subsequently reached out a number of times to communicate that and were – were told -- and, again, this is consistent with the filing review process that you've put up on the screen that we're always willing to speak if there's a request for clarification of our

[3] See https://www.sec.gov/divisions/corpfin/cffilingreview; see also Rx.3
[4] Dx. 19.
[5] It is possible that "resulted in" should read "resolved," but any discrepancy is not material.

> comments. And we were told that you didn't want to engage with us over the phone. So, you had all of our written comments and none of them were resolved.

(Tr. 118). Respondent makes much of the fact that it claims not to know who the "examiner" assigned to review the Registration Statement. (ACF at 11). This is a red-herring. At all times, starting in early October 2021, Respondent and its officers were aware that they could contact either Erin Purnell or Justin Dobbie regarding Corporation Finance's review of the Registration Statement. (Dx. 18; *see also* Tr. at 69 (Justin Dobbie explaining that he left voicemails for Respondent's officers and received an email in response)). At no time did Respondent lack awareness of who within Corporation Finance it could contact about the Registration Statement. Respondent just did not like the comments that it received and chose to ignore them.[6] The record is quite clear about Respondent's many opportunities to engage with Commission staff.

[6] Respondent's fixation on determining who the single examiner of their Registration Statement is a meritless distraction. Respondent was told during the hearing that a team of people were responsible, that Erin Purnell was a supervisor on that team, and that Justin Dobbie was the person ultimately responsible for the review. (*See, e.g.,* Tr. at 32, 36-37, 59-63 (Dobbie), 540-541 (Purnell)). In October 2021, they had contact information for Erin Purnell and Justin Dobbie (Dx. 18; *see also* Tr. at 69 (Dobbie)). Nonetheless, Respondent has sent and continues to periodically send numerous letters to Mr. Dobbie asking for the name and email address of the singular examiner responsible for this review. Although those letters contain statements that Respondent is not seeking to make them part of the record in this proceeding, because the letters were also sent to the Division and the Office of Administrative Law Judges, and are titled as "Fair Notice Affirmative Defenses," the Division briefly addresses them here.

At no point was Respondent deprived of due process or fair notice by somehow lacking contact information for a relevant Commission "examiner." Nor did the Commission staff ignore Respondent. The problem is not that Respondent lacks fair notice, but that Respondent chooses to ignore any information it does not like. *See, e.g.,* Respondent's February 26, 2023 letter to Justin Dobbie at 2 ("We did receive an email from the Division of Enforcement on February 24, 2023…However, pursuant to the SEC's Filing Review Process, there are no functions assigned to the Division of Enforcement. Therefore, we ***choose to ignore*** the email from the Division of Enforcement") (emphasis added). *(con't)*

C. Filing the Registration Statement Established the Commission's Jurisdiction, Even if the Tokens Are Not Securities.

Respondent argues that the Division has not proven that the Ducat and Locke tokens are securities. (*See, e.g.,* ACF at 32). But the Division need not prove that the tokens are securities in this case. True, in some cases, the Commission's jurisdiction to bring an action will depend on whether a financial instrument is a security. But here, Respondent established and conceded the Commission's jurisdiction to bring this action under Section 8(d) of the Securities Act when Respondent voluntarily filed the Registration Statement with the Commission. Not only did Respondent list the Ducat and Locke tokens in the introductory pages of the Registration Statement under the heading "Title of Each Class of Securities to be Registered," but Respondent referred to the Ducat and Locke tokens as "securities" in other sections of the Registration Statement as well. (Dx. 1 at 3). Additionally, Section 8(d) gives the Commission authority to bring a stop order proceeding regarding any registration statement filed with the Commission, regardless of its contents. Thus, here, the Division need not prove that the tokens are securities for a stop order to issue.

1. Respondent Willfully Obstructed the Division's Efforts to Gather Information Regarding Whether the Tokens Are Securities.

Additionally, after Respondent filed the Registration Statement with the Commission, the Commission authorized the Division to conduct the Section 8(e) Examination. But, when the

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Respondent was repeatedly told that it needed to amend its Registration Statement to, at a minimum, include the required information such as audited financial statements. Respondent was also told in the October 4, 2021 phone call that Corporation Finance would not conduct any further review until the Registration Statement was amended to include this information. (Tr. 541, Ms. Purnell). Respondent makes much of the supposed failure to respond to its October 12, 2021 letter. But, in truth, that letter is so utterly devoid of any merit it did not warrant a response. *See* Dx. 20. Notwithstanding this, Justin Dobbie attempted to engage with Respondent, but Respondent refused to speak with him by phone. Respondent also refused to withdraw their similarly materially deficient Form 10, and then claimed to be surprised that the Division of Enforcement became involved.

Division sought to obtain information from Respondent pursuant to a lawful subpoena in that Examination, Respondent deliberately refused to provide it. (Tr. 863:7-18 (Zhou)). Much of the information that the Division sought is relevant to determining whether the Ducat and Locke tokens are securities. For example, the names of, and communications with, potential contributors would allow the Division to investigate what potential contributors were told about how Ducat and Locke would operate.[7] Now, Respondent takes the inherently contradictory position that the Division cannot obtain information relating to whether the tokens are securities without first proving that the tokens are securities. And Respondent takes this position so despite the fact that Respondent's own description of Ducat and Locke as securities was one rationale for the 8(e) Examination, as stated in the Commission's 8(e) Examination order. (Rx. 5 at 1).

An investigative agency, or investigative arm of any agency, need not prove its case before it can issue subpoenas. Rather, Division subpoenas are valid so long as (i) the inquiry has a legitimate purpose, (ii) the subpoena was issued in accordance with the required administrative procedures, and (iii) the information sought is reasonably relevant to some subject of the inquiry. *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *see also* Br. at 31-32.

[7] Respondent claims that it would have disclosed information if the OIP for this matter had not been issued should not be credited. *See* ACF at 4-5 ("American CryptoFed's planned ongoing Form 8-K filing disclosure, such as the disclosure of contributors…has been disrupted by the SEC's Order Instituting Proceedings"). First, the pendency of this proceeding does not prevent Respondent from filing Forms 8-K with additional information, nor does it relieve them of the obligation to do so when required. Second, even during the hearing, when asked, Respondent's officers refused to provide information about their potential contributors. (Tr. 865:8-867:11).

D. *Jones* Does Not Preclude a Stop Order.

Respondent claims that this proceeding is unlawful under *Jones v. SEC*, 298 U.S. 1, 18 (1936). (ACF at 12-26).[8] Not so. First, there is a critical factual difference between the *Jones* registrant and American CryptoFed. The *Jones* registrant wanted to withdraw his registration statement because he ***no longer planned to conduct the offering***. In contrast, American CryptoFed asserted in writing that if the Form S-1 were withdrawn, American CryptoFed intended to offer the Ducat and Locke tokens to the public. (Dx. 13 at 1-2).

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. Among these are the 1954 amendment to Section 5 of the Securities Act, which allows registrants to make and solicit offers to buy and sell securities after the filing of a registration statement but before it becomes effective. In large part because of these amendments, the Fifth Circuit noted that

> *Jones* has no application when withdrawal would frustrate the purposes of the Act, cripple the investigative functions of the SEC, and allow the registration procedure itself to be used for fraud or deception. We hold, therefore, that an applicant has no absolute right to withdraw his registration statement after it has been filed -- whether or not there are existing investors.

Peoples Sec. Co. v. SEC, 289 F.2d 268, 274 (5th Cir. 1961); *see also Wolf Corp. v. SEC*, 317 F.2d 139, 141-42 (D.C. Cir. 1963) (rejecting claim that SEC has no ability to reject request to withdraw pre-effective registration statement). Here, the Division attempted to ascertain what

[8] Respondent also cites 5 U.S.C. § 556, seemingly for the proposition that the Division has the burden to prove anything Respondent asks of it. (ACF at 14-18). The Division has the burden in this case, but only to prove sufficient material issues of fact and law to support a stop order. *See Reg. Statement of American Cryptofed*, A.P. Rulings Release No. 6898, 2023 SEC LEXIS 438 (Feb. 17, 2023)("As required by Section 557(c)(3)(A) of the Administrative Procedure Act, 5 U.S.C. § 557(c)(3)(A), the Initial Decision will include a statement of 'findings and conclusions, and the reasons of basis therefor, on all the *material* issues of fact, law, or discretion presented on the record.'" (emphasis in ruling).

efforts American CryptoFed had taken (beyond filing the Registration Statement) to offer Ducat and Locke to investors, but was again stymied by American CryptoFed's obstruction. (Br. at 21).

Additionally, allowing a registrant to withdraw a materially defective registration statement would allow that registrant to later utilize certain exemptions from registration under Regulation D and Regulation A, which would not be available to registrants who have been subject to a stop order. *See* Securities Act Rules 506(d)(1)(vii) and 262(a)(7). This weighs against an unqualified right to withdraw, as the Commission and courts have noted. *See Comico Corp.*, Rel. No. 33-4050, 1959 SEC LEXIS 25 (Apr. 27, 1959); *Columbia Gen. Inv. Corp. v. SEC*, 265 F.2d 559, 564 (5th Cir. 1959).

III. Respondent Received Fair Notice.

At no time has Respondent lacked either "fair notice" or "precision and guidance" about what information was required or how to provide it. Respondent received more than fair notice. (Br. at 9-18 (setting forth the numerous regulations specifying what information is required); *see also* Br. at 33-34). Prior decisions and SEC forms can provide sufficient fair notice; the SEC need not provide individualized legal advice to each person or entity filing forms with the SEC. *See SEC v. Commonwealth Equity Servs., LLC*, 1:19-cv-11655-IT, 2023 U.S. Dist. LEXIS 61489, at *24-28 (D. Mass. Apr. 7, 2023) (finding that statute, court decision, and SEC forms provided sufficient fair notice under the Investment Advisers Act).

Additionally, the Commission staff engage with issuers, their attorneys, and their independent auditors regarding accounting and disclosure issues in the ordinary course, including through the filing review process as well as through issuer requests for interpretations, accommodations, or waivers of reporting requirements. At all times, however, it remains the obligation of the issuer to file complete and accurate information with the Commission. *See* 15 U.S.C. § 78z. One of the primary goals of the filing review program is for the staff in

Corporation Finance to communicate with issuers about their filings in order to enhance compliance with the applicable disclosure and accounting requirements. Here, since October 2021, Corporation Finance (and subsequently the Division) have attempted to engage with Respondent and repeatedly made clear to Respondent that the Registration Statement must include financial statements prepared by Respondent and audited by an independent, PCAOB-registered accountant . (Tr. 504:10-505:1, 513:13-514:22, 541:8-14 (Purnell), Dx. 17, and 18). But Respondent has not engaged the Commission staff in good faith. Instead, throughout this process Respondent has:

- refused to hire an accountant or attorney to provide the required information (Rx. 14, 15, 68; Dx. 19);
- refused to take phone calls from Corporation Finance staff (Tr. 68:20-69:9, 128:12-130:10 (Dobbie), 554:20-545:2, 546:7-13 (Purnell));
- and threatened to begin an unregistered distribution of the Ducat and Locke tokens (Dx. 13 at 1-2).

Respondent has not sought guidance in good faith from the Commission staff. Rather, Respondent has repeatedly ignored comments provided by the Commission staff regarding its compliance with the applicable requirements.

Respondent appears to misunderstand the difference between regulations that provide fair notice and guidance, and a person or entity providing legal advice. The regulations cited in the Division's Opening Brief provide fair notice and guidance. Commission staff can work with issuers who are operating in good faith to seek to comply with those regulations. But it is not the obligation of the Commission or its staff to serve as American CryptoFed's attorneys or accountants. *See SEC v. Carebourn Capital, L.P.*,

> A due process defense is not available when it is premised on the absence of the SEC's guidance on how to comply with a securities statute. *See, e.g., S.E.C. v. River North Equity LLC*, 415 F. Supp. 3d 853, 859 (N.D. Ill. 2019) (rejecting the defendants' argument that allowing the SEC's unregistered-dealer claims to go

> forward would violate their due process rights based on the breadth of the statutory definition and absence of SEC guidance on its interpretation of the statute); *SEC v. Falstaff Brewing Corp.*, No. 77-894, 1978 U.S. Dist. LEXIS 14669, 1978 WL 1120, at *28 (D.D.C. Oct. 28, 1978) ("The defendants do not have the right to rely on the Commission's assistance to tell them how to comply with the securities laws, nor can they successfully assert the absence of such assistance as a defense.")

No. 21-cv-2114, 2022 U.S. Dist. LEXIS 67596, at *6-7 n.5 (D. Minn. Apr. 12, 2022).[9]

IV. Respondent's "Petitions" Should Be Rejected.

In the "Conclusion and Petition" section of its brief (ACF at 44-45), Respondent makes numerous unsupported petitions or requests of this tribunal. This tribunal should:

- Reject request (i) to declare that the OIP is unlawful and dismiss the OIP's allegations because, for the reasons set forth above, this is a lawful proceeding.
- Reject request (ii) to deny a stop order, for the reasons set forth above.
- Reject request (iii) to declare the Section 8(e) Examination Order unlawful both for the reasons set forth above, and because it is beyond the scope of the OIP for this proceeding to declare another Order of the Commission unlawful.
- Reject request (iv) to strike evidence obtained during the Section 8(e) Examination because, as set forth above, that was a lawful examination.
- Reject request (v) to order that hypothetical, non-existent financial statements are acceptable. It is not proper to issue a hypothetical ruling such as that.
- Reject request (vi) that a single examiner be named. This is beyond the scope of this proceeding and irrelevant. See also footnote 6 supra.[10]
- Reject request (vii) that the Division must prove that the Ducat and Locke tokens are securities because that is not an essential element of this proceeding, it is beyond the

[9] *See also Carebourn* at *7 n. 5 (citing *SEC v. Fife*, No. 20-cv-5226, 2021 U.S. Dist. LEXIS 242126, 2021 WL 59985825 (N.D. Ill. Dec. 20, 2021) (rejecting the defendants' due process argument that the SEC's interpretation of "dealer" in the Securities and Exchange Act failed to provide them fair notice of the standards by which their conduct would be judged)); *SEC v. Fierro*, No. 20-cv-2104, 2020 U.S. Dist. LEXIS 238936, 2020 WL 7481773, at *5 (D.N.J. Dec. 18, 2020) (same); *SEC v. Keener*, No. 20-cv-21254, 2020 U.S. Dist. LEXIS 146256, 2020 WL 4736205, at *5 (S.D. Fla. Aug. 14, 2020) (same).

[10] The Division has been informed that Justin Dobbie continues to supervise this matter for Corporation Finance and Respondent can continue to address letters to him. If those letters lack merit and do not warrant a response, they may not receive a response.

scope of the OIP, and one material step in any such analysis would be Respondent providing information requested by Division staff in the 8(e) Examination.

- Reject request (viii) that the Division prove as true a statement in a press release that American CryptoFed is "attempting to raise money from the public" because proving the truth of a press release is beyond the scope of this proceeding. *See also* Dx. 1 at 3 referring to "the sale of Ducat tokens at higher market value than the original purchase price direct from CryptoFed."

- Reject request (ix) regarding alleged "precision and guidance" because it is based on the fallacious premise that information "does not exist and will never exist." But the Division does agree that the stop order should include the many specific defects in the Registration Statement, beginning with the lack of audited financial statements. That will provide yet more guidance, along with the copious precise guidance already provided, about the many material defects in the Registration Statement.

- Reject request (x), which appears to seek permission to obtain advisory rulings, and/or to have this tribunal serve as Respondent's attorney advising it on the precise disclosures it needs to make.

- Reject request (xi) as, if a stop order issues, the effectiveness of the Registration Statement will be permanently halted, unless and until Respondent remedies the material deficiencies in the Registration Statement, about which (as set forth in the Division's opening brief) it already received precision and guidance. Additionally, such an order is beyond the scope of the OIP.

CONCLUSION

For the reasons above and in the Division's opening brief, a stop order must issue.

Dated: April 18, 2023

Respectfully submitted,

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OS Received 04/18/2023

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on April 18, 2023, in the manner indicated below:

By Email:

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