IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT STATE OF WYOMING, COUNTY OF LARAMIE

CHUCK GRAY, Wyoming Secretary of State, Petitioner, v. AMERICAN CRYPTOFED DAO, LLC, Respondent.	Civil Action No: 2024-CV-0202917

PETITIONER'S RULE 26 INITIAL DISCLOSURES

Petitioner Chuck Gray, Secretary of State, through the Wyoming Attorney General's Office, submits the following disclosures consistent with Wyo. R. Civ. P. 26(a). These disclosures are based on information reasonably available at this time. In making these disclosures, Defendants do not waive their right to object to the production of any document or tangible thing as privileged or protected from disclosure. These disclosures are subject to supplementation and amendment as discovery progresses.

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

RESPONSE: The following officials, or individuals in their offices, may have knowledge of events relevant to this matter.

Colin Crossman
Herschler Building
122 W 25th St
1st Fl E
Cheyenne, WY 82002
Colin.crossman@wyo.gov

Mr. Crossman may have information concerning and authenticating exhibits in this matter. Additionally, he is familiar with the Secretary of State's office practices and may provide factual background concerning the events leading to the present dispute.

B. A copy—or description by category and location—of all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and may be used to support its claims or defenses, unless the use would be solely for impeachment.

RESPONSE: See the attached exhibits, an index is provided as follows:

Document Title	Bates Numbers
American CryptoFed Letter	SOS-000001-000005
Corporations Filing	SOS-000006
SEC Filing by CryptoFed	SOS-000007-000021

CryptoFed Key Issues to SEC	SOS-000022-000026
Request Letter to Wyoming Secretary of State	SOS-000027-000031
CryptoFed Launch Schedule	SOS-000032-000038
Jesse Email Launch for ERC	SOS-000039-000040
Zhou Email Launch Schedule	SOS-000041-000044
CryptoFed Public Comments	SOS-000045-000056
CryptoFed Written Testimony for WY Legislature	SOS-000057-000059
CryptoFed Testimony	SOS-000060-000062
Letter to Commissioners and Inspector General	SOS-000063-000068
CryptoFed Testimony before Legislative Committee	SOS-000069-000072
Letter to WY SOS	SOS-000073-000082
Letter to WY SOS	SOS-000083-000090
Letter to SEC	SOS-000091-000109
Blockchain Testimony	SOS-000110-000138
Letter to SEC	SOS-000139-000146
Letter to SOS	SOS-000147-000160
CryptoFed DAO's Rebuttal Letter to WY SOS	SOS-000161-000188
SOS Filing Information	SOS-000189-000190
Email Chain with CryptoFed on Locke Tokens	SOS-000191-000220

C. A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

RESPONSE: None at this time.

D. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy part of all of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

RESPONSE: None.

Dated this 11th day of July, 2025.

/s/ Mackenzie Williams

Mackenzie Williams, Bar No. 6-4250
Senior Assistant Attorney General
109 State Capitol
Cheyenne, WY 82002
307-777-8781
mackenzie.williams@wyo.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of July, 2025, the foregoing was served on the following using the indicated methods:

FileAndServeXpress:

L. Cooper Overstreet
Overstreet Homar & Kuker
2922 Central Ave.
Cheyenne, WY 82001
cooper@kukerlaw.com

/s/ Mackenzie Williams
Office of the Attorney General

Wyoming Secretary of State

October 17, 2024

American CryptoFed DAO LLC
1607 Capitol Ave.
Suite 327
Cheyenne, WY 82001

Dear Mr. Moeller and Mr. Zhou:

American CryptoFed DAO LLC ("CryptoFed") has requested numerous times that the Wyoming Secretary of State issue a no-action letter pursuant to W.S. 17-4-605(d), relating to issuance of its Locke token.

Although our office has repeatedly voiced our opinion on this issue, this recently came to a head at the September 16, 2024 meeting of the Wyoming Select Committee on Blockchain, Financial Technology and Digital Innovation Technology. Our office maintains that W.S. 17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law. However, based on your testimony during the Blockchain Committee's meeting on September 16, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee.[1]

Specifically, CryptoFed requests a response to the following question:

> Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office?

CryptoFed then proposes a distribution of Locke tokens with the following characteristics:

1. CryptoFed creates Locke tokens in ERC-20 format.
2. CryptoFed distributes certain Locke tokens, free of charge, to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed ("Contributors") in one way or another.
3. The Contributors, at their own discretion, may sell the Locke tokens on centralized or decentralized crypto swaps or exchanges, the natural result of which is the independent formation of a secondary market for Locke tokens.
4. CryptoFed will not have control, obligations or rights related to these Locke tokens distributed to Contributors, although the holders of these Locke tokens will have rights to participate in the CryptoFed's governance.

CryptoFed Letter of July 31, 2024, page 3.

[1] This letter is not an opinion issued under W.S. 17-4-605(d).

Breaking the plan down into several discrete relevant elements:

1. CryptoFed's Locke tokens are governance tokens (point 4);
2. The tokens are distributed "free of charge" (point 2);
3. Determination of distribution is related in some fashion to "non-monetary contributions" (point 2);
4. Token holders are expected to form and/or participate in a secondary market (point 3);
5. CryptoFed's distribution shall be limited to Wyoming persons (residents or entities) (point 2);
6. CryptoFed will have no control or rights to oversee the tokens once released (point 4); and
7. CryptoFed will use the ERC-20 format (point 1).

Based on the plan, as it stands, the Wyoming Secretary of State cannot issue a favorable opinion to the benefit of CryptoFed. We shall now address the primary areas of analysis below.

Governance/Utility Token Analysis

A governance token, which provides a holder with voting rights or other powers to determine a distributed system's policy or direction, is not a utility token as defined under W.S. 34-29-106. In order to be a utility token, a token must *predominantly serve a consumptive* purpose.[2]

A token holder's capacity to vote on policy or direction by virtue of holding a token is neither consumptive, nor is a vote the receipt of, or access to, services, software, content, or real or tangible property.

CryptoFed explicitly defines the Locke tokens as governance tokens (element 1). Therefore, there is no need to proceed further under W.S. 34-29-106, as the Locke tokens are not utility tokens under Wyoming law.

Security Analysis

Under W.S. 17-4-102(a)(xxviii), a "security" includes an "investment contract," which itself includes both a variant of the *Howey* test, **and also** "an interest in a ... limited liability company…".[3]

An interest in an LLC is *Per Se* a Security

The Wyoming DAO is merely an instance of a Limited Liability Company (W.S. 17-31-102(a)(ii)). As such, an interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E).

An interest in a limited liability company need not be economic in nature. It is an extremely common practice in the LLC world to classify membership interests, resulting in the bifurcation of LLC interests into voting (governance) rights and economic rights. CryptoFed has explicitly defined the Locke token as a governance token (element 1), which seems to imply that there has been a severing of at least some of the economic interest.

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[2] W.S. 34-29-106(g)(ii) defines consumptive as "a circumstance when a token is exchangeable for, or provided for the receipt of, services, software, content or real or tangible personal property, including rights of access to services, content or real or tangible personal property[.]".

[3] W.S. 17-4-102(a)(xxviii)(D): "Includes as an 'investment contract' an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a 'common enterprise' means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors[.]"
W.S. 17-4-102(a)(xxviii)(E): "Includes as an 'investment contract,' among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement."

Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights.

The *Howey* Test

While the *per-se* analysis above is itself dispositive of the need to register as a security, we now turn to a *Howey* test analysis.

CryptoFed may object that the *Howey* test, as an interpretation of federal law, does not apply to an entirely intrastate Wyoming analysis. However, this argument is unconvincing for two reasons. First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)). Second, the *Howey* analysis remains relevant as the majority of CryptoFed's communications and arguments have centered around different interpretations of this very test, and CryptoFed has explicitly requested this analysis be conducted.

Much of CryptoFed's argumentation revolves around the "investment of money" prong of the *Howey* test. *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). The purpose of the *Howey* test is to determine if a particular construct or investment contract is a security. That test, as originally stated, is: "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party... [.]" *Id.*

While we agree with CryptoFed that, under their proposed scheme (element 2), the "[c]ontributors do not invest money by providing fiat or other assets in exchange for Locke token[s]," we disagree as to the relevance of this under the *Howey* test.

Under *Howey*, while the test did mention an "investment of money" as a prong of the test, "this definition 'embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.' " *SEC v. Edwards*, 540 U.S. 389, 393 (2004) (quoting *Howey* at 299).

That flexibility has been interpreted to incorporate situations where the "investment of money" is any exchange of value, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 n.12 (1979) ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."); *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976) (" 'an investment of money' means only that the investor must commit his assets to the enterprise in such a manner as to subject himself to financial loss").

As CryptoFed admits that the distributions of the Locke tokens will be to those "who have made, are making and will make non-monetary contributions," (element 3) the token distribution clearly is being made in exchange for some value received. Therefore we do not agree that the first prong of *Howey* is avoided by their "free of charge" distribution.

In its letter of September 30, 2024, CryptoFed claims that offering the Locke token for services then allows it to avoid the third prong of the federal *Howey* test. This is not so. While the test does read "profits solely from the efforts" of

others, subsequent cases have interpreted this, in connection with the flexible principle language immediately following the test in *Howey*, as not warranting a strict application.[4]

Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added). As these elements are all satisfied in the somewhat stricter federal *Howey* test, it is easy to see how all elements of Wyoming's statutory version are similarly satisfied.

Registration Requirement

Since the Locke token is a security, as defined under Wyoming law, it clearly requires registration under W.S. 17-4-301, unless it qualifies for an exemption under W.S. 17-4-201. We do not find any exemptions which appear to apply to the Locke token; therefore registration would be required.[5] Alternatively, and mentioned in more detail below, CryptoFed may avail itself of the FinTech Sandbox.

Sale of Securities

Since the Locke token is a security under both a *Howey* and a Wyoming statutory analysis, and requires registration, we turn to the "free" distribution aspects of CryptoFed's plan (element 2). Clearly, as above, exchanging the Locke token for services rendered by contributors is not "free of charge" distribution, since the token is in that case essentially just itself payment. Therefore, as proposed, the distribution would be viewed as a constructive sale of a security.

CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop."

However, several instances of "free" security or token distributions have demonstrated that the "value received" by the issuer may simply be creation of a secondary market in said securities or tokens. CryptoFed has explicitly laid out that its plan is for the recipients to create a secondary market for the Locke token (element 4).

By stating so explicitly that the entire goal is to stimulate the creation of a secondary market, CryptoFed has admitted that the airdrop is not without the exchange of value. *SEC v. Sierra Brokerage Servs., Inc.*, 608 F. Supp. 2d 923, 940-943 (S.D. Ohio 2009) ("[W]here a gift is followed by widespread downstream sales of those securities, **these would-be gifts may be characterized as a subterfuge** to evade registration." emphasis added).[6]

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[4] *See Hocking v. Dubois*, 885 F.2d 1449, 1455 (9th Cir. 1989) ("we have dropped the term 'solely'..."); *Securities & Exchange Commission v. Glenn W. Turner Enterprises Inc.*, 474 F.2d 476, 482 (9th Cir. 1973) ("the Supreme Court's admonitions that the definition of securities should be a flexible one, the word 'solely' should not be read as a strict or literal limitation on the definition of an investment contract, but rather must be construed realistically, so as to include within the definition those schemes which involve in substance, if not form, securities."); *see also United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 n.16 (1975).

[5] We note that under W.S. 17-4-306(a)(iii), there may be a prohibition on registration due to the SEC's pending stop order. However, as CryptoFed is not seeking registration at this time, we do not reach that analysis.

[6] *See also, In re Joe Loofbourrow*, Securities Act Release No. 7700 (July 21, 1999), https://www.sec.gov/litigation/admin/34-41631.htm; *In re Web Works Marketing.com, Inc. and Trace D. Cornell*, Securities Act Release No. 7703 (July 21, 1999), https://www.sec.gov/litigation/admin/34-41632.htm; *In re Wowauction.com Inc. and Steven Michael Gaddis*, Securities Act Release No. 7702 (July 21, 1999), https://www.sec.gov/litigation/admin/33-7702.htm; and *In re Theodore Sotirakis*, Securities Act Release No. 7701 (July 21, 1999), https://www.sec.gov/litigation/admin/33-7701.htm.

Furthermore, styling the airdrop as a "gift" does not provide any relief. *See In re UniversalScience.com, Inc. and Rene Perez*, Securities Act Release No. 7879 (Aug. 8, 2000), https://www.sec.gov/litigation/admin/33-7702.htm ("Thus, a gift of stock is a 'sale' within the meaning of the Securities Act when the purpose of the 'gift' is to advance the donor's economic objectives rather than to make a gift for simple reasons of generosity.").[7] [8]

Conclusion

For at least the above reasons, the Wyoming Secretary of State maintains that it cannot, at this time, issue the requested opinion letter to CryptoFed. Such a letter would require our office to declare that the Locke token is not a security, and therefore does not require registration prior to the sale or disposition of the tokens. As it stands under the parameters presented by CryptoFed, the Locke token would be a security, and would require registration in Wyoming.

While the Locke token, as described, is a security, CryptoFed has the option, ***and has been repeatedly invited***, to apply for the Financial Technology Sandbox under W.S. 40-29-101, *et seq.* This letter does not provide any analysis of the potential of success under such a filing, and such a filing would not allow a waiver from the determination that the Locke token is a security. It may, however, allow the consideration of a waiver of some registration requirements under W.S. 17-4-300, *et seq*.

While this letter is not being issued in accordance with W.S. 17-4-605(d), this analysis is being provided following CryptoFed's statements at the Blockchain Committee meeting, specifically the statements regarding CryptoFed's intent to begin issuing the Locke token as soon as November 2024. We are currently engaging with the Wyoming Attorney General's Office about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S. 17-4-604.[9]

Sincerely,

Jesse Naiman
Deputy Secretary of State

[7] *See also, In re Tomahawk Exploration LLC and David Thompson Laurance*, Securities Act Release No. 10530 (Aug. 14, 2018), https://www.sec.gov/litigation/admin/2018/33-10530.pdf ("Tomahawk's issuance of tokens under the Bounty Program constituted an offer and sale of securities because the Company provided TOM to investors in exchange for services designed to advance Tomahawk's economic interests and foster a trading market for its securities.").

[8] We also note that, once a secondary market is created (and hence the value of that service has accrued to CryptoFed), the natural follow-on argument will be that CryptoFed itself can sell into that secondary market, attempting to avail itself of the "programmatic sale" artifice described by Judge Torres in *SEC v. Ripple Labs, et al.*, 20-cv-10832, Dkt #874, p.22 (July 13, 2023, S.D.N.Y.). CryptoFed cannot evade federal securities regulation in this manner.

[9] As this letter is not being issued under W.S. 17-4-605(d), and because this analysis is highly specific to the facts of CryptoFed's intended plan, this letter should not be understood to be binding on other projects that have unique facts which would not closely mirror those proposed by CryptoFed for this analysis.

Department of State: Division of Corporations

Allowable Characters

HOME

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	**3101344**	Incorporation Date / Formation Date:	**9/23/1999** (mm/dd/yyyy)
Entity Name:	**MSHIFT, INC.**		
Entity Kind:	**Corporation**	Entity Type:	**General**
Residency:	**Domestic**	State:	**DELAWARE**

REGISTERED AGENT INFORMATION

Name:	**THE CORPORATION TRUST COMPANY**		
Address:	**CORPORATION TRUST CENTER 1209 ORANGE ST**		
City:	**WILMINGTON**	County:	**New Castle**
State:	**DE**	Postal Code:	**19801**
Phone:	**302-658-7581**		

Additional Information is available for a fee. You can retrieve Status for a fee of $10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of $20.00.

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SEC Filing

Exhibit 1

American CryptoFed DAO LLC

Constitution

1. Mission

To create and maintain a monetary system with zero inflation, zero deflation and zero transaction costs. Under no circumstances, should inflation or deflation in the Ducat economy be allowed. Under no circumstances, should American CryptoFed DAO LLC (CryptoFed) charge any transaction fees in any form. A unanimous consent of all outstanding Locke token votes is required to make changes to this section.

2. This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is the operating agreement for CryptoFed, effective on September 15, 2021.

3. Utility Tokens

To accomplish this mission, CryptoFed will issue the two tokens outlined below.

3.1 Ducat - An inflation and deflation protected stable token with unlimited issuance, constrained by zero inflation and zero deflation as defined in this Constitution. Ducat is used for pricing goods and services, daily transactions, accounting and as a store of value.

3.2 Locke - A governance token with a maximum authorized finite number of 10 trillion. Locke is used to stabilize Ducat and for Locke holders to participate in network rulemaking and decision making. Under no circumstances, should the maximum authorized finite number of 10 trillion be changed.

A unanimous consent of all outstanding Locke token votes is required to make changes to this section.

3.3 A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce1:

A Token is a digital representation of value or rights,

1 https://www.sec.gov/news/public-statement/peirce-statement-token-safe-harbor-proposal-2.0

(i) that has a transaction history that:

(A) is recorded on a distributed ledger, blockchain, or other digital data structure;

(B) has transactions confirmed through an independently verifiable process; and

(C) cannot be modified;

(ii) that is capable of being transferred between persons without an intermediary party; and

(iii) that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.

4. Organization

4.1 As the founding organization, MShift, Inc. (MShift) is the sole member of CryptoFed whose powers and rights will completely and irreversibly become delegated to Locke token holders as defined in this Constitution. The delegation of powers and rights will become automatically effective immediately after the U.S. Securities and Exchange Commission (SEC) declares the effectiveness of CryptoFed's Form S-1 filing for Locke and Ducat token registration. For compliance purposes, MShift will discuss with the SEC and incorporate their comments in future revisions to this Constitution until they declare CryptoFed's Form S-1 filing effective.

4.2 CryptoFed is a token-based organization with

the goal to reach the decentralized and functional network maturity outlined in the Token Safe Harbor Proposal 2.0, independent of its approval, in less than three years beginning from the effective date of this Constitution.

4.3 The publicly available identifier used to operate the smart contracts of CryptoFed is: blockexplorer.americancryptofed.org.

4.4 There is no hierarchy, such as an executive branch, a board of directors, or an advisory board, at CryptoFed. CryptoFed will be decentralized to the extent that a CEO is no longer needed within three years. For the time being, the current CEO is a symbolic position to

communicate with regulators together with MShift because regulators, such as the SEC, or other agencies, may require contact people and the founding company to be responsible for document filing.

4.5 CryptoFed is a fully permissionless, token-based organization. Any individual or entity who has an account at a participating bank, compliant crypto exchange or organization complying with Know Your Customer (KYC), Anti-Money Laundering (AML) and money transmitter regulations, can buy Locke and Ducat tokens. Locke and Ducat tokens can be traded permissionlessly on compliant crypto exchanges.

4.6 Locke tokens represent citizenship, not ownership. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed. Under no circumstances, should any individuals, entities, natural persons, or legal persons be excluded from purchasing and owning Locke tokens if they agree to this Constitution and comply with laws and regulations of local governments or jurisdictions, such as AML and KYC.

4.7 Intellectual Property

All rights of existing and future intellectual properties, including issued patents, patent applications, copyrights, trademarks, logos, etc. held by MShift will be permanently, exclusively, and irreversibly licensed to CryptoFed, free of charge. Under no circumstances shall MShift license its intellectual property to individuals or entities other than

CryptoFed. Source code will be disclosed for transparency purposes, but the use of the source code will require a business source license subject to authorization by a Locke token vote. MShift will use its initially allocated Locke tokens to maintain, defend and protect its intellectual properties in good faith in courts as needed or at the request by a simple majority of Locke tokens through a valid vote.

4.8 Waiver

In return for being allowed to voluntarily participate in CryptoFed's monetary system and all related activities ("CryptoFed Participation"), all token holders, by holding either Locke or Ducat

tokens, understand that CryptoFed Participation involves high risks, including, but not limited to, serious damage and loss. Ducat and Locke token holders agree to accept all risks of CryptoFed Participation, with full knowledge of the risks involved, and to the fullest extent permitted by law, automatically and voluntarily waive all their rights whatsoever. Ducat and Locke token holders by their CryptoFed Participation release and agree not to sue CryptoFed, Mshift, or their shareholders, officers, directors, employees, sub-contractors, sponsors, agents and affiliates ("CryptoFed Initial Development Team, aka CryptoFed IDE"), from all present and future claims, arising as a result of their CryptoFed Participation. CryptoFed IDE is not responsible for any damages arising out of Ducat and Locke token holder CryptoFed Participation, even if those damages are caused by CryptoFed's ordinary negligence or otherwise. Ducat and Locke token holders agree to indemnify and hold harmless CryptoFed and CryptoFed IDE for all claims arising out of their CryptoFed Participation. Token holders understand that this document is intended to be as broad and inclusive as permitted by the laws of the jurisdictions in which CryptoFed Participation takes place and agree that if any portion of this Constitution is invalid, the remainder will continue in full legal force and effect. Ducat and Locke token holders also acknowledge that CryptoFed has not arranged and does not carry any insurance of any kind for their benefit. Ducat and Locke token holders also understand that this Constitution is a contract which eliminates the liability of CryptoFed.

5. Compliance

5.1 To participate in the CryptoFed economy, all individuals and business entities are required to open

accounts at CryptoFed participating banks, compliant crypto exchanges or organizations complying with KYC, AML and money transmitter regulations. These banks, exchanges and organizations will issue CryptoFed co-branded wallets with their name and CryptoFed to individuals and entities for the purposes of holding and transacting in Ducat and Locke.

5.2 Business wallets and personal wallets are two different types of wallets which may have different features, benefits and requirements.

5.3 Even though CryptoFed defines Locke and Ducat tokens as utility tokens, the SEC may elect to classify Locke and Ducat tokens as securities. CryptoFed will seek to register Ducat and Locke tokens with the SEC to ensure compliance with Securities laws and related regulations. On September 15, 2021, CryptoFed will file Form 10 and Form S-1 to become a reporting company and subject itself to ongoing periodic reporting obligations, including but not limited to, Form S-8, S-3, 10-K, 10-Q, 8-K. CryptoFed will seek to outsource the filing tasks via smart contracts to vendors who accept Ducat tokens within one year after the Ducat token is launched.

5.4 CryptoFed will disclose information as outlined in the Token Safe Harbor Proposal 2.0 published by SEC commissioner Hester Peirce, independent of its approval, because the proposal provides clear guidance as to what should be disclosed, what the definition of the token should be and to what extent decentralized and functional maturity should be achieved.

6. Ducat Interest Rate

6.1 The interest rate for Ducat paid to Ducat holders by CryptoFed is necessary to establish the monetary policy tool by which CryptoFed adjusts the Ducat money supply. It is equivalent to the Federal Funds Rate used by the Federal Reserve to adjust the money supply of the US dollar. The target interest rate for Ducat should be maintained at 5%, although it is not an entitlement and is subject to adjustment as needed to maintain zero inflation and zero deflation.

6.2 The interest rate for holding Ducat paid in Ducat by CryptoFed must be 3% higher than the net of [the upper bound of Federal Funds Rate2 minus inflation rate measured by Personal Consumption Expenditures (PCE) Price Index published monthly by the Bureau of Economic Analysis, Department of

Commerce] 3 and will never be negative. A 75% majority of Locke tokens through a valid vote is required to make changes to this section. This section will be annulled when 1 Ducat equals 2 US dollars for a consecutive 12-month period.

2 https://www.newyorkfed.org/markets/reference-rates/effr
3 https://www.bea.gov/data/consumer-spending/main

7. Compensation to Wallet Issuers

7.1 All banks, compliant crypto exchanges or organizations complying with KYC, AML and money transmitter regulations are eligible to be block producers on the CryptoFed Blockchain, an EOS protocol-based sisterchain. These entities can issue CryptoFed co-branded wallets to their personal and business customers.

7.2 For 10 years beginning from the effective date of this Constitution, an amount equal to 10% of the total interest paid by CryptoFed to Ducat holders will be paid by CryptoFed to the co-branded wallet issuers. This compensation to wallet issuers, who are the block producers, is in addition to the interest paid by CryptoFed to Ducat holders.

7.3 For 10 years beginning from the effective date of this Constitution, the co- branded wallet issuers will be paid 0.50 Ducat by the CryptoFed for every purchase transaction in Ducat made by their customers via their CryptoFed co-branded wallets.

7.4 This section will be automatically extended at each 10-year anniversary unless it is modified by a simple majority of Locke tokens through a valid vote.

8. Ducat Reward Rate

8.1 The Ducat reward rate for purchases in Ducat is necessary to establish the fiscal policy tool by which CryptoFed stimulates the Ducat economy. It is equivalent to the fiscal policy tools of increased government spending or lowering taxes that the Federal Government uses to stimulate the US economy. Rewards are not entitlements and are subject to adjustment as needed to maintain zero inflation and zero deflation.

8.2 Under no circumstances, should the rewards for Ducat purchases paid in Ducat by CryptoFed be less than 5.5%

of the purchase amount, with the total amount of net rewards per month capped at 5,000 Ducat per personal or business wallet. A 75% majority of Locke tokens through a valid vote is required to make changes to this section.

8.3 Ideally the reward rate for Ducat purchases paid by CryptoFed should be maintained at 12%, although that rate can always be adjusted as needed to maintain zero inflation and zero deflation in the Ducat economy.

8.4 Businesses in both private and public sectors accepting Ducat will receive minimum 1% and maximum 4% of the purchase amount as compensation for their participation, which is in addition to the rewards paid to purchasers. The actual rewards rate percentage will be guided, adjusted and optimized by Machine Learning in order to maintain zero inflation and zero deflation in the Ducat economy.

9. Zero Token Acceptance Fees

Under no circumstances, shall transaction fees be charged for accepting Ducat as payment for goods and services. A unanimous consent of all outstanding Locke token votes is required to make changes to this section.

10. Incentives to Counties, States and Cities

For 10 years beginning from the effective date of this Constitution, counties or states which accept their sales tax receipts paid in Ducat, will receive an additional 0.5% Ducat paid by CryptoFed for every taxable purchase transaction. In addition to counties and states, the first three cities in the same state which accept Ducat as payments for their services will also receive 0.5% Ducat paid by CryptoFed for every taxable purchase transaction in their cities. This section will automatically be extended at each 10-year anniversary unless it is modified by a simple majority of Locke token through a valid vote.

11. Conversion from Ducat to US Dollars

11.1 CryptoFed will cover all related transaction fees incurred when business Ducat holders exchange Ducat to USD-pegged stablecoins or USD on crypto exchanges. A list of eligible, compliant exchanges will be published and updated subject to approval by Locke token holders through a valid vote. If the market exchange rate for Ducat falls below Ducat : USD = 1:1, CryptoFed will make up the difference in Ducat to

ensure business Ducat holders

always receive a minimum of $1 USD for every Ducat exchanged. This section will be automatically annulled when 1 Ducat equals 1.3 US Dollars for a consecutive 12-month period.

11.2 Individual Ducat holders may exchange Ducat for USD at market value on compliant crypto exchanges and must pay all related transaction fees themselves, seeing that they always have the option to redeem Ducat at participating merchants for goods and services with zero transactions costs.

12. Target Equilibrium Exchange Rate

12.1 Suppose time t is measured in days and m >= 1 stands for months, then Ducat will be designed to rise against USD according to the deterministic function every day "t" since Ducat deployment (t=0):

1 Ducat = 1 USD * exp(r_1(t)+r_2(t)+...)

Such that

r_m(t) = r_m * t if (m-1)*T+1<=t<=m*T
r_m(t) = r_m * m * t if t>m*T
r_m(t) = 0 if otherwise

r_m = (1/T)*ln(PCEr_m / PCEr_{m-1})
PCEr_0 = PCE_0
T = 365/12

PCEr_m is an estimate of the Personal Consumption Expenditures Price Index by the end of the month m. The estimate PCEr_m is determined by an exponential least square fit to a subset of the historical PCE data released by the Department of Commerce in previous months m-1,m-2,...etc.

12.2 When sales tax receipts paid in Ducat exceed sales tax receipts paid in US dollars in more than 10 States, within 2 years, CryptoFed must start its own personal consumption expenditure price survey via the CryptoFed Blockchain and replace the United States Bureau of Economic Analysis' (BEA) monthly PCE price index with a real-time CryptoFed PCE price index using the same scope of components, weights and formula as the BEA PCE price index. Within 5 years, CryptoFed must implement its own price index, which may have components, weight and formula different from and

independent of the BEA PCE price index and which is subject to the approval of a simple majority of Locke tokens through a valid vote.4

13. Open Market Operations

13.1 CryptoFed's open market operations, equivalent to the Federal Reserve's open market operations, refers to the practice of buying and selling between Locke and Ducat on open crypto exchange markets in order to regulate the money supply of Ducat so that the Target

4 A comparison of PCE and CPI: Methodological Differences in U.S. Inflation Calculation and their Implications
https://www.bls.gov/osmr/research-papers/2017/pdf/st170010.pdf

Equilibrium Exchange Rate between Ducat and USD is maintained and only fluctuates within the 2% variation range5.

13.2 CryptoFed uses its USD-pegged stablecoin reserve to buy back Locke as guided by CryptoFed's Linear Quadratic Gaussian (LQG) controller or Machine Learning in its ordinary course of business to maintain the Target Equilibrium Exchange Rate. However, CryptoFed must buy back Locke tokens whenever the Locke's price falls 3% below its previous price for a 24-hour period or falls 5% below its previous price for a 1-hour period. Whenever the Locke's price falls 30% below its previous price for a 24-hour period, CryptoFed has the authority to use all CryptoFed's USD-pegged stablecoins held in reserve to buy back Locke tokens.

13.3 In the instance that individuals and businesses aggressively exchange Ducat for USD, to defend the Target Equilibrium Exchange Rate in 12.1, CryptoFed will aggressively buy back Ducat with Locke to reduce Ducat circulation and absorb the selling pressure, the adjustment of which will be guided by CryptoFed's Linear Quadratic Gaussian (LQG) controller. In conjunction, a strong and persistent Ducat selling pressure requires that CryptoFed reduces the Ducat Rewards Rate to discourage spending Ducat and increases the Ducat Interest Rate to encourage holding Ducat, the adjustment of which will be guided by Machine Learning.

14. Initial Locke Allocation

14.1 Out of the total maximum authorized finite number of 10 trillion Locke tokens, 25% will be reserved for MShift as the founding organization, 10% for merchants, 10% for contributors other than merchants, 10% for refundable auctions on crypto exchanges for price discovery, 5% for R&D and 40% will be exclusively reserved for the purpose of open market operations. All allocated Locke tokens will not be minted until they are distributed.

5 A Closer Look at Open Market Operations. https://www.stlouisfed.org/in-plain-english/a-closer-look-at-open-market-operations

14.2 Out of the total 25% allocated to MShift, a certain percentage will be used for compensation paid to contributors and 1/5th of this allocation (5% of the total) will be used to maintain, defend and protect the intellectual properties which will be permanently, exclusively, and irreversibly, free of charge, licensed to CryptoFed.

14.3 Under no circumstances should the 40% (4 trillion) Locke reserve quota be used for other purposes, although the number of Locke tokens held in reserve can be more or less than 4 trillion as a result of open market operations.

14.4 When the Locke Governance Token market price reaches $0.50 US dollars per token daily for a consecutive 12-month period, all undistributed Locke tokens from the initial allocation will be reallocated for R&D purposes.

14.5 CryptoFed will grant R&D funds, free of charge, to projects on the CryptoFed Blockchain that benefit the Ducat economy, including but not limited to, decentralized exchanges, price index calculations, accounting services, universal identity verification, voting mechanisms, secure email, social media, health care insurance, human resource management and other projects proposed by Locke tokens. The projects and associated budgets require the approval of a simple majority of Locke tokens through a valid vote.

14.6 Even though CryptoFed defines Locke tokens as utility tokens, the SEC may classify Locke tokens as

securities. In that case, the initial allocation of Locke tokens will be treated as an equity incentive, free of charge. This Constitution will serve as the Equity Incentive Plan for CryptoFed to issue non-qualified stock options and incentive stock options (ISO) to service providers defined as directors, employees, and consultants pursuant to related laws and regulations. By holding Locke tokens, the recipients by definition contribute to the CryptoFed monetary system, because the CryptoFed token economy depends on mass adoption to generate a network effect and overcome the hurdles of collective action. All stock options are subject to laws and regulations regarding an equity incentive plan for a private company before CryptoFed's Form 10 filing with SEC becomes effective on or around November 16, 2021. After the Form 10 filing becomes effective, all stock options will be subject to laws and regulations regarding equity incentive plans for a public company. Within one week after the Form 10 filing

with SEC becomes effective, CryptoFed will file Form S-8 and thereby extend the equity incentive plan to service providers beyond 500-person threshold limitation of related securities laws. Before the Form 10 filing with SEC becomes effective, the administrator of the Equity Incentive Plan will be designated by MShift and CryptoFed with full discretion permitted by related laws. After the Form 10 filing with SEC becomes effective, the details will be described in CryptoFed's Form S-8 filing. Until the SEC declares CryptoFed's Form S-1 effective, all stock options are restricted and untradeable.

14.7 All names of Locke token holders included in the initial allocation may appear in disclosure filings required by the SEC, as well as in other regulatory and administrative filings and on CryptoFed's website.

15. Token Acquisition

15.1 Purchases, holding and sales of Locke and Ducat tokens must be done through CryptoFed co-branded wallets or whitelisted wallets compliant with KYC and AML, with exception of the paper certificates for initial allocation of Locke tokens.

15.2 Ducat tokens can be purchased on compliant crypto exchanges and can also be earned by providing services and goods to CryptoFed.

15.3 Locke tokens can be acquired via the initial allocation, earned by providing services and goods to

CryptoFed, and can also be purchased either through refundable auctions or on crypto exchange markets.

15.4 For price discovery purposes, CryptoFed may conduct refundable auctions from time to time via compliant crypto exchanges. Proceeds from these token sales must be used for refunding purposes and must be reserved in order to allow purchasers to request full refunds at the original purchase prices via smart contracts. Purchaser refund rights expire if: a) Locke's price surpasses 5 times the original purchase price, or b) the original Locke tokens are sold, or c) 3 years passes from the original date of purchase, whichever comes first. After refund rights expire, the corresponding proceeds will be transferred to CryptoFed's USD-pegged stablecoin reserve for Locke buyback.

15.5 All proceeds either from Locke auctions after refund rights have expired or from Ducat sales, will be held in CryptoFed's USD-pegged stablecoin reserves for Locke buyback. No proceeds can be used for other purposes. Locke token buyback is not only an alternative method to refund Locke token holders for their token purchases, but also an effective tool for Ducat redemption. Ducat holders buy goods and services at merchants which in turn will convert the Ducat back to USD on compliant exchanges. CryptoFed must buy back those Ducat tokens on compliant exchanges to maintain the Target Equilibrium Exchange Rate between Ducat and USD. CryptoFed uses Locke tokens to conduct the Ducat buyback via open market operations. In order to enable Locke to buy back Ducat on an ongoing basis, the USD proceeds from the Ducat sales must be used to constantly buy back Locke on compliant exchanges. Below is the redemption flow.

Ducat Purchaser/ Holder => Ducat => Merchant => Ducat => Exchange => USD => Merchant CryptoFed => USD-pegged stablecoin proceeds => Locke buyback => Ducat buyback

15.6 Ducat will not be launched until the Locke token market price reaches
$0.10 US dollars per token daily for a consecutive one-month period.

16. Group Treasury

16.1 CryptoFed will not open or hold any fiat bank accounts, including USD fiat accounts, at any financial institution. The proceeds from Locke refundable auctions and Ducat sales will be held in the form of USD-pegged stablecoins

reserved for buying back Locke.

16.2 Smart contracts will hold the group treasury. Treasury funds can only be spent by collective group decisions through a valid vote and payments will be authorized automatically when a vote passes. All Locke and Ducat tokens will be burnt (destroyed) automatically whenever they circulate back to the group treasury, including but not limited to, the process of open market operations.

16.3 Ducat tokens can always be minted and granted to CryptoFed's service providers by a simple majority of Locke tokens through a valid vote, as long as zero inflation and zero deflation are maintained.

16.4 All USD-pegged stablecoins held in reserve and undistributed and unissued Locke token quota in the initial allocation belong to CryptoFed's group treasury and are dedicated to the specific purposes stated in this Constitution. The undistributed and unissued Locke token quota in the initial allocation will not be minted until they are distributed.

17. Voting and Agenda Setting

17.1 Voting Power of MShift Founding Team

Within 3 years beginning from the effective date of this Constitution, the MShift founding team will reduce its collective ownership to 15% or less out of the maximum authorized finite Locke tokens of 10 trillion. Furthermore, starting from the fourth anniversary of the effective date of this Constitution, MShift founding team's collective voting power out of the total Locke tokens outstanding will be reduced 1% annually until the cumulative voting power is reduced to 10% or less, independent of the founding team's total actual ownership of Locke tokens.

17.2 Except for the MShift founding team, no individual or entity (including their affiliates) can exercise more than 2% voting power out of the total Locke tokens outstanding, although they can own more than 2% Locke tokens.

17.3 Locke tokens belonging to CryptoFed Group Treasury have no voting power.

17.4 Locke tokens can amend this Constitution by a

simple majority through a valid vote, except for those sections of the Constitution which require a special majority or unanimous consent.

17.5 Locke tokens have rights to publish proposals as well as to campaign support for, or opposition to proposals for voting. Once a proposal is supported by more than

10% of the total Locke tokens outstanding, the proposal will be voted on and recorded on the CryptoFed Blockchain within 30 days.

17.6 The Quorum for Locke token voting is 25% of the total Locke tokens outstanding.

17.7 Voting power of Locke token holders will begin 60 days after the SEC declares the effectiveness of CryptoFed's Form S-1 filing so that CryptoFed can have sufficient time to prepare for the voting process.

18. Governing Law and Jurisdiction

CryptoFed was established pursuant to Wyoming Law and is located in the State of Wyoming. All token holders, by holding Locke and Ducat tokens, agree that this Constitution will be governed and interpreted according to the laws of the State of Wyoming, notwithstanding any conflicts of law principles. If any of these provisions is determined to be unenforceable, that part will be deemed severable and will not affect the enforceability of any other provisions. In addition, all token holders agree to submit to the exclusive jurisdiction of the appropriate state or federal court for Cheyenne, Wyoming.

SIGNATURES

American CryptoFed DAO LLC

Date: September 15, 2021 By:

Name and Tittle: Marian Orr, CEO

MShift Inc.

(Sole Member of American CryptoFed DAO LLC)

Date: September 15, 2021 By:

Name and Tittle: Scott Moeller, CEO, MShift Inc.

MShift Inc.

(Sole Member of American CryptoFed DAO LLC)

Date: September 15. 2021 By:

Name and Tittle: Xiaomeng Zhou, COO, MShift Inc.

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Key Issues to Ask the SEC for Clarity

1. Wyoming DAOs may not have many characteristics which are inherent to traditional corporations. When Wyoming DAOs initially file registration statements, the SEC as an agency with expertise, should inform these DAOs within a reasonable timeframe, both from a Fair Notice perspective, and the Void for Vagueness Doctrine whether the DAO's tokens are securities or not, , pursuant to the US Supreme Court opinions in *F.C.C. v. Fox Television Stations, Inc*., 567 U.S. 239, 253 (2012) below:

   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.

   We need the legal basis as to why the SEC refused to inform American CryptoFed whether its Locke and Ducat tokens are securities or not.

2. If filing the registration statements with the SEC,
   i) is the <u>only</u> reason which makes the DAO's tokens securities, and
   ii) if the SEC refuses to provide reasons other than the filing per se as to why the DAO's tokens are securities or not,

   the SEC should allow the DAO to withdraw their filings, pursuant to the US Supreme Court opinions in *Jones v. SEC*, 298 U.S. 1 (1936) below:

   *An additional reason why the action of the commission and of the court below cannot be sustained is that the commission itself had challenged the integrity of the registration statement and invited the registrant to show cause why its effectiveness should not be suspended. In the face of such an invitation**, it is a strange conclusion that the registrant is powerless to elect to save himself the trouble and expense of a contest by withdrawing his application.** Such a withdrawal accomplishes everything which a stop order would accomplish, as counsel for the commission expressly conceded at the bar. And, as the court below very properly recognized, a withdrawal of the registration*

statement "would end the effect of filing it and there is no authority under § 19 (b) to issue the Commission subpoena and it could not be enforced by order of the district court under § 22 (b)." 79 F. (2d) 619. at 27, Jones v. SEC, 298 U.S. 1 (1936) (emphasis added).

Please provide the legal basis as to why the SEC denied American CryptoFed's request for withdrawal, given that the filing the registration statements with the SEC is the only reason which makes DAO's tokens securities, and SEC refused to prove that its Locke and Ducat tokens are securities.

3. Under the condition that,
    i) filing the registration statements with the SEC is the only reason which makes DAO's tokens securities, and
    ii) the SEC issues order denying the withdrawal request,

    the SEC has Burden of Proof obligation to prove the DAO's tokens are securities, pursuant to **Administrative Procedure Act (APA)** coded as 5 U.S. Code § 556 (d), the first sentence of which states "Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof**."

    Please provide the legal basis as to why the SEC did not fulfill the APA obligation of burden of proof, prior to issuing Order Instituting Proceedings against American CryptoFed and the Initial Decision for Stop Order.

4. Given that Wyoming DAOs may not have many characteristics which traditional corporations have, and the initial registration statements prior to effectiveness may be "on its face incomplete or inaccurate in any material respect", in order to encourage Wyoming DAOs to file registration statements with the SEC for compliance purposes, the SEC should apply Section 8(b) of Securities Act of 1933, to issue a Refusal Order, if the registration statements has the Delaying Amendment to allow the SEC to have sufficient time to review the registration statements.

    Section 8(b) of Securities Act of 1933 which states the following:

If it appears to the Commission that a registration statement is ***on its face incomplete or inaccurate in any material respect****, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice,* ***issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order.*** *When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.*

Pursuant to the U.S. Supreme Court's opinion in *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) at 229 below, Section(b) of Securities Act of 1933 is a specific provision for initial registration statement filing and should be the sole and exclusive controlling provision.

We think it is clear that § 1391 (c) is a general corporation venue statute, whereas § 1400 (b) is a special venue statute applicable, specifically, to all defendants in a particular type of actions, i. e., patent infringement actions. In these circumstances the law is settled that "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.' Ginsberg & Sons v. Popkin, 285 U. S. 204, 208." MacEvoy Co. v. United States, 322 U. S. 102, 107.

We hold that 28 U. S. C. § 1400 (b) is the sole and exclusive provision controlling venue in patent infringement actions, and that it is not to be supplemented by the provisions of 28 U. S. C. § 1391 (c).

Please provide legal basis as to why the SEC applied Section 8(d) and Section 8(e) of the Securities Act of 1933, rather than Section 8(b), to American CryptoFed, which effectively turned an initial registration statement filing process into a search and seizure process of enforcement, given that American CryptoFed's Form S-1 registration statement has a Delaying Amendment in place, and a Refusal Order pursuant to Section 8(b) has been available for more than a year, this makes the following scenario of the Initial Decision impossible.

*Red Bank Oil Co., Securities Act Release No. 3095, 1945 SEC LEXIS 204, at *7 (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).").*

(d)Untrue statements or omissions in registration statement

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, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, 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.

For reference purposes, below are Section 8(d) and 8(e) of Securities Act of 1933.

(e)Examination for issuance of stop order

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.

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May 22, 2023
Via Electronic Email

Chuck Gray, Secretary of State
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Herschler Building East
122 W 25th St, Suites 100 and 101
Cheyenne, WY 82002-0020

Re: Petition for Review of the SEC's Initial Decision
Issued in American CryptoFed DAO LLC 3-21243

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman

As American CryptoFed DAO's organizers, we cannot thank the Secretary of State's Office enough for meeting with us within 24 hours, after our request on May 17, 2023 to discuss the Initial Decision ("Initial Decision") of the Administrative Law Judge of the Securities and Exchange Commission ("SEC" or "Commission") with your office.[1]

If the Initial Decision is finalized 'as is' by the Commission as a legal precedent of case law, without a petition from the Secretary of State's Office, **no** Decentralized Autonomous Organization ("DAO") enabled by Wyoming Decentralized Autonomous Organization Supplement ("Wyoming DAO Law") whose operation has to be conducted by smart contracts, will be able to complete any registration statements with the SEC, dramatically reducing the scope and potential reach of any Wyoming DAO.

[1] The Initial Decision is now available at the SEC link: https://www.sec.gov/alj/aljdec/2023/id1415.pdf

"A DAO is an entity in which those who have invested in the entity (contributors, participants, members, token holders, etc.) partake in the management and decision-making of the DAO. The entity does not have a central authority, instead, the authority is distributed among members who collectively determine and coordinate the actions of the DAO. ***With respect to governance, blockchain-based DAOs typically rely on smart contracts, which are self-executing programs that automate the actions required in a contract when specified conditions are met****"* (Emphasis added), according to a Memorandum of Wyoming Legislative Service Office (p.1-2, "LSO Memorandum") for the May 16, 2023 meeting of the Select Committee on Blockchain, Financial Technology and Digital Innovation Technology.[2]

Given that *"blockchain-based DAOs typically rely on smart contracts, which are self-executing programs that automate the actions required in a contract when specified conditions are met",* the governance activities of DAOs will require mass distribution of governance tokens prior to active operations. As a result, logically, in practice, the governance activities of DAOs will be impossible before governance tokens can be legally and broadly distributed and swapped. In order for governance tokens to be legally and broadly distributed and swapped at scale, American DAOs had better register their tokens with the SEC.

In order to complete registration statements of DAOs with the SEC, audited financial statements are required. The Summary of the Commission's Initial Decision states *"This Initial Decision suspends the effectiveness of the registration statement of American CryptoFed DAO LLC. The basis for this "stop order" is that the registration statement omits required information, such as audited financial statements."*

However, the "audited financial statements" for DAOs, including but not limited to, American CryptoFed DAO, cannot be performed by an independent accounting firm, before the financial records to be audited can be generated through transactions of tokens. However, the Initial Decision for "stop order" does not allow American CryptoFed to issue any tokens. Therefore, without "audited financial statements", no token issuance will be allowed by the SEC,

[2] https://wyoleg.gov/InterimCommittee/2023/S19-2023051509-01ComparisonofDAOLegislationMemo-FINAL.pdf

but without token issuance, there will be no **historical** records to be audited by an independent accounting firm. An audit by an independent accounting firm requires **historical** records of transactions to be audited, by definition of audit. All future plans are projections, which will not be treated as financial records to be audited from Generally Accepted Accounting Principles (GAAP) which consists of a common set of accounting rules, requirements, and practices issued by the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

This is a catch-22 situation.

Once this Initial Decision is finalized by the SEC, it will function as a legal precedent of case law for the SEC to issue stop orders to suspend all and any registration statements of all DAOs enabled by Wyoming DAO Law. Because it is impossible that a DAO could provide "audited financial statements" without a token issuance, without governance activities through smart contracts powered by tokens, and without any transaction records of tokens.

Therefore, this Initial Decision actually renders Wyoming DAO Law powerless, and prevents ANY potential token economy of Wyoming DAOs from emerging, although the Wyoming LSO Memorandum states *"DAOs have been formed for a variety of reasons, including the management of protocols, software, real estate finance, or the acquisition of artwork or historical artifacts. DAOs can seek to achieve a specific goal, manage a particular activity, deploy capital, or organize people."*

Fortunately, there is a clear and viable path for DAOs via SEC's registration, because the SEC Chairman Gary Gensler testified on September 15, 2022 to the US Senate under oath, *"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"* (Emphasis added)[3]. Therefore, now is the perfect opportunity for the Wyoming Secretary of State's Office to file a petition for review of the Initial Decision with the Commission, pursuant

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

to Rules 410 of the SEC's Rules of Practice[4], 17 C.F.R. § 201.410[5], and specially request Chairman Gensler to "be flexible in applying ***existing*** disclosure requirements" to American CryptoFed DAO. The purpose is to establish a legal precedent of case law for all DAOs enabled by Wyoming DAO Law to follow.

For your convenience, a proposed draft of Wyoming Secretary of State's Petition for Review of the Initial Decision is attached. This draft can provide a general legal framework for your office to complete the petition. Because the Commission's Initial Decision is suspending the date of effectiveness as governed by Section 8(a) of the Securities Act of 1933, pursuant to Rules 411 (b)(1)(i) of the SEC's Rules of Practice, the Commission's review of the Initial Decision is mandatory. The deadline for the Wyoming Secretary of State's Office to file the petition will be 21 days from the date of the hearing officer's order resolving the Motion to Correct Manifest Errors of Fact which American CryptoFed will file within ten (10) days of the Initial Decision, pursuant to Rule 111 (h) of the SEC's Rules of Practice, 17 C.F.R. § 201.111. We will share with your office the DAO's Motion to Correct Manifest Errors of Fact once it is filed. You may need it to complete your office's petition. Independent of the Wyoming Secretary of State's Office, American CryptoFed will file its own Petition for Review of the Initial Decision. We will share the draft of our own Petition with your office once it is ready on or before June 6, 2023.

We are looking to further discuss the petition with you and answer your questions at your earliest convenience, because Rules 410 (e) of the SEC's Rules of Practice, 17 C.F.R. § 201.410 (e) states *"Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an initial decision is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision."*

Therefore, by this Rules 410 (e) of the SEC's Rules of Practice, completely identical to 17 C.F.R. § 201.410 (e), which is authorized by Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, the SEC may deny any judicial review initiated by your office in the future, if a Petition for Review of the Initial Decision is not filed before the Commission finalizes the Initial

[4] https://www.sec.gov/about/rules-of-practice-2019-09.pdf
[5] https://www.law.cornell.edu/cfr/text/17/201.410

Decision as a legal precedent of case law. The consequences of the SEC's final decision will be real, profound, long-lasting, and irreversible for all Wyoming DAOs. We believe that in order for DAOs to fulfill their potential as enabled by Wyoming DAO Law, we now have our only and rare opportunity to engage the SEC and have the results of the review published transparently for all.

We are very appreciative of all the help Wyoming's Secretary of State's Office has given us.

Sincerely,

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

/s/ Scott Moeller

Name: Scott Moeller
Title: Organizer

DocuSigned by:
Xiaomeng Zhou
6F7F189BD770455...

/s/ Xiaomeng Zhou

Name: Xiaomeng Zhou
Title: Organizer

Draft July 27, 2023

American CryptoFed Launch Schedule for ERC 20 Locke Tokens

1. SEC Affirmative Confirmation – Q1 2024

On July 21, 2023, the SEC issued ORDER GRANTING PETITION FOR REVIEW AND SCHEDULING BRIEFS regarding Form S-1 Proceedings. On June 7, 2023, the SEC issued ORDER DENYING MOTION TO DISMISS which in effect reinstated Form 10 Proceedings. Please see the following two weeks.
https://www.sec.gov/litigation/opinions/2023/33-11214.pdf
https://www.sec.gov/litigation/opinions/2023/34-97659.pdf

Through these SEC proceedings (Form S-1 and Form 10), American CryptoFed should be able to obtain an affirmative confirmation by the end of Q1 2023 that investment contract does not exist in CryptoFed Business model, because CryptoFed only has the following two types of transactions which are not securities, in accordance with Judge Analisa Torres's ruling in *SEC vs. Ripple Labs*. *see* page 22 (last paragraph), page 25 (last paragraph) and page 26 (the first and second paragraphs) in following link.
https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.874.0_5.pdf

A) Locke Distribution Methods
   i) Employees (Compensation incentive)
   ii) Contributors (Compensation incentive)
   iii) Refundable Auction (No longer needed. To be dropped in a revised Constitution)
   iv) Open Market Operation (CryptoFed sells Locke token for buying back Ducat token on open crypto markets to support the price of Ducat, Locke Programmatic Sales)

B) Ducat Distribution Methods
   i) Rewards to consumers (Compensation incentive)

ii) Rewards to merchants (Compensation incentive)

iii) Interests paid to Ducat holders. (Compensation incentive)

iv) Rewards to Block Producers (Compensation incentive)

v) Rewards to developers (Compensation incentive)

vi) Subsidies to merchants for exchange rate loss (Compensation incentive)

vii) Open Market Operation (CryptoFed sells Ducat token for Wyoming Stable Token on open crypto markets to meet the demand of Ducat and drive Ducat price down to Target Exchange Rate, Ducat Programmatic Sales)

C) Secondary Markets for Locke and Ducat Tokens

CryptoFed will distribute Locke tokens (ERC 20), free of charge, to contributors who will establish Locke's secondary market by selling Locke tokens via UniSwap. When the price of Locke token reaches certain prices on the secondary market and participating merchants are able to accept Ducat for purchase of goods and services, CryptoFed will distribute certain amount of Ducat tokens (EOS protocol), free of charge, to these consumers who are the first-time users. These consumers and merchants can purchase goods and services at merchants, while establishing the secondary market for Ducat tokens by selling Ducat for Wyoming Stable Token.

2. FinCEN Affirmative Confirmation – Q1 2024

As a government agency within the US Department of Treasury, the Financial Crimes Enforcement Network (FinCEN) is enforcing Bank Secrecy Act Regulations and has issued guidance for crypto players to register as Money Transmission Services for KYC and AML compliance. In accordance with guidance FIN-2019-G001 (issued: May 9, 2019, Subject: Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies) cited below, our conclusion is that CryptoFed does not conduct any "money transmission services" and should not be required to comply with KYC and AML. We will reach out to FinCEN in late August 2023 to start dialogue with them.

The regulatory interpretations contained in this guidance may extend only to other business models consisting of the same key facts and circumstances as the business models described herein. Therefore, a particular regulatory interpretation may not apply to a person if their business model contains fewer, additional, or different features than those described in this guidance. (p.3).

The 2013 VC Guidance explained that the method of obtaining virtual currency (e.g., "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing") does not control whether a person qualifies as a "user," an "administrator" or an "exchanger." (p.13).

FinCEN's regulations define the term "money transmitter" to include a "person that provides money transmission services," or "any other person engaged in the transfer of funds." A "transmittor," on the other hand, is "[t]he sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank." In other words, a transmittor initiates a transaction that the money transmitter actually executes. (p.3).

The term "money transmission services" is defined to mean the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. (page 4).
https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf

Out of transactions in A) Locke Distribution Methods and B) Ducat Distribution Methods, all transactions for compensation incentives do not have the feature of "*the acceptance of currency, funds, or other value that substitutes for currency from one person*" and should not be categorized as "money transmission services". The remaining category is Open Market Operation which has three types of transactions below. None of these three types of transactions have all required features of *"money transmitter"* and "money transmission services".

i) CryptoFed will sell Locke tokens for buying back Ducat on crypto markets (both centralized and decentralized crypto exchanges) to support the price of Ducat and to raise Ducat price to Target Exchange Rate, in order to maintain zero inflation. Instead of transmission of these Ducat tokens obtained through this process *"to another location or person"*, CryptoFed will burn (destroy) these Ducat tokens. Given that CryptoFed will obtain Ducat tokens from both centralized and decentralized crypto exchanges by selling Locke tokens, CryptoFed will not be able to know whom the sellers of these Ducat tokens are, and whom the buyers of these Locke tokens are. Therefore, the most important feature of *"money transmission services"* that "*a transmittor initiates a transaction that the money transmitter actually executes",* does not exist for this type of transaction.

ii) CryptoFed will sell Ducat tokens for Wyoming Stable Tokens (WST) on crypto markets (both centralized and decentralized crypto exchanges) to meet the demand of Ducat and to drive Ducat price down to Target Exchange Rate, in order to maintain zero inflation. Instead of transmission of these WST *"to another location or person"*, CryptoFed will use these WST tokens to buy back Locke tokens based on CryptoFed7s Constitution (to be explained below). Given that CryptoFed will obtain WST from both centralized and decentralized crypto exchanges by selling Ducat tokens, CryptoFed will not be able to know whom the sellers of these WST are, and whom the buyers of these Ducat tokens are. Therefore, the most important feature of *"money transmission services"* that "*a transmittor initiates a transaction that the money transmitter actually executes,* does not exist for this type of transaction.

iii) CryptoFed will sell WST for buying back Locke tokens on crypto markets (both centralized and decentralized crypto exchanges) to support the price of Locke, whenever the Locke's price falls 3% below its previous price for a 24-hour period or falls 5% below its previous price for a 1-hour period, pursuant to CryptoFed's Constitution, following investment strategy of "Buying the Dip". Instead of transmission of Locke tokens obtained through this process *"to another location or person"*, CryptoFed will burn (destroy) these Locke tokens. Given that CryptoFed will obtain Locke tokens from both centralized and decentralized crypto exchanges by selling WST, CryptoFed will not be able to know whom the sellers of these Locke

tokens are, and whom the buyers of these WST are. Therefore, the most important feature of *"money transmission services"* that "*a transmittor initiates a transaction that the money transmitter actually executes",* does not exist for this type of transaction.

Furthermore, to the extent that CryptoFed purchases or sells Ducat tokens or Locke tokens or WST, paying and receiving the equivalent value in Ducat tokens or Locke tokens or WST, to and from unknown counterparties, the three types of CryptoFed's transactions are similar to investments for CryptoFed's own account described in FinCEN guidance FIN-2014-R002 (Issued: January 30, 2014, Subject: Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity) cited below. "*As a result, to the extent that the Company limits its activities strictly to investing in virtual currency for its own account, it is not acting as a money transmitter and is not an MSB under FinCEN's regulations.*"

This responds to your letters of May 21, 2013 and July 10, 2013, seeking an administrative ruling from the Financial Crimes Enforcement Network ("FinCEN") regarding the status of [ ] (the "Company") as a money services business ("MSB") under the Bank Secrecy Act ("BSA"). Specifically, you ask whether the periodic investment of the Company in convertible virtual currency, and the production and distribution of software to facilitate the Company's purchase of virtual currency for purposes of its own investment, would make the Company a money transmitter under the BSA. (first paragraph of page 1).

Your addendum of July 10, 2013 clarifies that the Company intends to limit its activities to investing in convertible virtual currencies for its own account, purchasing virtual currency from sellers and reselling the currency at the Company's discretion, whenever such purchases and sales make investment sense according to the Company's business plan. The seller would offer its virtual currency to the Company via the software discussed above, and the Company would sell all or part of its virtual currency at a virtual currency exchange after receipt from the seller, at a time of the Company's choosing based on the Company's own investment decisions. (last paragraph of page 1).

To the extent that the Company purchases and sells convertible virtual currency, paying and receiving the equivalent value in currency of legal tender to and from counterparties, all

exclusively as investments for its own account, it is not engaged in the business of exchanging convertible virtual currency for currency of legal tender for other persons. In effect, when the Company invests in a convertible virtual currency for its own account, and when it realizes the value of its investment, it is acting as a user of that convertible virtual currency within the meaning of the guidance. As a result, to the extent that the Company limits its activities strictly to investing in virtual currency for its own account, it is not acting as a money transmitter and is not an MSB under FinCEN's regulations. However, any transfers to third parties at the behest of the Company's counterparties, creditors, or owners entitled to direct payments should be closely scrutinized, as they may constitute money transmission. (See footnote 10 to this ruling.) (first paragraph of page 4).
https://www.fincen.gov/sites/default/files/shared/FIN-2014-R002.pdf

3. **Completion of Preparation for ERC 20 Locke Token Launch - Q2 2024**

Given that neither SEC nor FinCEN has jurisdiction over CryptoFed, we will issue ERC 20 Locke tokens on Ethereum to all contributors (both individuals and entities), free of charge, by the middle of Q2 2024 so that they can sell the ERC 20 Locke tokens via UniSwap at their own discretion and to establish the secondary market for ERC 20 Locke tokens in Q3 2024. For UniSwap, please see the following article.

Decentralized Exchange Uniswap Trading Volume Outpaces Coinbase for 4th Consecutive Month
https://www.coindesk.com/markets/2023/05/11/decentralized-exchange-uniswap-trading-volume-outpaces-coinbase-for-4th-consecutive-month/

We anticipate that by December 31, 2025, the Market Cap of ERC 20 Locke tokens will reach top 5 at CoinMarketCap (https://coinmarketcap.com/), surpassing XRP (Ripple). To be clear, the issuance of Locke and Ducat tokens on EOS protocol will not be ready until Q3 2026, three years from now, because it will take at least 2 years for merchants to implement any payment options at their point of sales. However, we have already started the preparation for software development of EOS protocol, including working with EOS Network Foundation. As

long as we are making progress towards the deployment of EOS protocol together with merchants, the value of Locke tokens in ERC 20 will continue to grow. For the launch of ERC 20 Locke tokens in Q2 2024, one year from now, we are preparing the followings:

i) CryptoFed's Constitution update

ii) Whitepaper for CryptoFed's economics

iii) CryptoFed's website contents update

iv) Creation of Locke tokens (ERC 20)

v) Distribution Locke tokens (ERC 20) to CryptoFed's contributors

- Merchants' individuals participating in MAG conferences.
- MAG merchants
- MShift (advisors, employees, etc.)
- EOS Network Foundation (Antelope)
- EOS EVM developers for American CryptoFed Blockchain
- Block Producers for American CryptoFed Blockchain
- EOS EVM wallet developers for Locke and Ducat
- EOS EVM decentralized identity developers
- EOS EVM Wyoming Stable Token developers
- EOS EVM UniSwap (Equivalent) developers
- EOS Point of Sales API developers for Ducat acceptance
- Centralized exchanges to list Locke and Ducat tokens (EOS)

vi) User guide for American CryptoFed's contributors to use UniSwap for establishing the secondary market for ERC 20 Locke tokens.

Colin Crossman <colin.crossman@wyo.gov>

American CryptoFed's Launch Schedule for ERC 20 Locke Tokens

Jesse Naiman <jesse.naiman1@wyo.gov> Wed, Aug 9, 2023 at 8:15 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Dear Mr. Zhou,

I hope this email finds you well. I am writing to inform you of our findings after a thorough examination of the draft launch schedule you provided to us on July 27, 2023.

While we understand that you only sent us a draft, some of the actions you lay out, such as the issuance of ERC 20 Locke tokens on Ethereum by the middle of Q2 2024 (page 5), might violate the SEC's stop order (*see* 15 USC 77e(c)). Even if that order is improper, I recommend consulting legal counsel to navigate this complex issue.

Moving to the substance of your argument, your draft relies heavily on Judge Torres' ruling in *SEC v. Ripple Labs* (1:20-cv-10832, S.D.N.Y. July 13, 2023) concerning both programmatic sales and compensation incentives. While this ruling may seem relevant to your situation, the *Ripple* decision has been met with significant skepticism in the legal field. *SEC v. Terraform Labs* (1:23-cv-01346, S.D.N.Y. July 31, 2023).

Judge Rakoff's analysis specifically detailed how the subjective "manner of sale" distinction made by Judge Torres is not supported under the *Howey* Test, and Judge Rakoff held that such a distinction is unsustainable (p. 41). Judge Rakoff's focus on the totality of circumstances means that the analysis is not confined to the characteristics of the token itself. Instead, the Court will consider the entire system or scheme in which the token is embedded, including the marketing, management, and economic relationships involved.

This perspective is critical to consider, especially given our understanding that the CryptoFed model you have proposed appears more analogous to the model used by Terraform Labs, rather than that used by Ripple Labs. Judge Rakoff's analysis may be more pertinent to your situation, even if both Torres' and Rakoff's decisions can be seen to coexist.

In light of these considerations, your team should retain skilled and competent counsel in this matter before proceeding any further with affirmative actions to implement the draft you provided. The legal landscape in this area is complex, and expert guidance will be crucial to navigate it successfully.

We do not currently agree that the current state of the case law supports your contention that the SEC does not have jurisdiction over CryptoFed. This stance may require further exploration and legal consultation.

Given the above, we have chosen not to address the FinCEN components of your draft at this time. Regarding the money transmitter aspects of those regulations, the Wyoming Banking Commission would also need to render an opinion after the overarching SEC issue has been resolved.

Lastly, I would like to emphasize that this is a rapidly moving area of law. It appears near certain that both higher courts and Congress will need to intervene to provide clarity.

Please feel free to reach out if you have any questions or need further clarification on any of the points mentioned above.

Wishing you all the best in your endeavors.

Sincerely,

Jesse Naiman
Deputy Secretary of State

[Quoted text hidden]

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SOS- 000040

Colin Crossman <colin.crossman@wyo.gov>

American CryptoFed's Launch Schedule for ERC 20 Locke Tokens

Xiaomeng Zhou <zhouxm@americancryptofed.org> Thu, Aug 10, 2023 at 8:40 AM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Good morning, Jesse and Team.

Thank you very much for your email which raised some important issues.
We can build consensus on these issues in our discussions.

Here are my initial responses to address key issues.

1. Comparison between *SEC v. Ripple Labs* and *SEC v. Terraform Labs*

In my initial letter to you on July 27th, 2023, the Terraform decision had not been made. Today, I compare the *SEC v. Terraform Labs* decision with *SEC v. Ripple* decision. Out of the three prongs of Howey test, *[(1)] invests his money [(2)] in a common enterprise and [(3)] is led to expect profits solely from the efforts of the promotor or a third party."* (*SEC v. Terraform Labs*, p.30), the only difference lies in the Third Prong.

The difference in applying *Howey's* Third Prong can only be resolved by the US Appeals Courts and the US Supreme Court, I believe. Until then, the SEC will continue going after crypto players, based on the SEC's own interpretation about the Third Prong, such as Coinbase, Binance, etc.

In anticipation of these conflicting interpretations of different courts or judges, American CryptoFed has taken an unusual approach by ensuring that American CryptoFed's transactions do not satisfy the First Prong of *"investment of money".* The ruling of *SEC v. Ripple* is very helpful by clarifying what is *"investment of money"* as below:

The Other Distributions do not satisfy Howey's first prong that there be an "investment of money" as part of the transaction or scheme. 328 U.S. at 301. Howey requires a showing that the investors "provide[d] the capital," id. at 300, "put up their money," Glen-Arden, 493 F.2d at 1034, or "provide[d]" cash, Telegram, 448 F. Supp. 3d at 368–69. "In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." Int'l Bhd. of Teamsters v. Daniel, 439 U.S. 551, 560 (1979). Here, the record shows that

recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.

However, regarding the First Prong, the ruling of *SEC v. Terraform Labs* is silent by stating, "*Because the defendants do not dispute that each purchaser of the defendants' crypto-assets made an "investment of money" in exchange for these crypto-assets, the Court's analysis focuses exclusively on the two remaining Howey prongs."*

Given that the ruling of *SEC v. Terraform Labs* is silent about the First Prong, the ruling of *SEC v. Ripple* regarding the First Prong should prevail. There is no authoritative challenge to the ruling of *SEC v. Ripple* regarding theFirst Prong. As a result, American CryptoFed should be able to distribute ERC 20 Locke tokens, free of charge. American CryptoFed itself will never sell Locke tokens itself as Ripple and Terraform have done. It is impossible for American CryptoFed to satisfy the First Prong. After these contributors who receive Locke tokens and create a secondary market of Locke via UniSwap by themselves, American CryptoFed will be able to continue paying compensation to contributors with Locke on an ongoing basis, free of charge. Given that the secondary market will be established by contributors themselves, Locke's refundable auction will no longer be needed. I will remove it from the next version of CryptoFed's Constitution.

American CryptoFed will not issue Ducat tokens on EOS protocol until Q3 2026. Therefore, until then we do not even need to discuss Ducat tokens in detail. We fully agree with your position "this is a rapidly moving area of law." We will revisit Ducat in late 2025 or early 2026. For the time being, the only focus should be the distribution of ERC 20 Locke tokens, free of charge. The only case law for interoperating *Howey's* First Prong in the context of crypto industry, is *SEC v. Ripple Labs,* which supports American CryptoFed's distribution of ERC 20 Locke tokens, free of charge. I really want to know whether you agree with our position on *Howey*'s First Prong.

Furthermore, even after Ducat tokens will be launched and Open Market Operation will be conducted in accordance with CryptoFed's Constitution, *Howey*'s First Prong will never be met, because the *"investment of money"*does not exist in any of the following transactions of Open Market Operation. If *"investment of money"* exists, the money raised must be able to be reflected in the balance sheet in accordance with Generally Accepted Accounting Principle (GAAP).

i) CryptoFed will sell Locke tokens for buying back Ducat on crypto markets (both centralized and decentralized crypto exchanges) to support the price of Ducat and to raise the Ducat price to a Target Exchange Rate, in order to maintain zero inflation. CryptoFed will burn (destroy) these Ducat tokens.

ii) CryptoFed will sell Ducat tokens for Wyoming Stable Tokens (WST) on crypto markets (both centralized and decentralized crypto exchanges) to meet the demand of Ducat and to drive the Ducat price down to a Target Exchange Rate, in order to maintain zero inflation. CryptoFed will use these WST tokens to buy back Locke tokens based on CryptoFed's Constitution (to be

explained below). CryptoFed will sell WST for buying back Locke tokens on crypto markets (both centralized and decentralized crypto exchanges) to support the price of Locke, whenever the Locke's price falls 3% below its previous price for a 24-hour period or falls 5% below its previous price for a 1-hour period, pursuant to CryptoFed's Constitution, following investment strategy of "Buying the Dip". CryptoFed will burn (destroy) these Locke tokens.

2) The SEC's Stop Order (Initial Decision on Form S-1 Filing)

The SEC issued an order instituting administrative proceedings against our Form 10 filing ("Form 10 OIP") and Form S-1 filing ("Form S-1" OIP). We have two great opportunities to obtain an Affirmative Confirmation (an order) through either Form 10 OIP and/or Form S-1 OIP or both, to prove that CryptoFed's transactions, including but not limited to, distribution of ERC 20 Locke tokens, free of charge, will not satisfy *Howey's* First Prong. It is unthinkable that the SEC has authority or legal argument to overturn the ruling of *SEC v. Ripple* regarding the First Prong.

The briefing schedule on Form S-1 OIP has been decided by ORDER GRANTING PETITION FOR REVIEW AND SCHEDULING BRIEFS. Please see the following link for the Order. We anticipate that the final decision will be around Q1 2024.
https://www.sec.gov/files/litigation/opinions/2022/33-11214.pdf

Regarding Form 10 OIP, we are pushing the SEC to comply with their own rules (Rules of Practice) to make decisions on our motions and provide a schedule for public hearing. The SEC already violated their own Rule 250(a), 17 C.F.R. § 201.250(a), for more than 18 months which mandates *"even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion."* The SEC knowingly and willfully violates the law by not making any decisions. The implication is that we will prevail, because the SEC knows that the Exchange Act does not authorize them to stay our Form 10 filing which would have automatically become effective 60 days after filing. The only way for the SEC to stop the automatic effectiveness is to declare that the SEC has no jurisdiction over CryptoFed's transactions defined by CryptoFed's business model. Please see the following link to see the four motions we filed on June 15 and 19 2023.
https://www.sec.gov/litigation/apdocuments/3-20650

3) Money Transmitter Exemption

All American CryptoFed transactions should be exempted from money transmitter regulations, pursuant to Wyoming statute **40-22-104. Exemptions; applicability** below:

Buying, selling, issuing, or taking custody of payment instruments in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States by any means;

We would like to meet Wyoming Banking Commission to discuss the exemption.
Can you make an introduction?

For the reasons set forth above, we believe that we should be able to distribute our ERC 20 Locke tokens in Q2 or Q3 2024 after we obtain Affirmative Confirmation from the SEC that American CryptoFed's transactions are not securities.

If you are available, we would like to have an in-person meeting with you and your team. We are available on September 8, 13 (afternoon) 14, and 15.

Best regards
Zhou
[Quoted text hidden]

American CryptoFed DAO's Public Comments

for the

Wyoming Stable Token Business Plan (DRAFT 1.0)

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Submission Date and Time: 10:00 am, August 25, 2023, MDT.

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American CryptoFed

American CryptoFed DAO ("American CryptoFed") respectfully submits this paper of public comments to the Wyoming Stable Token Commission ("Commission") regarding the Commission's Business Plan (Draft 1.0) ("Business Plan Draft 1.0") for the Wyoming Stable Token ("WST" or "WSTs") which was presented at the Commission meeting on August 10, 2023, and made public via the Commission's website: https://governor.wyo.gov/stable-token. Although this Commission's Business Plan Draft 1.0 was not complete at the time of this review, it contains enough content for American CryptoFed to make public comments to solicit additional public discussion. The fundamental principle for American CryptoFed to make its public comments is that a government should only do what private sectors cannot do, reflecting these principles specified by the Business Plan Draft 1.0: **Small Government, Low Taxes, Business-Friendly Regulations, Property Rights, Support for Personal Freedom, and Crypto-Friendly** (p.13). The path for the Commission to simultaneously satisfy all these specific and core principles is extremely narrow. American CryptoFed would be very grateful if the Commission could allocate ten (10) minutes for American CryptoFed to explain its public comments in person at the Commission's meeting scheduled at 9:00 am, September 7, 2023, MDT, as to why we believe the Business Plan Draft 1.0, in its current state, may unintentionally and unwittingly create unintended consequences that will work against all these specific and core principles which it is expected to support and strengthen.

1. **The Commission Should Facilitate and Enable Competition among Banks/ Credit Unions for Issuing WST on the Commission's Behalf and Should Not Directly Compete with Them by Creating a Chartered Bank "Regulatory Wrapper" for the WST**

   Business Plan Draft 1.0 stated:

   > Some digital assets, like payment stable tokens and the WST, are legally close to deposits and behave much like them in substance as a liability of the issuer which changes hands for payments purposes… In order to obtain a bank or trust company

> charter as a **"regulatory wrapper" for the WST**, there are several requirements… (Emphasis added, p. 8-9).
>
> Finally, it should be noted that Congress is considering several proposals to subject instruments like the WST to comprehensive prudential regulation, including the *Lummis-Gillibrand Responsible Financial Innovation Act* (sec. 701, S. 2281) offered by Senators Lummis and Gillibrand, and the *Clarity for Payment Stablecoins Act* (H.R. 4766) offered by House Financial Services Committee Chair Patrick McHenry…
>
> **Obtaining a bank charter to issue the WST** likely would fit well within both major stable token proposals moving in Congress, and additionally a trust company charter would likely satisfy most requirements. (Emphasis added, p.10).

However, Wyoming laws have already enabled two distinguishable types of depositary institutions. In addition to banks/credit unions (**fractional reserve** banks/credit unions), "Wyoming-chartered special purpose depository institutions ("SPDIs") are **fully-reserved** banks that receive deposits and conduct other activity incidental to the business of banking, including custody, asset servicing, fiduciary asset management, and related activities."[1] (Emphasis added). SPDIs are allowed to issue their own stablecoins or WST on the Commission's behalf. The banks/credit unions can also establish their SPDI subsidiaries to do the same.

Notably, "both major stable token proposals moving in Congress" (Business Plan Draft 1.0, p. 10) will enable depository institutions or their subsidiaries, across the U.S., to issue stablecoins, the benefits of which Wyoming depository institutions already enjoy. The *Clarity for Payment Stablecoins Act* (H.R. 4766) emphasizes "a subsidiary of an insured depository institution that has been approved to issue payment stablecoins under section 5" (p. 5: line 6-8),[2] and the *Lummis-Gillibrand Responsible Financial Innovation Act* (S. 2281) states "It shall be **unlawful for any person other than a depository institution** in accordance with this section, or **subsidiary thereof**, to issue a payment stablecoin." (Emphasis added, p.199: line 11-14)[3].

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[1] https://wyomingbankingdivision.wyo.gov/banks-and-trust-companies/special-purpose-depository-institutions

[2] https://www.congress.gov/118/bills/hr4766/BILLS-118hr4766ih.pdf

[3] https://www.lummis.senate.gov/wp-content/uploads/Lummis-Gillibrand-2023.pdf

Furthermore, as the Business Plan Draft 1.0 admitted below, the creation of a "regulatory wrapper" for the WST does not necessarily mean that the fundamental issue "to access the Federal Reserve's payment, clearing and settlement services, all of which would be important for a stable token issuer" (p.8), can be resolved:

> Requires approval from Federal banking agencies which be reticent to grant approvals for digital asset-related activities. (p.9).

Rather than resolving the fundamental issue, a "regulatory wrapper" for the WST through a chartered bank can only deepen the Commission's dependency on Federal banking agencies, leading to unnecessary uncertainties for the Commission. The unintentional dependency on Federal banking agencies may paralyze the Commission, if the *Lummis-Gillibrand Responsible Financial Innovation Act* (S. 2281) becomes Federal law mandating: "It shall be **unlawful for any person other than a depository institution** in accordance with this section, **or subsidiary thereof**, to issue a payment stablecoin." (Emphasis added, p.199: line 11-14). Therefore, the only viable path remaining for the Commission is to facilitate both Wyoming's SPDIs and SPDI subsidiaries of banks/credit unions to issue WST on the Commission's behalf, rather than creating a chartered bank "regulatory wrapper" to directly compete with them. This viable path will also be the only path which "would fit well within both major stable token proposals moving in Congress" which may be reconciled.

2. The Commission Has Capacities to Prepare Sufficient Conditions for Wyoming's SPDIs and the SPDI Subsidiaries of Banks/Credit Unions to Issue WST on the Commission's Behalf through Encouraging Merchants' WST Acceptance

2.1. The Risk of De-pegging Can Be Drastically Reduced or Eliminated by Merchant WST Acceptance

The Business Plan Draft 1.0 correctly observed:

> In the case of fiat-backed stable tokens such as WST, the risk of de-pegging is lower as the currency backing the token remains at the same value, unless the de-peg

> impacts the Reserve investments. Nevertheless, once a stable token is no longer seen as equivalent to the underlying asset, it loses its reliability as a medium of exchange or a store of value and can result in substantial redemptions. (p.14).

SPDIs and the SPDI subsidiaries of banks/credit unions would like to establish methodology to mitigate this risk of de-pegging before issuing WST on the Commission's behalf. The risk of de-pegging can be drastically reduced, even eliminated, if most merchants in Wyoming, and the State of Wyoming, accept WST as payment for goods and services, public services and tax payments, because the ubiquity of merchant WST acceptance for goods and services in Wyoming, and WST acceptance by the State of Wyoming for tax payments and public service payments (including tuition payments for public schools), will further drive the ubiquity of WST, acceptance across the U.S., enhance the confidence among consumers and merchants in WST, close the gap (the differences) between WST and US dollar, and reduce utility needs of WST liquidation (WST's conversion to the US dollar).

2.2. The Commission Can Bring Merchants and Wyoming's SPDIs and the SPDI Subsidiaries of Banks/Credit Unions Together to Issue WST

The Business Plan Draft 1.0 correctly observed in its Executive Summary:

> However, their potential extends beyond these use cases, as they could be further integrated into **everyday retail** and commercial financial activities and help token holders transfer value quickly and **in a cost-effective manner**. (Emphasis added, p.2).

Before "both major stable token proposals moving in Congress" are potentially reconciled and become law, which will enable banks and credit unions, or their subsidiaries, across the U.S. to issue their own stablecoin, Wyoming's SPDIs and the SPDI subsidiaries of banks/credit unions could enjoy overwhelming benefits as first movers, because Wyoming laws exist as of today, if the Commission has willingness and takes necessary actions to invite large U.S. merchants, represented by the Merchant Advisory Group (MAG), to participate in the

discussion of WST acceptance. Mr. John Drechny, the CEO of the MAG, stated in his testimony before the Select Committee on Blockchain, Financial Technology and Digital Innovation Technology, in support of the Wyoming Stable Token Act, "The MAG represents over 150 of the largest U.S. merchants accounting for over $4.8 Trillion in annual sales at over 580,000 locations across the U.S. and online."[4]

2.3. The Commission Can Establish a Selection Rule for Banks/Credit Unions Holding the WST Trust Account as a First Major Step to Facilitate Collaboration with Merchants for WST Acceptance

The Business Plan Draft 1.0 correctly observed:

> All Reserves will be deposited into the Account and will be held in trust for the sole purpose of meeting redemption requests made by token holders. The Reserves cannot be used for any other purpose but to redeem WSTs.

The Commission will select banks/credit unions "for holding the US dollars as required by W.S. 40-31-106." The Commission can establish a rule as below:

All Wyoming SPDIs and the SPDI subsidiaries of banks/credit unions will automatically be eligible to hold the WST Trust Account, as long as they apply to issue and redeem WST on the Commission's behalf, and work together with merchants for WST acceptance by merchants and their customers for their daily purchases of good and services. To the extent that the State of Wyoming also accepts WST as payments for public services and sales or use taxes, the State is also one of the merchants.

This type of open and transparent rule to facilitate collaboration among the Sate of Wyoming, merchants, Wyoming SPDIs and/or the SPDI subsidiaries of banks/credit unions, will

[4] https://wyoleg.gov/InterimCommittee/2022/S19-2022111808-02MAGStatementtoWYLegislature11.22.pdf

positively and dramatically expand the participation of stakeholders, decentralize the WST operations to these participants, leverage the established legal compliant capacities of Wyoming SPDIs and the SPDI subsidiaries of banks/credit unions, take advantage of various channels of merchants to onboard consumers, liberate the Commission from today's budget limitations and burdens of both legal compliant uncertainties and WST business uncertainties.

3. The Commission Can Meet All Legal Compliant Requirements by Facilitating Collaboration between Merchants and Wyoming's SPDIs and/or SPDI Subsidiaries of Banks/Credit Unions

3.1. Bank Secrecy Act Compliance (Anti-Money Laundering, Know-Your-Customer, and Travel Rule)

The Business Plan Draft 1.0 correctly observed:

> More so than any other aspect of compliance relating to the WST, anti-money laundering, Bank Secrecy Act and sanctions compliance **is essential to maintaining the State of Wyoming's good reputation** in the digital asset space and to the proper functioning of the token. **This aspect is not optional**, and violations generally result in strict liability for the violator, which can result in large civil fines or even criminal penalties. (p.11).

However, to the extent that PayPal, Custodia, Kraken, Circle, Fidelity Digital Assets, Coinbase, etc. can comply with the Bank Secrecy Act (BSA) and anti-money laundering (AML) regulations through the Travel Rule Universal Solution Technology (TRUST) network, the latest TRUST development is more promising than the Business Plan Draft 1.0 observed below.

> **There are ways of mitigating some of this risk through blockchain analytics and other technological means, but the distributed, permissionless nature of this technology means that this risk can only be mitigated.** (p.11).

"TRUST provides its members with a suite of tools and features, such as proof of ownership, and comprehensive compliance with the Travel Rule, so members can prevent any issues with U.S. authorities."[5]

It is possible for Wyoming's SPDIs and/or SPDI subsidiaries of banks/credit unions to fully comply with BSA/AML, if they join TRUST, as PayPal did recently.

Alternatively, these SPDIs can issue blockchain certification to each individual and business. Based on the certification, these individuals and businesses can randomly generate their own decentralized identities on their own devices. To maintain their freedom of choice, each individual and business can have multiple SPDIs and multiple decentralized identities on their devices simultaneously or subsequently. Individuals and businesses can use their own devices to verify each other and selectively reveal the information they wish. In June 2022, MAG merchants and MShift (American CryptoFed DAO's founding company) jointly testified about these forms of decentralized identities before the Select Committee on Blockchain, Financial Technology and Digital Innovation Technology[6]. The Travel Rule compliance can be achieved by ensuring that only transactions among individuals and businesses with decentralized identities are allowed.

3.2. Securities Regulation Compliance

The Business Plan Draft 1.0 correctly observed:

> Additionally, it is important to note that banks and trust companies generally qualify for exemptions from many registration requirements under the Securities Exchange Act of 1933, the Investment Advisers Act of 1940 and the Investment Company Act of 1940. These exemptions are subject to compliance with a number of

[5] PayPal Joins Coinbase Crypto Compliance Initiative TRUST https://www.pymnts.com/cryptocurrency/2022/paypal-joins-coinbase-crypto-compliance-initiative-trust/.

[6] https://wyoleg.gov/InterimCommittee/2020/S19-20200612MAGLetterregardingDigitalIdentity.pdf

provisions and guardrails (e.g., SEC Regulation R), but would likely facilitate the issuance, management and redemption of the WST.

Wyoming's SPDIs and/or SPDI subsidiaries of banks/credit unions can satisfy these requirements for the exemptions above.

Furthermore, even if the Securities and Exchange Commission ("SEC") classifies WST as a security, the plain language of the Securities Act of 1933, codified in 15 U.S. Code § 77, exempts all securities issued by the State of Wyoming or its agencies. Simply put, the SEC has no legal authority to regulate any sovereign state of the United States.

> 15 U.S. Code § 77c - Classes of securities under this subchapter[7]
> (a) Exempted securities
> Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:
> (1) Reserved.
> (2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing;…

4. Conclusion

The Business Plan Draft 1.0's recommendation for "a chartered bank (or in some cases, a depository trust company)" (p.8) will lead the Commission to an unnecessary dependency on Federal banking agencies, given that it "Requires approval from Federal banking agencies which [may] be reticent to grant approvals for digital asset-related activities." (p.9). The unintentional dependency on Federal banking agencies has the possibility to disable the Commission, if "both major stable token proposals moving in Congress" discussed in the Business Plan Draft 1.0 (p.10) are reconciled and become law, given that the *Lummis-Gillibrand Responsible Financial*

[7] https://www.law.cornell.edu/uscode/text/15/77c

Innovation Act (S. 2281) states "It shall be **unlawful for any person other than a depository institution** in accordance with this section, **or subsidiary thereof**, to issue a payment stablecoin." (Emphasis added, p.199: line 11-14).[8]

The only viable path for the Commission to overcome these uncertainties lies in Wyoming's SPDIs and/or SPDI subsidiaries of banks/credit unions which can issue WST on the Commission's behalf. Before "both major stable token proposals moving in Congress" enable all banks/credit unions across the U.S. to issue stablecoins, the Commission can empower Wyoming's SPDIs and/or SPDI subsidiaries of banks/credit unions to enjoy the benefits of first movers, by inviting and encouraging MAG merchants, representing approximately 62% of total U.S. credit and debit card volume[9], to accept WST.

Under collaboration with MAG merchants, the WST issuance of Wyoming's SPDIs and/or SPDI subsidiaries of banks/credit unions can be more decentralized, diversified, distributed, secure, efficient, effective, innovative, inexpensive, timely, and stable than one centralized "chartered bank (or in some cases, a depository trust company)" recommended by Business Plan Draft 1.0 (p.8), leading to more and more possibilities of adoption by multiple blockchains.

The Business Plan Draft 1.0 correctly observed:

> When a stable token is available on multiple blockchains, it expands its accessibility, offering users choices with potential differences in transaction speeds, costs, and core functionalities across various platforms. (p.12).

"What is often lacking is not creativity in the idea-creating sense but innovation in the action-producing sense, i.e., putting ideas to work."[10] A broad participation from Wyoming's

[8] https://www.lummis.senate.gov/wp-content/uploads/Lummis-Gillibrand-2023.pdf
[9] https://www.merchantadvisorygroup.org/about/mission
[10] https://hbr.org/2002/08/creativity-is-not-enough

SPDIs and/or SPDI subsidiaries of banks/credit unions will not only ensure legal and regulatory compliance, also it will foster innovations. If the Commission can facilitate the collaboration among the State of Wyoming, the MAG merchants, and Wyoming's SPDIs and SPDI subsidiaries of banks/credit unions, innovations will likely happen, because these U.S. large merchants have tremendous resources to drive innovations and acceptance of WST payments for their own interests.

Dated: August 25, 2023. Respectfully submitted.

/s/Troy Carrothers

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August 30, 2023

Wyoming Legislative Select Committee on Blockchain,
Financial Technology, and Digital Innovation Technology

Re: Testimony on Wyoming Stable Token Commission's Business Plan (draft 1.0)

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO ("CryptoFed") to provide public testimony before this Select Committee's session of **General Updates - Wyoming Stable Token Commission Updates** scheduled at 8:35 am, Monday, September 11, 2023. We will attend the session via Zoom to provide oral public comments, based on this written testimony.

CryptoFed petitions this Select Committee to provide incentives and assurances to Wyoming community banks/credit unions to establish SPDI subsidiaries so they can issue Wyoming Stable Token (WST) on behalf of the WST Commission. Currently, Wyoming community banks/credit unions may be reluctant to establish SPDI subsidiaries due to the fear of potential pressure from Federal banking agencies, including but not limited to the FDIC. The background rationales are two-fold.

First, the WST Commission's Business Plan (Draft 1.0) ("WST Business Plan Draft 1.0") indicates that it may have "to obtain a bank or trust company charter as a **'regulatory wrapper' for the WST",** while knowing that it "Requires approval from Federal banking agencies which [may] be reticent to grant approvals for digital asset-related activities" (emphasis in original, [may] added, p.9)[1]. This WST Business Plan Draft 1.0, if adopted, will create an unintended

[1] *See* https://governor.wyo.gov/stable-token for downloading the WST Business Plan Draft 1.0.

dependency on Federal banking agencies, resulting in a potential delay in 2023 or even indefinite paralysis in the WST Commission's plans to issue WST.

Second, although the WST Business Plan Draft 1.0 hopes "Obtaining a bank charter to issue the WST likely would fit well within both major stable token proposals moving in Congress, and additionally a trust company charter would likely satisfy most requirements", the unintentional dependency on Federal banking agencies, will have risks of disabling the WST Commission, given that the *Lummis-Gillibrand Responsible Financial Innovation Act* (S. 2281) states "It shall be unlawful for any person other than a depository institution in accordance with this section, or subsidiary thereof, to issue a payment stablecoin." (p.199: line 11-14)[2], and the *Clarity for Payment Stablecoins Act* (H.R. 4766) emphasizes "a subsidiary of an insured depository institution that has been approved to issue payment stablecoins under section 5" (p.5: line 6-8)[3]. Furthermore, if "both major stable token proposals moving in Congress" have been reconciled and become law, the Wyoming SPDIs will no longer have any clear advantage, and Wyoming community banks/credit unions will also lose the benefit of time to take advantage of Wyoming SPDI laws as first movers, because all banks and credit unions across the U.S. will be able to do the same without the requirement of a 100% reserve.

The only remaining viable path for the WST Commission is to enable SPDIs and SPDI subsidiaries of Wyoming community banks/credit unions to issue WST on the behalf of the WST Commission. CryptoFed submitted a paper of public comments to the WST Commission on August 25, 2023, which outlined the path in detail. The paper is attached to this written testimony for the reference of this Select Committee.

[2] https://www.lummis.senate.gov/wp-content/uploads/Lummis-Gillibrand-2023.pdf
[3] https://www.congress.gov/118/bills/hr4766/BILLS-118hr4766ih.pdf

CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to explore the potential of cryptocurrencies in the real world, beyond speculative use cases. We look forward to an ongoing dialogue with Wyoming's legislators.

Respectfully submitted.

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American CryptoFed

November 2, 2023

Wyoming Legislative Select Committee on Blockchain,
Financial Technology, and Digital Innovation Technology

Re: Testimony on DAOs' Token Issuance Clarification:
A Non-Security Scenario Was Defined by A Federal Judge's Ruling in *SEC v. Ripple*

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO ("CryptoFed") to provide public testimony for the Decentralized Autonomous Organizations (DAO) session during the Select Committee's November 20, 2023 meeting. We will attend the session in person to provide oral public comments, based on this written testimony.

CryptoFed petitions the Committee to consider adding a paragraph similar to the following proposed paragraph to the Wyoming Decentralized Autonomous Organizations Supplement ("Wyoming DAO Law"):

*If recipients of a DAO's token distribution do not pay **money or 'tangible and definable consideration'** to the DAO, the said token distribution will not constitute the offer and sale of securities.*

The background is that any DAO cannot start its operation via smart contracts without token issuances, but token issuances may inadvertently violate securities laws of Wyoming. This is a **Catch-22 issue** which makes it impossible for Wyoming DAO to grow on a large scale, unless there are clear definitions of securities or non-securities. We previously raised this issue during the May 16, 2023 meeting of the Select Committee.

On July 13, 2023 and October 3, 2023, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued two orders respectively in *SEC v. Ripple Labs*, which make it clear that if recipients of tokens do not pay **money or 'some tangible and definable consideration'** to the issuing entity, the token distribution is not a security. By

denying the SEC's request for certifying interlocutory appeal, the October 3, 2023 Order[1] confirmed the July 3, 2023 Order[2].

The July 3, 2023 Order states (Emphasis added, p.26 and 27):

> These Other Distributions include **distributions to employees as compensation and to third parties** as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger. (p.26).
>
> Here, the record shows that recipients of the Other Distributions **did not pay money or "some tangible and definable consideration" to Ripple**. **To the contrary, Ripple paid XRP to these employees and companies**. (p.26).
>
> Therefore, having considered the economic reality and totality of circumstances, the Court concludes that Ripple's Other Distributions did not constitute the offer and sale of investment contracts. (p.27).

The October 3, 2023 Order states (Emphasis added, p.8):

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple.**" Order at 26 (emphasis added).

Currently, Wyoming DAO Law enables a DAO to be registered, but it does not provide Wyoming DAOs with sufficient room to deploy smart contracts by issuing tokens. This fundamentally limits the potential of DAOs. **A viable and practical methodology for Wyoming DAO Law to overcome this shortcoming is to gradually add these scenarios of non-securities which have been confirmed by rulings of U.S. District Courts.** If CryptoFed's proposal above is adopted in one way or another, we anticipate that a new, positive momentum will be created for Wyoming DAOs.

For all the reasons set forth above, CryptoFed respectfully petitions this Committee to consider its proposal. CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to

[1]For October 3, 2023 Order, *see* https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

[2] For July 13, 2023 Order, *see,* https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf

explore the potential of cryptocurrencies in the real world, beyond speculative use cases. We look forward to an ongoing dialogue with Wyoming's legislators.

Sincerely,

/s/Troy Carrothers

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December 16, 2023
Via Electronic Email and eFAP

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Re: Request for immediate action on American CryptoFed DAO's Motion
Filed on December 15, 2021 pursuant to Rule of Practice 250(a), 17 CFR § 201.250 (a)

Dear Chairman, Commissioners and Inspector General

We write to you regarding the Matter of American CryptoFed DAO, AP File No. 3-20650, requesting the immediate actions specified below. Such request is made because the Securities and Exchange Commission ("SEC" or "Commission"), i) has been in violation of its own Rule of Practice 250(a), 17 CFR § 201.250 (a) and the Fifth Amendment of the U.S. Constitution for more than two (2) years, and further, ii) has denied the request of American CryptoFed DAO ("American CryptoFed" or "Respondent") for appointment of an

Administrative Law Judge (ALJ) in an order (Release No. 93806 / December 16, 2021)[1] at page 2 stating:

> First, Respondent requests that the Commission designate an Administrative Law Judge ("ALJ") as hearing officer to preside over this proceeding. Rule of Practice 110 provides that "[a]ll proceedings shall be presided over by the Commission" unless the Commission "so orders." **Here, the OIP set this matter "before the Commission," not an ALJ, and no subsequent order issued by the Commission in this proceeding has directed otherwise.** Respondent contends that the Commission made "a public promise to designate an administrative law judge as the Presiding officer" in a press release dated November 10, 2021. But a press release is not an "order" of the Commission, so it cannot supersede either Rule 110's default rule (i.e., that proceedings are presided over by the Commission) or the OIP itself. Further, the Commission retains at all times the authority to designate or to re-designate the presiding officer in its administrative proceedings, and, as the Supreme Court stated in *Lucia v. SEC*, **"'[b]y law, the Commission itself may preside over' any administrative proceeding that it institutes."** (Emphasis added)

In addition to the request for immediate action by the Commission, American CryptoFed urges the Commission's Office of Inspector General to open an investigation into the impropriety by the Commission. This letter can provide an overview of the undisputable factual background and legal basis which raise significant concerns worthy of investigation.

I.
Rule of Practice 250(a), 17 CFR § 201.250 (a)

On June 7, 2023, the Commission issued an Order Denying Motion to Dismiss (Release No. 97659, "June 7, 2023 Order")[2], for which Commissioner Peirce and Commissioner Uyeda published a dissenting statement[3]. Footnote 13 of the June 7, 2023 Order at page 5 states:

> We have resolved the motion on the premise that Respondent's Form 10 is not yet effective. Here, the Commission instituted Section 12(j) proceedings before the registration statement automatically become effective 60 days after filing, and the OIP explicitly ordered that "the institution of these proceedings stays the effectiveness of the Respondent's Form 10." **Respondent's motion to lift the OIP's stay of effectiveness**

[1] https://www.sec.gov/files/litigation/opinions/2021/34-93806.pdf
[2] https://www.sec.gov/files/litigation/opinions/2023/34-97659.pdf
[3] https://www.sec.gov/news/statement/peirce-uyeda-american-cryptofed-20230607

> **remains pending before the Commission.** This order should not be construed as expressing a view as to the disposition of that motion. (Emphasis added).

Because "The OIP explicitly ordered that 'the institution of these proceedings stays the effectiveness of the Respondent's Form 10,'" ("Stay Order"), American CryptoFed, pursuant to Rule of Practice 250 (a), 17 CFR § 201.250 (a) *Motion for a ruling on the pleadings* ("Rule 250 (a)")[4] timely filed the "Respondent's motion to lift the OIP's stay of effectiveness" ("Motion to Lift the Stay Order") ,[5] on December 15, 2021, two (2) years ago. Rule 250 (a) states:

> (a) *Motion for a ruling on the pleadings*. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, **even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law**. The hearing officer shall **promptly** grant or deny the motion. (Emphasis added).

The Rule 250 (a) requires the Commission to **"promptly grant or deny the motion"**, even allowing the Commission to accept all of the SEC Division of Enforcement's factual allegations as true and to draw all reasonable inferences in the Division of Enforcement's favor. However, the Commission has not made a decision on the Motion to Lift the Stay Order, as of today, two (2) years after the filing. As a result of this extended period of indecision and non-decision, the Commission is in violation of Rule 250 (a), because in no circumstance can a delay on a critical pending motion for more than two years be considered "prompt".

II.
The Fifth Amendment of the U.S. Constitution

[4] https://www.govinfo.gov/content/pkg/CFR-2020-title17-vol3/pdf/CFR-2020-title17-vol3-sec201-250.pdf

[5] The Motion to Lift the Stay Order can be found in the SEC website link by filing date: https://www.sec.gov/litigation/apdocuments/3-20650

The Fifth Amendment of the U.S. Constitution states, "No person shall…be deprived of life, liberty, or property, **without due process of law**…" (Emphasis added). Rule 250 (a) defines the "due process of law", requiring the Commission to "promptly grant or deny the motion". The Commission's inability to come to a decision on American CryptoFed's Motion to Lift the Stay Order not only violated Rule 250 (a), but also the Fifth Amendment of the U.S. Constitution.

The Commission's indecision and non-decision create a vague situation lacking fair notice as to what American CryptoFed should do in order to comply with the securities law. The fair notice / void for vagueness doctrine upheld by the US Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) at 2317 states:

> 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.** (Emphasis added).

As a result of the Commission's indecision and non-decision, the Commission is clearly unable to apply existing securities law to American CryptoFed by following the pre-determined due process of law which is Rule 250 (a), leading to an inevitable conclusion, from a legal perspective of as-applied constitutional challenges (not facial challenges), that the existing securities law does not apply to American CryptoFed and that the SEC does not have jurisdiction over American CryptoFed.

III.

Requirement for the Commission's Stay Order To Be Lawful.

The Commission's Stay Order can be lawful when, and only when, the Commission declares that American CryptoFed's Locke and Ducat tokens are not securities. The Commission's June 7, 2023 Order has confirmed that a stay order has never existed for any not-yet-effective Exchange Act registration statement, by stating the following:

> Further, we are aware of **only one prior instance in which the Commission instituted a Section 12(j) proceeding as to a not-yet-effective Exchange Act registration statement**, but that proceeding settled shortly after **the Form 10 became automatically effective**, and there was no attempt to withdraw it. (Emphasis added, p.3).

This admission is pivotal, and affirms the legal path. **In the entire 89 years after the Exchange Act became law in 1934**, by the Commission's own admission, the Commission is aware of only **one case** "in which the Commission instituted a Section 12(j) proceeding as to a not-yet-effective Exchange Act registration statement", **but no Stay Order was included in the proceeding. By the Commission's own admission, "the Form 10 became automatically effective"** in accordance with Section 12 (g) of Exchange Act which states "Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct." Therefore, according to this legal precedent, American CryptoFed's Form 10 registration statement filed on September 16, 2021 would have become automatically effective on or before November 16, 2021, if American CryptoFed's Locke and Ducat tokens were, in truth, securities. Given that the Commission's Stay Order has prevented American CryptoFed's Form 10 registration statement from automatically becoming effective sixty (60) days after filing, the only legal justification for the Commission's Stay Order is that American CryptoFed's Locke and Ducat tokens are not

securities. To this extent, the Commission's Stay Order amounts to proof that American CryptoFed's Locke and Ducat tokens are not securities.

IV
Conclusion

It is clear that the Commission stands in violation of both the Fifth Amendment of the U.S. Constitution and Rule of Practice 250 a), 17 CFR § 201.250 (a). For these reasons and that set forth in Section III above, American CryptoFed petitions the Commission for prompt action to declare that i) American CryptoFed's Locke and Ducat tokens are not securities; ii) no investment contract exists in the American CryptoFed business model, iii) the SEC does not have jurisdiction over American CryptoFed. In addition, American CryptoFed petitions the Commission's Office of Inspector General to open an investigation into the impropriety by the Commission and to include the result in its Semiannual Report to Congress.

We look forward to written responses from both the Commission and the Commission's Office of Inspector General respectively.

Sincerely,

/s/ Scott Moeller

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June 25, 2024

Wyoming Legislative Select Committee on Blockchain,
Financial Technology, and Digital Innovation Technology

Re: Testimony on DAOs' Token Issuance Clarification

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO ("CryptoFed") to provide public testimony for the session of Wyoming Secretary of State's Office during the Select Committee's July 1st, 2024 meeting. We will attend the session to provide oral public comments, based on this written testimony. Xiaomeng Zhou will attend in person, while Scott Moeller will attend online.

I. CRYPTOFED'S PETITION

In order to make the Wyoming Decentralized Autonomous Organization Supplement and Wyoming Decentralized Unincorporated Nonprofit Association Act functional, CryptoFed petitions the Select Committee to consider adding a paragraph to W.S. 17-4-605(d) of Wyoming Uniform Securities Act, similar to the following proposed paragraph:

> **If the secretary of state declines to answer questions sought by a Decentralized Autonomous Organization or a Decentralized Unincorporated Nonprofit Association, the declination is a determination that the secretary of state will not institute a proceeding or an action against the Decentralized Autonomous**

Organization or the Decentralized Unincorporated Nonprofit Association for engaging in the specified activities raised by the questions.

II. FACTUAL BACKGROUND

CryptoFed is the first Wyoming DAO established on July 1st, 2021, under the Wyoming Decentralized Autonomous Organization Supplement, about three years ago. During this period, CryptoFed has done its best to explore these methodologies of issuing tokens which are compatible with the Wyoming Uniform Securities Act. After tireless efforts for three years, CryptoFed has no choice but to petition this Select Committee to add the paragraph above to W.S. 17-4-605(d), because on December 8th, 2023, Mr. Jesse Naiman, Deputy Secretary of State formally notified CryptoFed of the following decision:

> We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"
>
> Your request is governed by W.S. 17-4-605(d), which states:
>
> > The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.
>
> **After reviewing your request, the Secretary of State's Office declines to answer your question at this time.** (emphasis added).

III. MANDATE BY WYOMING'S SUPREME COURT AND THE U.S. SUPREME COURT

1. The Wyoming's Supreme Court states in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty** in legislation, especially in the criminal law, is a well-established element of the guarantee of due process of law.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

2. The U.S. Supreme Court's opinion states in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.** *Hoffman Estates v. Flipside, Hoffman Estates, Inc*., supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1972); *Connally v. General Construction Co*., 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement**." Smith, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id*., at 575.

For all the reasons set forth above, CryptoFed respectfully petitions this Select Committee to consider CryptoFed's proposal. CryptoFed hopes that Wyoming Secretary of State's Office will support this proposal, because it can fundamentally reduce the burden of Wyoming Secretary of State's Office to comply with the mandate by the Wyoming's Supreme Court and the U.S. Supreme Court.

CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to explore the potential of cryptocurrencies in the real world. We look forward to an ongoing dialogue with Wyoming's legislators.

Sincerely,

/s/ Scott Moeller

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July 31, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
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CC:
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Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you very much for the opinion of the Secretary of State's Office during the July 1, 2024 meeting of the Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") regarding the token issuance of American CryptoFed DAO ("CryptoFed"). During the 15-minute discussion[1], the Secretary of State's Office did not raise any Wyoming statute, regulation or any binding precedent that CryptoFed may possibly violate if CryptoFed distributes its Locke governance tokens to its contributors within the State of Wyoming ("Intrastate Token Issuance"), free of charge.

[1] Available at 2:09:19 -2:23:51, https://www.youtube.com/live/-fs6TE654es

However, before CryptoFed begins any intrastate issuance of Locke tokens within Wyoming in Q4 2024, in order to avoid misunderstandings and for the purpose of compliance, CryptoFed is seeking clarity from the Secretary of State's Office on the following question:

Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office? ("CryptoFed Question")

CryptoFed would be very grateful if the Secretary of State's Office would answer this CryptoFed Question prior to September 16, 2024 when the next Select Committee meeting will be held in Laramie. CryptoFed hopes this matter can be discussed at the next Select Committee meeting, because i) CryptoFed's issuance of Locke token can prove that the Wyoming DAO legislation is functional; and ii) the opinion of the Secretary of State's Office is the only regulatory hurdle CryptoFed needs to overcome prior to its intrastate issuance of Locke tokens within the sovereign borders of Wyoming. To help inform the Secretary of State's answer to the CryptoFed Question, CryptoFed provides the following factual background and legal argument as to why Locke tokens are not securities.

I.
Statement of Material Facts

To accomplish its mission, CryptoFed has designed a dual-token economy to operate in tandem under the names of Locke and Ducat. The Ducat token will have an unlimited issuance only constrained by the metrics of zero inflation and zero deflation as measured by the PCE price index published monthly by the Bureau of Economic Analysis, the US Department of Commerce. The Ducat token will be used as a crypto currency for the daily purchases of goods and services, a unit of account, and a store of value. The Locke token is a governance token with

a finite number not to exceed 10 trillion total tokens. Locke holders are decentralized and oversee the policies and rules which will facilitate the Ducat economy.

CryptoFed anticipates the intrastate distribution of Locke tokens within Wyoming, free of charge, will take place from Q4 2024 through Q4 2026. This letter focuses solely on this intrastate distribution of Locke tokens from Q4 2024 through Q4 2026 within Wyoming. Ducat tokens will not be distributed until after January of 2027. CryptoFed does not seek an opinion from the Secretary of State's Office on the issuance of the Ducat token at this time and will do so around Q2 2026 prior to its distribution.

The Locke tokens to be distributed from Q4 2024 through Q4 2026 will have the following characteristics:

i) CryptoFed creates Locke tokens in ERC-20 format.

ii) CryptoFed distributes certain Locke tokens, free of charge, to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed ("Contributors") in one way or another.

iii) The Contributors, at their own discretion, may sell the Locke tokens on centralized or decentralized crypto swaps or exchanges, the natural result of which is the independent formation of a secondary market for Locke tokens.

iv) CryptoFed will not have control, obligations or rights related to these Locke tokens distributed to Contributors, although the holders of these Locke tokens will have rights to participate in the CryptoFed's governance.

II.
Howey **Test**

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 298–99, the US Supreme Court stated "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person [(1)] invests his money [(2)] in a common enterprise and [(3)] is led to expect profits solely from the efforts of the promoter or a third party." The US Supreme Court further emphasized, "The test is whether the scheme involves [(1)] an investment of money [(2)] in a common enterprise [(3)] with profits to come solely from the efforts of others." *Id.,* at 301. An investment contract exists in a specific transaction if the three prongs are simultaneously satisfied. In other words, the absence of one of the three prongs will result in the conclusion that no investment contract exists.

The first prong of *Howey* examines whether an "investment of money" was part of the relevant transaction. *Id.,* at 301. Here, the CryptoFed's Contributors do not invest money by providing fiat or other assets in exchange for Locke token.

The third prong of *Howey* examines whether the economic reality surrounding the distribution of Locke tokens will lead the CryptoFed's Contributors to "expect profits solely from the efforts of the promoter or a third party," *Id.,* 298–99. Here, the CryptoFed's Contributors understand that they have to contribute their own efforts and do not expect profits "solely from the efforts of others" *Id.,* at 301. Given that these Contributors do not invest money by providing fiat or other assets, and given that Wyo. Stat. § 17-31-110 specifies, "no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member," it would be unreasonable to assume that CryptoFed's Contributors as Locke token holders will expect profits "solely from the efforts of others" *Id.,* at 301, if no member has any fiduciary duty to make any efforts to generate profit for Locke token holders.

As a result, an investment contract under the Securities Act of 1933 and Wyo. Stat. § 17-4-102 (xxviii) does not exist in the transaction that CryptoFed distributes Locke tokens, free of charge, only to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed in one way or another. This conclusion is independent of whether or not the second prong of *Howey*, the existence of a "common enterprise," 328 U.S. at 301, can be demonstrated in CryptoFed. The absence of the first and the third prongs of *Howey* are sufficient to prove that no investment contract exists in the transaction distributing Locke tokens to CryptoFed's Contributors free of charge. Any rebuttal to this conclusion would need to prove that the transaction satisfies simultaneously both the first and the third prongs of *Howey.*

III.
Exclusive Jurisdiction of the Secretary of State's Office

Director Crossman raised the issue of Federal "covered securities" during the July 1, 2024 meeting of the Select Committee.[2] However, "covered securities" does not preclude the State of Wyoming from regulating intrastate transactions. The boundary between the State of Wyoming's rights and Federal rights is clearly defined in the matter of securities regulation. Below are the statements of the U.S. Securities and Exchange Commission (Release No. 33-7524, File No. S7-11-98, Request for Comments)[3] which recognize this boundary:

> A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").

[2] Available at 2:19:43 -2:21:10, https://www.youtube.com/live/-fs6TE654es

[3] Available at https://www.sec.gov/rules-regulations/1998/04/securities-uniformity-annual-conference-uniformity-securities-laws).

> The 1996 Act amended section 18 of the Securities Act to preempt state blue-sky registration and review of securities offerings of "covered securities." "Covered securities" are defined by section 18 and include several types of securities, including "nationally traded securities," i.e., securities traded on the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("AMEX") or the Nasdaq National Market System ("Nasdaq/NMS").
>
> **Securities that are not 'covered securities' remain subject to state registration requirements**. (emphasis added).

In September 2021, CryptoFed has filed Form 10 and Form S-1 registrations with the U.S. Securities and Exchange Commission ("SEC") against which the SEC has instituted two proceedings to stop these registrations (*see* SEC's public dockets for Form 10 and Form S-1 proceedings).[4] However, the SEC has still not made rulings on these two proceedings even though the deadlines for each have long passed. Regarding the Form 10 proceedings, CryptoFed keeps filing monthly letters to urge the SEC to make a ruling[5]. Regarding the Form S-1 proceedings, the SEC issued an Order Extending Time to Issue Decision.[6] The SEC's inability to make rulings for its formal proceedings indicate that CryptoFed's Locke tokens will not become Federal "covered securities". A deadlock has ensued, in which the SEC has neither legal infrastructure to handle CryptoFed's non-securities tokens, nor legal authority to stop CryptoFed's registration filings for the purposes of compliance and disclosure. However, the deadlock is a milestone for CryptoFed's achievement, to the extent that the deadlock will effectively preempt the SEC from accusing CryptoFed of issuing unregistered securities. Since

[4] Available at https://www.sec.gov/litigation/apdocuments/3-20650 and https://www.sec.gov/litigation/apdocuments/3-21243

[5] The letters from February through June 2024 were published in the SEC docket, available at https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20650

[6] Available at https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf

2021, CryptoFed has regularly updated the Secretary of State's Office on the status of these two proceedings.

Given that CryptoFed's Locke tokens are not Federal "covered securities", the Wyoming Secretary of State's Office has an exclusive jurisdiction over this matter, because CryptoFed as a Wyoming legal entity will distribute Locke tokens, free of charge, *only* to Wyoming individual residents and Wyoming legal entities (intrastate distribution). During the July 1, 2024 meeting of the Select Committee, Secretary Gray made the statement, "The issue is really with the SEC, not with our office."[7] However, his statement mischaracterized the nature of this matter and confused the clear boundary of State of Wyoming's rights vs. Federal rights. Under a dual system of federal-state securities regulation, the State of Wyoming has its sovereign rights to make its decision on CryptoFed's Intrastate Token Issuance independent of the SEC as a Federal agency. If the Secretary of State's Office voluntarily defers to the SEC's decisions even in the matter of an intrastate transaction, the Blockchain initiatives of a series of Wyoming legislations will be fatally and effectively stifled.

The Select Committee, during the July 2, 2024 meeting, discussed a bill (25LSO-0090 Working Draft 0.4)[8] entitled Defense of State Banking, which stated: "AN ACT relating to banks, banking and finance; requiring the attorney general to take action **to defend the state's interest in the dual banking system…**" (emphasis added). In the same spirit, in order for Wyoming DAOs to survive and thrive, CryptoFed urges the Secretary of State's Office "**to defend the state's interest in the dual" (*ibid*) federal-state securities regulation system,** instead of willingly abandoning the sovereign autonomy and rights of the State of Wyoming.

[7] Available at 2:16:50 -2:17:12, https://www.youtube.com/live/-fs6TE654es

[8] Available at p.1 https://wyoleg.gov/InterimCommittee/2024/S19-2024070125LSO-0090v0.4.pdf

IV
Mandate by the Supreme Courts of the U.S. and Wyoming

To be clear, CryptoFed does not seek legal advice from the Secretary of State's Office. CryptoFed has conducted its own legal analysis of the *Howey* test as demonstrated in Section II of this letter. What CryptoFed seeks is a clarity from the Secretary of State's Office, as a regulator, as to whether CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violates any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office. For the purpose of compliance, CryptoFed needs a Yes or No answer. In an email dated December 8th, 2023, Deputy Secretary Naiman declined to provide a Yes or No answer. However, as the following legal binding precedents demonstrate, the Secretary of State's Office is mandated by the Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity.

1. The Wyoming's Supreme Court stated in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law**.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

2. The Wyoming's Supreme Court stated in *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988) (emphasis added):

> We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides **sufficient notice to a person of ordinary intelligence that appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

3. The U.S. Supreme Court's opinion stated in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.** *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1972); *Connally v. General Construction Co.*, 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement**." *Smith*, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id.*, at 575.

4. The US Supreme Court's opinion stated in *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453, (emphasis added):

> **No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.** The applicable rule is stated in *Connally v. General Construction Co.*, 269 U.S. 385, 391: **"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement,** consonant alike with ordinary notions of fair play and the settled rules of law. And 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**."

V
Conclusion

Wyo. Stat. § 17-4-605(d) authorizes Secretary of State's Office to provide CryptoFed with a clarity, and the U.S. Supreme Court and the Wyoming's Supreme Court mandate the Secretary of State's Office to do so. Taken together, the Secretary of State's Office not only has the authority but also has the obligation to provide CryptoFed with clarity from the perspective of a regulator.

For all the reasons set forth above, CryptoFed respectfully requests the Secretary of State's Office to answer the following CryptoFed Question prior to the next Select Committee meeting scheduled on September 16-17, 2024:

Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office?

CryptoFed looks forward to a written answer from the Secretary of State's Office and appreciates all the help of the Secretary of State's Office in exploring the crypto frontier, as always.

Sincerely,

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American CryptoFed

August 12, 2024
Via Electronic Email

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Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you very much for the short email response from Deputy Secretary Naiman dated August 1, 2024 ("SOS August 1, 2024 Email") to CryptoFed's July 31, 2024 Letter. For the convenience of our discussion, we include the SOS August 1, 2024 Email in its entirety at the end of this letter (following the signature page). The SOS August 1, 2024 Email stated the following:

> Thank you for your inquiry, which we will review.
>
> I would note that we previously declined to answer this question, per my email dated December 8, 2023. ("SOS December 8, 2023 Email").

I
The Secretary of State's Obligation to Provide Clarity

The SOS December 8, 2023 Email above notified CryptoFed of the following decision:

> We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"
>
> Your request is governed by W.S. 17-4-605(d), which states:
>
> > The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.
>
> **After reviewing your request, the Secretary of State's Office declines to answer your question at this time.** (emphasis added).

However, the Wyo. Stat. § 17-4-605(d) cited above authorizes the Secretary of State's Office to provide CryptoFed with clarity, but it does not authorize the Secretary of State's Office to decline to provide CryptoFed with clarity. The SOS December 8, 2023 Email and the SOS August 1, 2024 Email inevitably raise a fundamental question:

Can the Secretary of State's Office provide at least one legal binding precedent (case law) to substantiate the legal position that the government agencies of the State of Wyoming in general and the Secretary of State's Office in particular are allowed by laws to decline to provide CryptoFed with clarity?

The Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legal binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, all mandate the Secretary of State's

Office to provide CryptoFed with clarity. The Due Process Clause of the Fourteenth Amendment of the US Constitution states: "nor shall any State deprive any person of life, liberty, or property, without **due process of law**." (emphasis added). The Due Process Law of Art. 1, § 6, of the Wyoming Constitution states: "No person shall be deprived of life, liberty or property without **due process of law**." (emphasis added). In CryptoFed's July 31, 2024 Letter, CryptoFed cited two legal binding precedents of the Wyoming's Supreme Court (*Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977); *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988)), and two legal binding precedents of the U.S. Supreme Court (*Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358; *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453) to prove that the Secretary of State's Office has the obligation to provide CryptoFed with clarity from the perspective of a regulator. For the sake of simplicity, here we just cite the opinion of Wyoming's Supreme Court in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) as below (emphasis added) to make our point:

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of **due process** previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law**.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

Therefore, unless the Secretary of State's Office can provide a legal binding precedent to prove the contrary, it is inevitable to conclude that the legal position of the Secretary of State's Office, declining to provide CryptoFed with clarity, violates the Due Process Clause of the

Fourteenth Amendment of the US Constitution and the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, shown by the legal binding precedents of the Wyoming's Supreme Court and the U.S. Supreme Court.

II
Due Process and Void of Vagueness Doctrine

When the Secretary of State's Office declined to provide CryptoFed with clarity in both the SOS December 8, 2023 Email and the SOS August 1, 2024 Email, CryptoFed assumed that the Secretary of State's Office acted in good faith. Good faith here is used to encompass honest dealing and requires an honest belief, faithful performance of duties, and observance of fair dealing standards. Therefore, acting in good faith means that the Secretary of State's Office really did *not* know the answer to the CryptoFed's question, when it said "After reviewing your request, the Secretary of State's Office declines to answer your question at this time" in the SOS December 8, 2023 Email, and "I would note that we previously declined to answer this question, per my email dated December 8, 2023" in the SOS August 1, 2024 Email. In other words, if the Secretary of State's Office had known the answer, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's question.

In *Giles v. State*, Wyo. 96 P.3d 1027 (Wyo. 2004) ¶ 15, the Supreme Court of Wyoming stated (emphasis added):

> As identified in *Alcalde v. State*, 2003 WY 99, ¶ 13, 74 P.3d 1253, ¶ 13 (Wyo. 2003), a statute may be challenged for vagueness "on its face" or "as applied" to particular conduct. When a statute is challenged for vagueness on its face, the court examines the statute not only in light of the complainant's conduct, but also as it might be applied in other situations. **On the other hand, when a statute is challenged on an "as applied" basis, the court examines the statute solely in light of the complainant's specific conduct.**

In *Griego v. State*, 761 P.2d 973, 976 (Wyo. 1988), the Supreme Court of Wyoming stated (emphasis added):

> We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides sufficient notice to **a person of ordinary intelligence** that **appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

Given that the Secretary of State's Office was unable to provide CryptoFed with an answer, not only is it impossible for CryptoFed as "a person of ordinary intelligence" (*Supra*, *Griego v. State*) to know whether its intended conduct is illegal, but also it is impossible for the Secretary of State's Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event, can the Secretary of State's Office enforce the Wyoming Uniform Securities Act, without violating the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution. As a result, CryptoFed can make an as-applied constitutional challenge to the Wyoming Uniform Securities Act, and can argue that the Wyoming Uniform Securities Act is void for vagueness as applied to CryptoFed's specific conduct of distributing its Locke tokens to its contributors within the State of Wyoming (intrastate token issuance or distribution), free of charge, because the Wyoming Uniform Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the Secretary of State's Office.

Wyoming Legislative Service Office in a memorandum dated July 24, 2023[1] also emphasized:

> In Wyoming, **a statute is void for vagueness "if it fails to give a person of ordinary sensibility fair notice that the contemplated conduct is forbidden."** *Keser v.*

[1] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

> *State*, 706 P.2d 263, 265-266 (Wyo. 1985). A statute violates **due process** if people "must necessarily guess at its meaning and differ as to its application." *Id*. at 266. **A statute may be challenged as void for vagueness** as a facial challenge (which is available only when the statute reaches a substantial amount of constitutionally protected conduct or when the statute specifies no standard of conduct at all) or **an as-applied challenge**. *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031-32 (Wyo. 2004).

By declining to provide clarification sought by CryptoFed, the Secretary of State's Office has not only violated the Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legal binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also *has* invalidated the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

When the SOS December 8, 2023 Email stated "After reviewing your request, the Secretary of State's Office declines to answer your question **at this time**" (emphasis added), the Secretary of State's Office intended to preserve its option to arbitrarily select a future time and apply undisclosed criteria to discriminatorily enforce the Wyoming Uniform Securities Act against CryptoFed, exacerbating the violation of the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution.

III
Conclusion

In a conflict between the action or inaction of the Secretary of State's Office and the Constitutions of both Wyoming and the United States, the Constitutions of both Wyoming and the United States prevail. In *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939) at 453, the US Supreme Court's opinion states, "No one may be required at peril of life, liberty or property to

speculate as to the meaning of penal statutes." In *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977), the Wyoming's Supreme Court repeated the same. Given that the Secretary of State's Office declined to provide clarification, and consequently created a vague situation lacking fair notice as to what CryptoFed should do in order to comply with the Wyoming Uniform Securities Act, for all the reasons set forth in this letter, CryptoFed has no choice but to conclude that the SOS December 8, 2023 Email and the SOS August 1, 2024 Email amount to proof that the Wyoming Uniform Securities Act does not apply to CryptoFed's specific conduct. The default is freedom. CryptoFed should be able to enjoy its constitutional right to freedom from governmental intervention to pursue its "life, liberty, or property".

If the Secretary of State's Office disagrees with CryptoFed's conclusion, please inform CryptoFed, and provide CryptoFed with legal arguments together with supporting statues and legally binding precedents. CryptoFed would like to resolve the differences through fruitful discussion guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written answer from the Secretary of State's Office prior to the next Select Committee meeting scheduled on September 16-17, 2024, and appreciates all the help of the Secretary of State's Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer/President
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer/COO
zhouxm@americancryptofed.org

---------- Forwarded message ---------
From: **Jesse Naiman** <jesse.naiman1@wyo.gov>
Date: Thu, Aug 1, 2024 at 12:09 PM
Subject: Re: Request for Clarity on Intrastate Token Issuance within Wyoming
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: <chuck.gray@wyo.gov>, Kelly Janes <kelly.janes@wyo.gov>, <colin.crossman@wyo.gov>, Senator - Rothfuss, Chris <Chris.Rothfuss@wyoleg.gov>, <Cyrus.Western@wyoleg.gov>, Representative - Andrew, Ocean <Ocean.Andrew@wyoleg.gov>, <Tara.Nethercott@wyoleg.gov>, <Dan.Furphy@wyoleg.gov>, Representative - Singh, Daniel <Daniel.Singh@wyoleg.gov>, <Mike.Yin@wyoleg.gov>, <Affie.Ellis@wyoleg.gov>, LSO - Clarissa Nord <Clarissa.Nord@wyoleg.gov>, <david.hopkinson@wyoleg.gov>, Scott Moeller <scott.moeller@americancryptofed.org>

Mr. Zhou,

Thank you for your inquiry, which we will review.

I would note that we previously declined to answer this question, per my email dated December 8, 2023.

Thank you,

Jesse

--
Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

American CryptoFed

September 4, 2024
Via Electronic Email and eFAP

Chairman Gary Gensler, 202-551-2100, Chair@sec.gov
Commissioner Hester M. Peirce, 202- 551-5080, CommissionerPeirce@sec.gov
Commissioner Caroline A. Crenshaw, 202-551-5070, CommissionerCrenshaw@sec.gov
Commissioner Mark T. Uyeda, 202-551-2700, CommissionerUyeda@sec.gov
Commissioner Jaime Lizárraga, 202-551-2800, CommissionerLizarraga@sec.gov
U.S. Securities and Exchange Commission,
100 F Street, N.E. Washington, D.C. 20549

CC:
Inspector General, Deborah J. Jeffrey, oig@sec.gov
Christopher M. Bruckmann, Division of Enforcement, bruckmannc@sec.gov
Christopher Carney, Division of Enforcement, CarneyC@sec.gov
Martin Zerwitz, Division of Enforcement, ZerwitzM@sec.gov
Michael Baker, Division of Enforcement, BakerMic@sec.gov
Justin Dobbie, Division of Corporation Finance, dobbiej@sec.gov

Re: Request for Opinion on American CryptoFed DAO's Locke Distribution in Wyoming.

Dear Chairman and Commissioners

Since December 16, 2023, American CryptoFed DAO ("CryptoFed") has sent monthly letters to urge the U.S. Securities and Exchange Commission ("Commission" or "SEC") to make a decision on CryptoFed's motion filed on December 15, 2021 pursuant to Rule of Practice 250(a), 17 CFR § 201.250 (a) ("Rule 250(a) Motion"). In addition to the original letter, **the second, the third, the fourth, the fifth, the sixth, the seventh, the eighth and the ninth letters** dated January 18, 2024, February 18, 2024, March 18, 2024, April 18, 2024, May 20, 2024, June

20, 2024, July 22, 2024, and August 22, 2024, have been filed with the SEC respectively. These letters are identical and are available at the SEC public docket.[1]

The Rule of Practice 250(a) requires the Commission to **"promptly grant or deny the motion", even allowing the Commission to accept all of the SEC Division of Enforcement's factual allegations as true and to draw all reasonable inferences in the Division of Enforcement's favor.** The Commission's ongoing indecision and non-decision have proven that the Commission is unable to enforce existing federal securities laws and regulations against CryptoFed. In other words, **the Commission has no jurisdiction over CryptoFed's tokens**. This conclusion also applies to the administrative proceedings under the Securities Act of 1933 (File No. 3-21243) on which the Commission has not been able to make decision either,[2] although the Rule 250(a) Motion was filed in the administrative proceedings under the Securities Exchange Act of 1934 (File No. 3-20650). The US Supreme Court held in *Tcherepnin v. Knight*, 389 US 332 (1967) at 335-336, "The Securities Act of 1933 (48 Stat. 74, as amended) contains a definition of security virtually identical to that contained in the 1934 Act."

Therefore, CryptoFed is planning to distribute Locke tokens after November 15, 2024. The plan is detailed in an invitation letter called **American CryptoFed DAO's Invitation and Disclosure** ("Invitation Letter") to be sent to individuals who work for large US merchants. The Invitation Letter is also filed as an attachment to this letter for your review. In the Invitation Letter, CryptoFed not only outlines the regulatory landscape related to Locke token issuance in

[1] Available at https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20650

[2] The Commission issued two orders called ORDER EXTENDING TIME TO ISSUE DECISION, on June 3, 2024 and September 3, 2024 respectively, available at https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf and https://www.sec.gov/files/litigation/admin/2024/33-11300.pdf .

general, but also provides a *Howey* Test to prove that Locke tokens are not securities and not subject to the Commission's jurisdiction.

For the reasons set forth above, American CryptoFed petitions the Commission to inform CryptoFed by November 4, 2024, whether the Commission opposes CryptoFed's distribution of Locke tokens as prescribed in the Invitation Letter.

CryptoFed looks forward to a written response from the Commission on or before November 4, 2024.

Sincerely,

/s/ Scott Moeller

[redacted]
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer/President
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

[redacted]
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer/COO
zhouxm@americancryptofed.org

American CryptoFed

September 4, 2024
Linked in Invitation Email for Downloading

Re: American CryptoFed DAO's Invitation and Disclosure

Dear Merchant Attendees of MAG Payments Conference 2024

Greetings!

American CryptoFed DAO ("CryptoFed") is the first ever effort to bring together merchant payment professionals spanning different MAG merchants to explore the feasibility of establishing a decentralized, autonomous monetary system with **zero CryptoFed transaction costs**. CryptoFed has determined a narrow legal path to issue the governance tokens of CryptoFed monetary system called **Locke** within the State of Wyoming, free of charge, to individuals and legal entities who have made, are making and will make non-monetary contributions to CryptoFed ("Contributors") in one way or another.

1. A CryptoFed Community of Merchant Payment Professionals

To bring merchant payment professionals together, CryptoFed's methodology is to create a community by offering to grant ten (10) million Locke governance tokens, free of charge, to each MAG merchant attendee. Some key tasks of merchant recipients of Locke tokens ("Contributor") are as follows:

i) Providing insights on updating the CryptoFed's Constitution filed with the U.S.

Securities and Exchange Commission ("SEC") on September 16, 2021.[1]

ii) Providing insights on CryptoFed's business model from the perspective of economic sustainability, scalability and flexibility.

iii) Providing insights for designing criteria to allocate Locke tokens to MAG merchants, to ensure that MAG merchants have sufficient voting influence on possible changes of the CryptoFed Constitution in the future.

iv) Providing insights for planning a pilot with MAG merchants and local merchants towards accepting CryptoFed's currency token called **Ducat** within the State of Wyoming after January 2027.

v) Providing insights towards expanding Wyoming's pilot of accepting **Ducat** across the entire United States.

For clarity of understanding, CryptoFed is a decentralized autonomous organization (DAO) established under Wyoming law. We believe that MAG merchant attendees, will be strong and unique Contributors to the DAO, especially for the tasks outlined above, and may want to engage in contributing to the DAO. However, to be absolutely clear, every Contributors to the DAO has NO obligations to do anything. Rather, contributors work voluntarily, based on their own decisions, at their own convenience and for their own interest. As a result, CryptoFed's community is intended to be a loose network by intent, due to the very nature of the autonomy of participants and the decentralized process of decision-making by these at will participants. CryptoFed can be functional and sustainable as a monetary system, if and only if, among a large

[1] available at https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

scale of self-interested participants of Locke token holders (such as Contributors) and Ducat token holders (such as merchants and consumers), a token mechanism of *incentive-compatibility*[2] can be identified, invented and implemented via blockchains. The grants of Locke tokens to Contributors who are merchant payment professionals is the first major step to establish this mechanism. The CryptoFed Constitution is the foundational document designed to make this paradigm shift in the mechanism of monetary systems possible.

2. Eligibility and Procedure to Join the CryptoFed Community

All MAG merchant attendees are eligible to join the CryptoFed Community and receive Locke grants, free of charge. Colleagues of MAG merchant attendees are also eligible to receive Locke grants, as well. Just introduce them to us!

How to join the CryptoFed Community and accept Locke Grants:

i) Interested MAG merchant attendees inform CryptoFed of their intent to join the community and accept the grant by responding to the invitation email they received no later than November 15, 2024.

ii) Organizers of CryptoFed (Scott Moeller and/or Xiaomeng Zhou) will confirm receipt of these MAG merchant attendees' emails within 48 hours of receipt.

iii) Due to regulatory restrictions, CryptoFed will grant Locke tokens only to Wyoming residents or Wyoming legal entities. If recipients of Locke grants are not currently Wyoming residents or Wyoming legal entities, the grant offer will not be valid and

[2] "However, in many situations, providing incentives to the participating agents is an important part of the problem. Mechanism design theory became relevant for a wide variety of applications only after Hurwicz (1972) introduced the key notion of *incentive-compatibility*, which allows the analysis to incorporate the incentives of self-interested participants. In particular, it enables a rigorous analysis of economies where agents are self-interested and have relevant private information." p.2-3, available at https://www.nobelprize.org/uploads/2018/06/advanced-economicsciences2007.pdf

will not be delivered until the recipients create a Wyoming entity, such as a Wyoming LLC, to receive the Locke grant. The deadline to receive the specified grants is the third anniversary from the date stamp in the confirmation emails which CryptoFed's organizers will have sent to potential recipients. Grant offers will be voided automatically after the deadline.

iv) Potential recipients of Locke grants, after receiving the confirmation email from a CryptoFed organizer, are eligible to receive information and participate in events and discussions, even if the specified Locke tokens have not yet been delivered to the recipient.

Disclaimer: On September 4, 2024, CryptoFed filed this invitation and disclosure letter with the US Securities and Exchange Commission ("SEC"), requesting the SEC to provide CryptoFed with clarity as to whether the Locke distribution violates federal securities laws. CryptoFed will proceed, only if the SEC does not stop the Locke token distribution by November 4, 2024. CryptoFed does not believe that this Locke token distribution is an investment contract subject to the SEC's jurisdiction. For more details, please see Section 4 ii) and iii) in this letter. CryptoFed has invested tremendous time and resources to understand the regulatory landscape associated with this proposed grant of Locke tokens to contributing members of the CryptoFed Community. CryptoFed summarizes our understanding of the key laws and regulations related to our proposed business model and key details of the Locke grant in this letter for Disclosure purposes. It is important for prospective Locke recipients to understand that this letter is NOT legal, tax or accounting

advice. CryptoFed strongly encourages anyone interested in receiving Locke tokens to consult with an attorney, tax advisor and/or accountant.

3. The Characteristics of Locke Tokens

To accomplish its mission of establishing a monetary system with **Zero Inflation, Zero Deflation, Zero Transaction Costs and Maximum Employment**, CryptoFed has designed a dual-token economy to operate in tandem. CryptoFed's dual tokens are named Locke and Ducat whose characteristics are defined by CryptoFed's Constitution.

Ducat tokens will be used as a cryptocurrency for the daily purchases of goods and services, as a unit of account, and as a store of value. The Ducat token will have an unlimited issuance constrained only by the metrics of zero inflation and zero deflation. "The Federal Reserve seeks to achieve inflation at the rate of 2 percent over the longer run as measured by the annual change in the price index for personal consumption expenditures (PCE)."[3] Similarly, the inflation and zero deflation of Ducat will be measured by the PCE published monthly by the Bureau of Economic Analysis, the US Department of Commerce[4].

Locke is a governance token, with a finite number of tokens not to exceed 10 trillion in total. Locke holders will be decentralized and will oversee the operation of CryptoFed's Constitution through blockchain voting and proposals to facilitate and sustain the Ducat economy. CryptoFed anticipates the intrastate distribution of Locke tokens within the State of Wyoming, free of charge, will take place from Q4 2024 through Q4 2026. Ducat tokens will not be launched until after January of 2027, after Locke token's price at crypto exchanges and swaps reaches and maintains a market price of minimum $0.10 USD per unit of Locke for at least 30

[3] Available at https://www.federalreserve.gov/economy-at-a-glance-inflation-pce.htm
[4] Available at https://www.bea.gov/data/personal-consumption-expenditures-price-index

continuous days, so that merchants can have sufficient time and funds (by selling Locke) to prepare for Ducat integration.

The Locke tokens to be distributed from Q4 2024 through Q4 2026 will have the following characteristics:

i) CryptoFed creates Locke tokens in ERC-20 format on the Ethereum blockchain protocol.

ii) CryptoFed distributes Locke tokens, free of charge, to Wyoming individual residents and Wyoming legal entities who have made, are making and will make non-monetary contributions to CryptoFed ("Contributors") in one way or another.

iii) The Contributors, at their own discretion and for their own interest may sell the Locke tokens on centralized or decentralized crypto swaps or exchanges with national or global reach, the natural result of which is the independent formation of a secondary market for Locke tokens.

iv) CryptoFed will not have control, obligations or rights related to these Locke tokens distributed to Contributors, although the holders of these Locke tokens will have rights to participate in the CryptoFed's governance pursuant to CryptoFed's Constitution.

v) In the SEC Form 10 filing, CryptoFed stated[5]:

> Locke and Ducat tokens may have no value. CryptoFed depends on Locke's value to reach and sustain a value equivalent to $0.10 USD per token before launching Ducat. However, there is no guarantee that Locke and Ducat tokens can have any value.

[5] Available at p. 29, https://assets-global.website-files.com/6090b5b01b912f49aba3e5f4/614433c362e7c899d1a6f9d2_Form10_Registration.pdf

4. Regulatory Compliance of Locke Token Issuance

Over the last three years, CryptoFed has worked diligently to make a true "mission impossible" possible. A Locke token compatible with the U.S. federal and state laws will be issued within the borders of Wyoming but can be tradeable worldwide.

i) The State of Wyoming in the U.S. Regulatory Landscape

In order to issue the tokens to Contributors, American CryptoFed DAO has to handle approximately one hundred (100) regulators and statutes because of the dual systems of federal and state regulations. Regarding securities laws, in addition to the US Securities and Exchange Commission ("SEC"), there are fifty (50) State regulators. Regarding Know Your Customer (KYC) and Anti-Money Laundering (AML) regulated by the Banking Secrecy Act (Federal) and Money Transmitter License requirements (State), in addition to the Financial Crimes Enforcement Network (FinCEN) of the US Department of Treasury, there are forty eight (48) State regulators (all 50 states except Wyoming and Montana).

Wyo. Stat. § 40-22-104 a(vi) exempts crypto currency from money transmitter license requirement. Wyo. Stat. § 39-11-105(b)(vi)(A) exempts cryptocurrency transactions and earnings from taxation at the state level. Wyo. Stat. § §17-31-101 through 17-31-116 ("Wyoming Decentralized Autonomous Organization Supplement" or "Wyoming DAO Law") allows a DAO to be established as a legal entity and automatically be run by computer code. Wyoming has already enacted approximately thirty (30) crypto-friendly statutes making Wyoming the only possible State for CryptoFed to launch Locke tokens first to Contributors, and subsequently start a pilot of Ducat with merchants later.

ii) *Howey* Test

In a guidance paper entitled Framework for "Investment Contract" Analysis of Digital Assets, the SEC stated[6]:

> Both the Commission and the federal courts frequently use the "investment contract" analysis to determine whether unique or novel instruments or arrangements, such as digital assets, are securities subject to the federal securities laws.

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 298–99, the US Supreme Court stated "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person [(1)] invests his money [(2)] in a common enterprise and [(3)] is led to expect profits solely from the efforts of the promoter or a third party." The US Supreme Court further emphasized, "The test is whether the scheme involves [(1)] an investment of money [(2)] in a common enterprise [(3)] with profits to come solely from the efforts of others." *Id.,* at 301. An investment contract exists in a specific transaction if the three prongs are simultaneously satisfied. In other words, the absence of one of the three prongs will result in the conclusion that no investment contract exists.

The first prong of *Howey* examines whether an "investment of money" was part of the relevant transaction. *Id.,* at 301. Here, in this instance of Locke grants to MAG merchant attendees, the CryptoFed's Contributors do not invest money by providing fiat or other assets in exchange for Locke tokens.

The third prong of *Howey* examines whether the economic reality surrounding the distribution of Locke tokens will lead CryptoFed's Contributors to "expect profits solely from the efforts of the promoter or a third party," *Id.,* 298–99. Here, the CryptoFed's Contributors

[6] Available at p. 1, https://www.sec.gov/files/dlt-framework.pdf

understand that they have to contribute their own efforts and do not expect profits "solely from the efforts of others" *Id.,* at 301. Given that these Contributors do not invest money by providing fiat or other assets, and given that Wyo. Stat. § 17-31-110 specifies, "no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member," it would be unreasonable to assume that CryptoFed's Contributors as Locke token holders will expect profits "solely from the efforts of others" *Id.,* at 301, if no member has any fiduciary duty to make any efforts to generate profit for Locke token holders.

As a result, an investment contract under the Securities Act of 1933 and Wyo. Stat. § 17-4-102 (xxviii) does not exist in the transaction in which CryptoFed distributes Locke tokens, free of charge, to Contributors who have made, are making and will make non-monetary contributions to CryptoFed in one way or another. This conclusion is determined independent of whether or not the second prong of *Howey*, the existence of a "common enterprise," 328 U.S. at 301, can be demonstrated in CryptoFed. The absence of the first and the third prongs of *Howey* are sufficient to prove that no investment contract exists in the transaction of distributing Locke tokens to CryptoFed's Contributors free of charge and that Locke tokens are not securities subject to the Wyoming and Federal securities laws. Any rebuttal to this conclusion would need to prove that the transaction satisfies simultaneously both the first and the third prongs of *Howey.*

iii) The US Securities and Exchange Commission ("SEC")

In September 2021, CryptoFed filed Form 10 and Form S-1 registrations with the SEC against which the SEC instituted two proceedings to stop these registrations (*see* SEC's public dockets for Form 10 and Form S-1 proceedings).[7] However, as of today, the SEC has still not

[7] Available at https://www.sec.gov/litigation/apdocuments/3-20650 and https://www.sec.gov/litigation/apdocuments/3-21243

made rulings on these two proceedings even though the deadlines for each have long passed. Regarding the Form 10 proceedings, CryptoFed has continued filing monthly letters to urge the SEC to make a ruling[8]. Regarding the Form S-1 proceedings, the Commission issued two orders called Order Extending Time to Issue Decision, on June 3, 2024 and September 3, 2024 respectively.[9] The SEC's inability to even make rulings for its own formal proceedings indicates that the SEC has neither the legal infrastructure to handle CryptoFed's non-securities tokens, nor the legal authority to stop CryptoFed's registration filings for the purposes of compliance and disclosure. However, this deadlock has become a milestone achievement for CryptoFed, to the extent that the deadlock will effectively preempt the SEC from accusing CryptoFed of issuing unregistered securities.

Recently, the University of Oxford Business Law Blog published an article entitled **DAOs vs Nation States: A Wyoming DAO's Experiment with the U.S. Securities and Exchange Commission**, embedding a link to a 38-page paper analyzing why CryptoFed is compatible with the existing Federal securities laws and regulations.[10]

iv) The Wyoming Secretary of State's Office

On December 8, 2023, Mr. Jesse Naiman, Wyoming's Deputy Secretary of State formally notified CryptoFed of the following decision:

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[8] The letters from February through August 2024 were published in the SEC docket, available at https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20650

[9] Available at Available at https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf and https://www.sec.gov/files/litigation/admin/2024/33-11300.pdf .

[10] available at https://blogs.law.ox.ac.uk/oblb/blog-post/2024/03/daos-vs-nation-states-wyoming-daos-experiment-us-securities-and-exchange

> We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"
>
> Your request is governed by W.S. 17-4-605(d), which states:
>
> The secretary of state may provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.
>
> **After reviewing your request, the Secretary of State's Office declines to answer your question at this time.** (emphasis added).

Obviously, Wyoming Secretary of State's Office is unable or unwilling to make a decision as to whether Locke tokens are securities or not. Therefore, since June 2024, CryptoFed has initiated a process to discuss this matter before the Wyoming Legislative Select Committee on Blockchain, Financial Technology, and Digital Innovation Technology ("Wyoming Select Committee") through written testimony.[11] On July 1st, 2024, CryptoFed also provided oral public testimony during the Wyoming Select Committee meeting, while Secretary Chuck Gray and Business Division Director Mr. Colin Crossman responded on the record. During the 15-minute discussion, [12] the Secretary of State's Office did not raise any Wyoming statute, regulation or any binding precedent that CryptoFed would or may possibly violate if CryptoFed distributes its Locke governance tokens to its Contributors within the State of Wyoming, free of charge.

[11] CryptoFed's written testimony available at, https://wyoleg.gov/InterimCommittee/2024/S19-20240701AmericanCryptoFedDAOsTestimony.pdf

[12] Available at video below between 2:09:19 - 2:24:02, https://www.youtube.com/live/-fs6TE654es

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[13] also emphasized:

> In Wyoming, **a statute is void for vagueness "if it fails to give a person of ordinary sensibility fair notice that the contemplated conduct is forbidden."** *Keser v. State*, 706 P.2d 263, 265-266 (Wyo. 1985). A statute violates **due process** if people "must necessarily guess at its meaning and differ as to its application." *Id*. at 266. **A statute may be challenged as void for vagueness** as a facial challenge (which is available only when the statute reaches a substantial amount of constitutionally protected conduct or when the statute specifies no standard of conduct at all) or **an as-applied challenge**. *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031-32 (Wyo. 2004).

Therefore, by declining to provide clarification sought specifically by CryptoFed, the Secretary of State's Office has invalidated the Wyoming securities laws *as applied to* CryptoFed's specific conduct. The constitutional challenge is an as-applied challenge, NOT as a facial challenge.

v) Financial Crimes Enforcement Network (FinCEN) of the US Department of Treasury

Wyo. Stat. § 40-22-104 a(vi) exempts crypto currency from money transmitter license requirements, but CryptoFed is also required to comply with FinCEN regulations related to KYC, AML and money transmitter.

On May 9, 2019, FinCEN published a guidance entitled **Application of FinCEN's Regulations to Certain Business Models** ("May 9, 2019 Guidance") which "consolidates current FinCEN regulations, and related administrative rulings and guidance issued since 2011, and then applies these rules and interpretations to other common business models involving CVC

[13] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

engaging in the same underlying patterns of activity." (p. 1).[14] Pursuant to 31 CFR Part 1010 Subpart G § 1010.711, CryptoFed has requested that FinCEN issue a new administrative ruling for clarification, because the May 9, 2019 Guidance does not expressly cover the specific situation of Locke token distribution which combines the key facts and circumstances of CryptoFed's particular business model as described below:

(a) CryptoFed will not perform the function of "acceptance of currency, funds, or other value that substitutes for currency from one person" (May 9, 2019 Guidance, p. 4).

(b) CryptoFed will only engage in a one-way "transmission of currency, funds, or other value that substitutes for currency to another location or person" (*ibid*), e.g., the one-way delivery of Locke tokens to contributors, free of charge, without "the acceptance of currency, funds, or other value that substitutes for currency from one person". (*ibid*).

(c) CryptoFed does not have a "transmittor" in its business model who is "[t]he sender of the first transmittal order in a transmittal of funds" and "initiates a transaction that the money transmitter actually executes." (*ibid,* p. 3).

In the May 9, 2019 Guidance, FinCEN states at page 3, **"a particular regulatory interpretation may not apply to a person if their business model contains fewer, additional, or different features than those described in this guidance."** (emphasis added). Therefore, the absence of some key components from CryptoFed's particular business model makes it impossible to define CryptoFed as a money transmitter performing a money services business

[14] Available at https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf

under FinCEN regulations. On June 4, 2024, FinCEN responded with the following by email (emphasis added):

> In the administrative ruling request letter dated January 29, 2022 [sic], American CryptoFed DAO LLC (the "Company") **sought clarification from FinCEN** concerning whether the Company is a money transmitter under FinCEN's regulations and subject to FinCEN's registration requirements for money services businesses. Pursuant to its discretion under Title 31 of the Code of Federal Regulations, Chapter X, Part 1010, Subpart G, FinCEN **declines to issue an administrative ruling** to the Company in response to its request.

5. Conclusion

Under the dual systems of federal and state regulations, in addition to laws and regulations of federal government and the State of Wyoming, CryptoFed is also required to comply with laws and regulations of the remaining forty-night (49) states. For this reason, for the time being, CryptoFed must limit the Locke distribution within the border of the State of Wyoming.

The SEC, FinCEN and the Wyoming Secretary of State share one thing in common regarding CryptoFed's request for clarification. All of them cannot make decisions pursuant to existing laws and regulations. The fundamental reasons are as stated below:

i) By design, CryptoFed has a self-sustaining business model to grant tokens. CryptoFed never raises funds and never takes money from participants on CryptoFed's own behalf. This makes it impossible for the SEC and the Wyoming Secretary of State's Office to categorize CryptoFed's tokens as securities.

ii) By design, CryptoFed will use tokens to coordinate its activities for its mission via decentralized blockchain and crypto markets, which will eliminate the necessity of central administration. This decentralized model of individuals and entities operating independently for their own benefit makes it impossible for FinCEN to categorize CryptoFed as a money transmitter which requires centralized management.

Regulators' inability to make decisions regarding the conduct of CryptoFed has invalidated the laws and regulations *as applied to* CryptoFed's specific conduct. The U.S. Constitution states only one command twice. The Fifth Amendment states to the federal government that no one shall be **"deprived of life, liberty or property without due process of law."** The Fourteenth Amendment uses these same eleven words, called the Due Process Clause, to describe a legal obligation of all states. The default is freedom. CryptoFed should be able to enjoy its constitutional right to freedom from governmental intervention to pursue its "life, liberty, or property". The Fair Notice / Void for Vagueness Doctrine upheld by the U.S. Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) at 2317 states (Emphasis added):

> 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, 46 S.Ct. 126, 70 L.Ed. 322 (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, 92 S.Ct. 839, 31 L.Ed.2d 110 (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, 59 S.Ct. 618, 83 L.Ed. 888 (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, 128 S.Ct. 1830, 170 L.Ed.2d 650 (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, 128 S.Ct. 1830.

For all the reasons set forth above, CryptoFed concludes that it is lawful to launch Locke tokens within the State of Wyoming. Distributing Locke tokens to MAG merchant attendees and their colleagues is a major step for CryptoFed to build a monetary system with **zero CryptoFed transaction costs.** CryptoFed plans to launch the Locke tokens in November 15 - December 31 2024 in the format of ERC-20 tokens which are tradable via Uniswap for global reach. As a MAG merchant attendee, CryptoFed invites you to accept a grant of ten (10) million Locke tokens, join the emerging CryptoFed community, and together make history!

Sincerely,

/s/ Scott Moeller
A82E97EDD0C44FD...
Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou
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Title: Organizer
zhouxm@americancryptofed.org

OS Received 09/05/2024

American CryptoFed

September 8, 2024

Wyoming Legislative Select Committee on Blockchain,
Financial Technology, and Digital Innovation Technology

Re: Testimony on the Clarity of DAOs' Token Issuance

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO ("CryptoFed") to provide public testimony during the session of the Wyoming Secretary of State's Office scheduled at 10:45 AM – 12:00 PM in the Select Committee's September 16, 2024 meeting. Scott Moeller and Xiaomeng Zhou will attend the session in person to provide oral public comments, based on this written testimony.

I. BACKGROUND

This testimony is to petition this Select Committee again to consider CryptoFed's written proposal (attached as **Exhibit A**) which was submitted to this Select Committee and briefly discussed during the July 1, 2024 meeting. Since the last meeting of the Select Committee, CryptoFed has sent two letters on July 31, 2024 (attached as **Exhibit B)** and August 12, 2024 (attached as **Exhibit C)** respectively, to the Wyoming Secretary of State's Office, cc'ing this Select Committee, to seek for clarification on CryptoFed's intra-state token issuance within the State of Wyoming. As of today, the only response to CryptoFed's two letters was a brief

statement by Deputy Secretary of State, Jesse Naiman, emphasizing, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."

II. CRYPTOFED'S PETITION

In order to make both the Wyoming Decentralized Autonomous Organization Supplement and Wyoming Decentralized Unincorporated Nonprofit Association Act functional, CryptoFed petitions this Select Committee again to consider adding a paragraph to W.S. 17-4-605(d) of Wyoming Uniform Securities Act, similar to the following proposed paragraph:

> **If the secretary of state declines to answer questions sought by a Decentralized Autonomous Organization or a Decentralized Unincorporated Nonprofit Association, the declination is a determination that the secretary of state will not institute a proceeding or an action against the Decentralized Autonomous Organization or the Decentralized Unincorporated Nonprofit Association for engaging in the specified activities raised by the questions.**

III. BENEFITS OF CRYPTOFED'S PROPOSAL

The Wyoming's Supreme Court held in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977), "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**." (emphasis added). The U.S Supreme Court held in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358, "As generally stated, the void-for-vagueness doctrine requires that **a penal statute define the criminal offense with sufficient**

definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage **arbitrary and discriminatory enforcement**." (emphasis added).

CryptoFed's proposal has at least three benefits from a practical perspective:

i) The Wyoming Secretary of State's Office can exercise regulatory oversight without the legal obligation of providing clarity as to what tokens are securities and what are not. Under existing federal and state laws (Supra, *Sanchez v. State; Kolender v. Lawson*), the Wyoming Secretary of State's Office does have this obligation.

ii) By the proposed legislation, this Select Committee and the Wyoming Legislature can provide legal clarity to Wyoming DAOs without the necessity of defining what tokens are securities and what are not.

iii) Wyoming DAOs will have a clear and specific guidance to innovate and explore the frontiers of a token economy without "be[ing] required at peril of life, liberty or property **to speculate as to the meaning of penal statutes**." (Supra, *Sanchez v. State*, emphasis added).

IV. CONCLUSION

For all the reasons set forth above, CryptoFed respectfully petitions this Select Committee again to consider CryptoFed's proposal. CryptoFed hopes that the Wyoming Secretary of State's Office will support this proposal, because this proposal can fundamentally reduce the burden of the Wyoming Secretary of State's Office to comply with the obligations

mandated by the Wyoming's Supreme Court (Supra, *Sanchez v. State*) and the U.S. Supreme Court (Supra, *Kolender v. Lawson*).

CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to explore the potential of cryptocurrencies in the real world. We look forward to an ongoing dialogue with Wyoming's legislators.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
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Scott Moeller
Organizer, American CryptoFed DAO
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/s/ Xiaomeng Zhou

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Exhibit A

Exhibit A

June 25, 2024

Wyoming Legislative Select Committee on Blockchain,
Financial Technology, and Digital Innovation Technology

Re: Testimony on DAOs' Token Issuance Clarification

Dear Chairman Rothfuss, Chairman Western, and Members of the Select Committee:

Thank you for the opportunity for American CryptoFed DAO ("CryptoFed") to provide public testimony for the session of Wyoming Secretary of State's Office during the Select Committee's July 1st, 2024 meeting. We will attend the session to provide oral public comments, based on this written testimony. Xiaomeng Zhou will attend in person, while Scott Moeller will attend online.

I. CRYPTOFED'S PETITION

In order to make the Wyoming Decentralized Autonomous Organization Supplement and Wyoming Decentralized Unincorporated Nonprofit Association Act functional, CryptoFed petitions the Select Committee to consider adding a paragraph to W.S. 17-4-605(d) of Wyoming Uniform Securities Act, similar to the following proposed paragraph:

> **If the secretary of state declines to answer questions sought by a Decentralized Autonomous Organization or a Decentralized Unincorporated Nonprofit Association, the declination is a determination that the secretary of state will not institute a proceeding or an action against the Decentralized Autonomous**

Organization or the Decentralized Unincorporated Nonprofit Association for engaging in the specified activities raised by the questions.

II. FACTUAL BACKGROUND

CryptoFed is the first Wyoming DAO established on July 1st, 2021, under the Wyoming Decentralized Autonomous Organization Supplement, about three years ago. During this period, CryptoFed has done its best to explore these methodologies of issuing tokens which are compatible with the Wyoming Uniform Securities Act. After tireless efforts for three years, CryptoFed has no choice but to petition this Select Committee to add the paragraph above to W.S. 17-4-605(d), because on December 8th, 2023, Mr. Jesse Naiman, Deputy Secretary of State formally notified CryptoFed of the following decision:

> We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"
>
> Your request is governed by W.S. 17-4-605(d), which states:
>
> > The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.
>
> **After reviewing your request, the Secretary of State's Office declines to answer your question at this time.** (emphasis added).

American CryptoFed

Exhibit A

III. MANDATE BY WYOMING'S SUPREME COURT AND THE U.S. SUPREME COURT

1. The Wyoming's Supreme Court states in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty** in legislation, especially in the criminal law, is a well-established element of the guarantee of due process of law.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

2. The U.S. Supreme Court's opinion states in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.** *Hoffman Estates v. Flipside, Hoffman Estates, Inc*., supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1926); *Connally v. General Construction Co*., 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement**." Smith, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id*., at 575.

Exhibit A

For all the reasons set forth above, CryptoFed respectfully petitions this Select Committee to consider CryptoFed's proposal. CryptoFed hopes that Wyoming Secretary of State's Office will support this proposal, because it can fundamentally reduce the burden of Wyoming Secretary of State's Office to comply with the mandate by the Wyoming's Supreme Court and the U.S. Supreme Court.

CryptoFed appreciates the pioneering efforts of Wyoming's lawmakers to explore the potential of cryptocurrencies in the real world. We look forward to an ongoing dialogue with Wyoming's legislators.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
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Scott Moeller
Organizer, American CryptoFed DAO
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/s/ Xiaomeng Zhou

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Exhibit B

Exhibit B

July 31, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 W 25th St.
Suites 100 and 10, Cheyenne, WY 82002-0020

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you very much for the opinion of the Secretary of State's Office during the July 1, 2024 meeting of the Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") regarding the token issuance of American CryptoFed DAO ("CryptoFed"). During the 15-minute discussion[1], the Secretary of State's Office did not raise any Wyoming statute, regulation or any binding precedent that CryptoFed may possibly violate if CryptoFed distributes its Locke governance tokens to its contributors within the State of Wyoming ("Intrastate Token Issuance"), free of charge.

[1] Available at 2:09:19 -2:23:51, https://www.youtube.com/live/-fs6TE654es

However, before CryptoFed begins any intrastate issuance of Locke tokens within Wyoming in Q4 2024, in order to avoid misunderstandings and for the purpose of compliance, CryptoFed is seeking clarity from the Secretary of State's Office on the following question:

Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office? ("CryptoFed Question")

CryptoFed would be very grateful if the Secretary of State's Office would answer this CryptoFed Question prior to September 16, 2024 when the next Select Committee meeting will be held in Laramie. CryptoFed hopes this matter can be discussed at the next Select Committee meeting, because i) CryptoFed's issuance of Locke token can prove that the Wyoming DAO legislation is functional; and ii) the opinion of the Secretary of State's Office is the only regulatory hurdle CryptoFed needs to overcome prior to its intrastate issuance of Locke tokens within the sovereign borders of Wyoming. To help inform the Secretary of State's answer to the CryptoFed Question, CryptoFed provides the following factual background and legal argument as to why Locke tokens are not securities.

I.
Statement of Material Facts

To accomplish its mission, CryptoFed has designed a dual-token economy to operate in tandem under the names of Locke and Ducat. The Ducat token will have an unlimited issuance only constrained by the metrics of zero inflation and zero deflation as measured by the PCE price index published monthly by the Bureau of Economic Analysis, the US Department of Commerce. The Ducat token will be used as a crypto currency for the daily purchases of goods and services, a unit of account, and a store of value. The Locke token is a governance token with

a finite number not to exceed 10 trillion total tokens. Locke holders are decentralized and oversee the policies and rules which will facilitate the Ducat economy.

CryptoFed anticipates the intrastate distribution of Locke tokens within Wyoming, free of charge, will take place from Q4 2024 through Q4 2026. This letter focuses solely on this intrastate distribution of Locke tokens from Q4 2024 through Q4 2026 within Wyoming. Ducat tokens will not be distributed until after January of 2027. CryptoFed does not seek an opinion from the Secretary of State's Office on the issuance of the Ducat token at this time and will do so around Q2 2026 prior to its distribution.

The Locke tokens to be distributed from Q4 2024 through Q4 2026 will have the following characteristics:

i) CryptoFed creates Locke tokens in ERC-20 format.

ii) CryptoFed distributes certain Locke tokens, free of charge, to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed ("Contributors") in one way or another.

iii) The Contributors, at their own discretion, may sell the Locke tokens on centralized or decentralized crypto swaps or exchanges, the natural result of which is the independent formation of a secondary market for Locke tokens.

iv) CryptoFed will not have control, obligations or rights related to these Locke tokens distributed to Contributors, although the holders of these Locke tokens will have rights to participate in the CryptoFed's governance.

II.
***Howey* Test**

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 298–99, the US Supreme Court stated "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person [(1)] invests his money [(2)] in a common enterprise and [(3)] is led to expect profits solely from the efforts of the promoter or a third party." The US Supreme Court further emphasized, "The test is whether the scheme involves [(1)] an investment of money [(2)] in a common enterprise [(3)] with profits to come solely from the efforts of others." *Id.,* at 301. An investment contract exists in a specific transaction if the three prongs are simultaneously satisfied. In other words, the absence of one of the three prongs will result in the conclusion that no investment contract exists.

The first prong of *Howey* examines whether an "investment of money" was part of the relevant transaction. *Id.,* at 301. Here, the CryptoFed's Contributors do not invest money by providing fiat or other assets in exchange for Locke token.

The third prong of *Howey* examines whether the economic reality surrounding the distribution of Locke tokens will lead the CryptoFed's Contributors to "expect profits solely from the efforts of the promoter or a third party," *Id.,* 298–99. Here, the CryptoFed's Contributors understand that they have to contribute their own efforts and do not expect profits "solely from the efforts of others" *Id.,* at 301. Given that these Contributors do not invest money by providing fiat or other assets, and given that Wyo. Stat. § 17-31-110 specifies, "no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member," it would be unreasonable to assume that CryptoFed's Contributors as Locke token holders will expect profits "solely from the efforts of others" *Id.,* at 301, if no member has any fiduciary duty to make any efforts to generate profit for Locke token holders.

As a result, an investment contract under the Securities Act of 1933 and Wyo. Stat. § 17-4-102 (xxviii) does not exist in the transaction that CryptoFed distributes Locke tokens, free of charge, only to Wyoming individual residents and Wyoming legal entities (intrastate distribution) who have made, are making and will make non-monetary contributions to CryptoFed in one way or another. This conclusion is independent of whether or not the second prong of *Howey*, the existence of a "common enterprise," 328 U.S. at 301, can be demonstrated in CryptoFed. The absence of the first and the third prongs of *Howey* are sufficient to prove that no investment contract exists in the transaction distributing Locke tokens to CryptoFed's Contributors free of charge. Any rebuttal to this conclusion would need to prove that the transaction satisfies simultaneously both the first and the third prongs of *Howey.*

III.
Exclusive Jurisdiction of the Secretary of State's Office

Director Crossman raised the issue of Federal "covered securities" during the July 1, 2024 meeting of the Select Committee.[2] However, "covered securities" does not preclude the State of Wyoming from regulating intrastate transactions. The boundary between the State of Wyoming's rights and Federal rights is clearly defined in the matter of securities regulation. Below are the statements of the U.S. Securities and Exchange Commission (Release No. 33-7524, File No. S7-11-98, Request for Comments)[3] which recognize this boundary:

> A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").

[2] Available at 2:19:43 -2:21:10, https://www.youtube.com/live/-fs6TE654es

[3] Available at https://www.sec.gov/rules-regulations/1998/04/securities-uniformity-annual-conference-uniformity-securities-laws).

> The 1996 Act amended section 18 of the Securities Act to preempt state blue-sky registration and review of securities offerings of "covered securities." "Covered securities" are defined by section 18 and include several types of securities, including "nationally traded securities," i.e., securities traded on the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("AMEX") or the Nasdaq National Market System ("Nasdaq/NMS").
>
> **Securities that are not 'covered securities' remain subject to state registration requirements**. (emphasis added).

In September 2021, CryptoFed has filed Form 10 and Form S-1 registrations with the U.S. Securities and Exchange Commission ("SEC") against which the SEC has instituted two proceedings to stop these registrations (*see* SEC's public dockets for Form 10 and Form S-1 proceedings).[4] However, the SEC has still not made rulings on these two proceedings even though the deadlines for each have long passed. Regarding the Form 10 proceedings, CryptoFed keeps filing monthly letters to urge the SEC to make a ruling[5]. Regarding the Form S-1 proceedings, the SEC issued an Order Extending Time to Issue Decision.[6] The SEC's inability to make rulings for its formal proceedings indicate that CryptoFed's Locke tokens will not become Federal "covered securities". A deadlock has ensued, in which the SEC has neither legal infrastructure to handle CryptoFed's non-securities tokens, nor legal authority to stop CryptoFed's registration filings for the purposes of compliance and disclosure. However, the deadlock is a milestone for CryptoFed's achievement, to the extent that the deadlock will effectively preempt the SEC from accusing CryptoFed of issuing unregistered securities. Since

[4] Available at https://www.sec.gov/litigation/apdocuments/3-20650 and https://www.sec.gov/litigation/apdocuments/3-21243

[5] The letters from February through June 2024 were published in the SEC docket, available at https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-20650

[6] Available at https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf

2021, CryptoFed has regularly updated the Secretary of State's Office on the status of these two proceedings.

Given that CryptoFed's Locke tokens are not Federal "covered securities", the Wyoming Secretary of State's Office has an exclusive jurisdiction over this matter, because CryptoFed as a Wyoming legal entity will distribute Locke tokens, free of charge, *only* to Wyoming individual residents and Wyoming legal entities (intrastate distribution). During the July 1, 2024 meeting of the Select Committee, Secretary Gray made the statement, "The issue is really with the SEC, not with our office."[7] However, his statement mischaracterized the nature of this matter and confused the clear boundary of State of Wyoming's rights vs. Federal rights. Under a dual system of federal-state securities regulation, the State of Wyoming has its sovereign rights to make its decision on CryptoFed's Intrastate Token Issuance independent of the SEC as a Federal agency. If the Secretary of State's Office voluntarily defers to the SEC's decisions even in the matter of an intrastate transaction, the Blockchain initiatives of a series of Wyoming legislations will be fatally and effectively stifled.

The Select Committee, during the July 2, 2024 meeting, discussed a bill (25LSO-0090 Working Draft 0.4)[8] entitled Defense of State Banking, which stated: "AN ACT relating to banks, banking and finance; requiring the attorney general to take action **to defend the state's interest in the dual banking system…**" (emphasis added). In the same spirit, in order for Wyoming DAOs to survive and thrive, CryptoFed urges the Secretary of State's Office "**to defend the state's interest in the dual" (*ibid*) federal-state securities regulation system,** instead of willingly abandoning the sovereign autonomy and rights of the State of Wyoming.

[7] Available at 2:16:50 -2:17:12, https://www.youtube.com/live/-fs6TE654es

[8] Available at p.1 https://wyoleg.gov/InterimCommittee/2024/S19-2024070125LSO-0090v0.4.pdf

IV
Mandate by the Supreme Courts of the U.S. and Wyoming

To be clear, CryptoFed does not seek legal advice from the Secretary of State's Office. CryptoFed has conducted its own legal analysis of the *Howey* test as demonstrated in Section II of this letter. What CryptoFed seeks is a clarity from the Secretary of State's Office, as a regulator, as to whether CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violates any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office. For the purpose of compliance, CryptoFed needs a Yes or No answer. In an email dated December 8th, 2023, Deputy Secretary Naiman declined to provide a Yes or No answer. However, as the following legal binding precedents demonstrate, the Secretary of State's Office is mandated by the Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity.

1. The Wyoming's Supreme Court stated in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law**.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

2. The Wyoming's Supreme Court stated in *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988) (emphasis added):

> We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides **sufficient notice to a person of ordinary intelligence that appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

3. The U.S. Supreme Court's opinion stated in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.** *Hoffman Estates v. Flipside, Hoffman Estates, Inc*., supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1972); *Connally v. General Construction Co*., 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement**." *Smith*, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id*., at 575.

4. The US Supreme Court's opinion stated in *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453, (emphasis added):

> **No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.** The applicable rule is stated in *Connally v. General Construction Co.*, 269 U.S. 385, 391: **"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement,** consonant alike with ordinary notions of fair play and the settled rules of law. And 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**."

V
Conclusion

Wyo. Stat. § 17-4-605(d) authorizes Secretary of State's Office to provide CryptoFed with a clarity, and the U.S. Supreme Court and the Wyoming's Supreme Court mandate the Secretary of State's Office to do so. Taken together, the Secretary of State's Office not only has the authority but also has the obligation to provide CryptoFed with clarity from the perspective of a regulator.

For all the reasons set forth above, CryptoFed respectfully requests the Secretary of State's Office to answer the following CryptoFed Question prior to the next Select Committee meeting scheduled on September 16-17, 2024:

Does CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without a registration filing, violate any Wyoming statute, regulation, or any binding precedent under the jurisdiction of the Secretary of State's Office?

CryptoFed looks forward to a written answer from the Secretary of State's Office and appreciates all the help of the Secretary of State's Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller
DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...
Name: Scott Moeller
Title: Organizer/President
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou
Signed by:
Xiaomeng Zhou
6F7F189BD770455...
Name: Xiaomeng Zhou
Title: Organizer/COO
zhouxm@americancryptofed.org

Exhibit C

Exhibit C

August 12, 2024
Via Electronic Email

Secretary of State, Chuck Gray, chuck.gray@wyo.gov
Deputy Secretary of State, Jesse Naiman, jesse.naiman1@wyo.gov
Compliance Division Director, Kelly Janes, kelly.janes@wyo.gov
Business Division Director, Colin Crossman, colin.crossman@wyo.gov
Wyoming Secretary of State's Office,
Herschler Building East, 122 W 25th St.
Suites 100 and 10, Cheyenne, WY 82002-0020

CC:
Co-Chairman, Senator Chris Rothfuss, Chris.Rothfuss@wyoleg.gov
Co-Chairman, Representative Cyrus Western, Cyrus.Western@wyoleg.gov
All Members of Wyoming Legislative Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you very much for the short email response from Deputy Secretary Naiman dated August 1, 2024 ("SOS August 1, 2024 Email") to CryptoFed's July 31, 2024 Letter. For the convenience of our discussion, we include the SOS August 1, 2024 Email in its entirety at the end of this letter (following the signature page). The SOS August 1, 2024 Email stated the following:

> Thank you for your inquiry, which we will review.
>
> I would note that we previously declined to answer this question, per my email dated December 8, 2023. ("SOS December 8, 2023 Email").

I
The Secretary of State's Obligation to Provide Clarity

The SOS December 8, 2023 Email above notified CryptoFed of the following decision:

> We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"
>
> Your request is governed by W.S. 17-4-605(d), which states:
>
> > The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.
>
> **After reviewing your request, the Secretary of State's Office declines to answer your question at this time.** (emphasis added).

However, the Wyo. Stat. § 17-4-605(d) cited above authorizes the Secretary of State's Office to provide CryptoFed with clarity, but it does not authorize the Secretary of State's Office to decline to provide CryptoFed with clarity. The SOS December 8, 2023 Email and the SOS August 1, 2024 Email inevitably raise a fundamental question:

Can the Secretary of State's Office provide at least one legal binding precedent (case law) to substantiate the legal position that the government agencies of the State of Wyoming in general and the Secretary of State's Office in particular are allowed by laws to decline to provide CryptoFed with clarity?

The Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legal binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, all mandate the Secretary of State's

Office to provide CryptoFed with clarity. The Due Process Clause of the Fourteenth Amendment of the US Constitution states: "nor shall any State deprive any person of life, liberty, or property, without **due process of law**." (emphasis added). The Due Process Law of Art. 1, § 6, of the Wyoming Constitution states: "No person shall be deprived of life, liberty or property without **due process of law**." (emphasis added). In CryptoFed's July 31, 2024 Letter, CryptoFed cited two legal binding precedents of the Wyoming's Supreme Court (*Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977); *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988)), and two legal binding precedents of the U.S. Supreme Court (*Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358; *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453) to prove that the Secretary of State's Office has the obligation to provide CryptoFed with clarity from the perspective of a regulator. For the sake of simplicity, here we just cite the opinion of Wyoming's Supreme Court in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) as below (emphasis added) to make our point:

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of **due process** previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law**.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

Therefore, unless the Secretary of State's Office can provide a legal binding precedent to prove the contrary, it is inevitable to conclude that the legal position of the Secretary of State's Office, declining to provide CryptoFed with clarity, violates the Due Process Clause of the

Fourteenth Amendment of the US Constitution and the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, shown by the legal binding precedents of the Wyoming's Supreme Court and the U.S. Supreme Court.

II
Due Process and Void of Vagueness Doctrine

When the Secretary of State's Office declined to provide CryptoFed with clarity in both the SOS December 8, 2023 Email and the SOS August 1, 2024 Email, CryptoFed assumed that the Secretary of State's Office acted in good faith. Good faith here is used to encompass honest dealing and requires an honest belief, faithful performance of duties, and observance of fair dealing standards. Therefore, acting in good faith means that the Secretary of State's Office really did *not* know the answer to the CryptoFed's question, when it said "After reviewing your request, the Secretary of State's Office declines to answer your question at this time" in the SOS December 8, 2023 Email, and "I would note that we previously declined to answer this question, per my email dated December 8, 2023" in the SOS August 1, 2024 Email. In other words, if the Secretary of State's Office had known the answer, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's question.

In *Giles v. State*, Wyo. 96 P.3d 1027 (Wyo. 2004) ¶ 15, the Supreme Court of Wyoming stated (emphasis added):

> As identified in *Alcalde v. State*, 2003 WY 99, ¶ 13, 74 P.3d 1253, ¶ 13 (Wyo. 2003), a statute may be challenged for vagueness "on its face" or "as applied" to particular conduct. When a statute is challenged for vagueness on its face, the court examines the statute not only in light of the complainant's conduct, but also as it might be applied in other situations. **On the other hand, when a statute is challenged on an "as applied" basis, the court examines the statute solely in light of the complainant's specific conduct.**

In *Griego v. State*, 761 P.2d 973, 976 (Wyo. 1988), the Supreme Court of Wyoming stated (emphasis added):

> We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides sufficient notice to **a person of ordinary intelligence** that **appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

Given that the Secretary of State's Office was unable to provide CryptoFed with an answer, not only is it impossible for CryptoFed as "a person of ordinary intelligence" (*Supra*, *Griego v. State*) to know whether its intended conduct is illegal, but also it is impossible for the Secretary of State's Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event, can the Secretary of State's Office enforce the Wyoming Uniform Securities Act, without violating the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution. As a result, CryptoFed can make an as-applied constitutional challenge to the Wyoming Uniform Securities Act, and can argue that the Wyoming Uniform Securities Act is void for vagueness as applied to CryptoFed's specific conduct of distributing its Locke tokens to its contributors within the State of Wyoming (intrastate token issuance or distribution), free of charge, because the Wyoming Uniform Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the Secretary of State's Office.

Wyoming Legislative Service Office in a memorandum dated July 24, 2023[1] also emphasized:

> In Wyoming, **a statute is void for vagueness "if it fails to give a person of ordinary sensibility fair notice that the contemplated conduct is forbidden."** *Keser v.*

[1] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

> *State*, 706 P.2d 263, 265-266 (Wyo. 1985). A statute violates **due process** if people "must necessarily guess at its meaning and differ as to its application." *Id*. at 266. **A statute may be challenged as void for vagueness** as a facial challenge (which is available only when the statute reaches a substantial amount of constitutionally protected conduct or when the statute specifies no standard of conduct at all) or **an as-applied challenge**. *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031-32 (Wyo. 2004).

By declining to provide clarification sought by CryptoFed, the Secretary of State's Office has not only violated the Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legal binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also *has* invalidated the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

When the SOS December 8, 2023 Email stated "After reviewing your request, the Secretary of State's Office declines to answer your question **at this time**" (emphasis added), the Secretary of State's Office intended to preserve its option to arbitrarily select a future time and apply undisclosed criteria to discriminatorily enforce the Wyoming Uniform Securities Act against CryptoFed, exacerbating the violation of the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution.

III
Conclusion

In a conflict between the action or inaction of the Secretary of State's Office and the Constitutions of both Wyoming and the United States, the Constitutions of both Wyoming and the United States prevail. In *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939) at 453, the US Supreme Court's opinion states, "No one may be required at peril of life, liberty or property to

speculate as to the meaning of penal statutes." In *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977), the Wyoming's Supreme Court repeated the same. Given that the Secretary of State's Office declined to provide clarification, and consequently created a vague situation lacking fair notice as to what CryptoFed should do in order to comply with the Wyoming Uniform Securities Act, for all the reasons set forth in this letter, CryptoFed has no choice but to conclude that the SOS December 8, 2023 Email and the SOS August 1, 2024 Email amount to proof that the Wyoming Uniform Securities Act does not apply to CryptoFed's specific conduct. The default is freedom. CryptoFed should be able to enjoy its constitutional right to freedom from governmental intervention to pursue its "life, liberty, or property".

If the Secretary of State's Office disagrees with CryptoFed's conclusion, please inform CryptoFed, and provide CryptoFed with legal arguments together with supporting statues and legally binding precedents. CryptoFed would like to resolve the differences through fruitful discussion guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written answer from the Secretary of State's Office prior to the next Select Committee meeting scheduled on September 16-17, 2024, and appreciates all the help of the Secretary of State's Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer/President
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

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---------- Forwarded message ---------
From: **Jesse Naiman** <jesse.naiman1@wyo.gov>
Date: Thu, Aug 1, 2024 at 12:09 PM
Subject: Re: Request for Clarity on Intrastate Token Issuance within Wyoming
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: <chuck.gray@wyo.gov>, Kelly Janes <kelly.janes@wyo.gov>, <colin.crossman@wyo.gov>, Senator - Rothfuss, Chris <Chris.Rothfuss@wyoleg.gov>, <Cyrus.Western@wyoleg.gov>, Representative - Andrew, Ocean <Ocean.Andrew@wyoleg.gov>, <Tara.Nethercott@wyoleg.gov>, <Dan.Furphy@wyoleg.gov>, Representative - Singh, Daniel <Daniel.Singh@wyoleg.gov>, <Mike.Yin@wyoleg.gov>, <Affie.Ellis@wyoleg.gov>, LSO - Clarissa Nord <Clarissa.Nord@wyoleg.gov>, <david.hopkinson@wyoleg.gov>, Scott Moeller <scott.moeller@americancryptofed.org>

Mr. Zhou,

Thank you for your inquiry, which we will review.

I would note that we previously declined to answer this question, per my email dated December 8, 2023.

Thank you,

Jesse

--
Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
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American CryptoFed

September 23, 2024
Via Electronic Email and eFAP

Chairman Gary Gensler, 202-551-2100, Chair@sec.gov
Commissioner Hester M. Peirce, (202) 551-5080, CommissionerPeirce@sec.gov
Commissioner Caroline A. Crenshaw, 202-551-5070, CommissionerCrenshaw@sec.gov
Commissioner Mark T. Uyeda, 202-551-2700, CommissionerUyeda@sec.gov
Commissioner Jaime Lizárraga, 202-551-2800, CommissionerLizarraga@sec.gov
U.S. Securities and Exchange Commission,
100 F Street, N.E. Washington, D.C. 20549

CC:
Inspector General, Deborah J. Jeffrey, oig@sec.gov
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Michael Baker, Division of Enforcement, BakerMic@sec.gov
Justin Dobbie, Division of Corporation Finance, dobbiej@sec.gov

Re: Request for immediate action on American CryptoFed DAO's Motion
Filed on December 15, 2021 pursuant to Rule of Practice 250(a), 17 CFR § 201.250 (a)

Dear Chairman and Commissioners

This is **the tenth letter** about this matter. To date, we have not yet received any response to our original letter, except a form response from the Inspector General Office stating "We will evaluate the information provided and determine an appropriate action". Therefore, we will continue to cc the Commission's Inspector General Office in our communications. For your convenience, the original letter requesting immediate action dated December 16, 2023 is copied and pasted below, starting from page 3 of this correspondence. In addition to the original letter, **the second, the third, the fourth, the fifth, the sixth, the seventh, the eighth and the ninth**

letters dated January 18, 2024, February 18, 2024, March 18, 2024, April 18, 2024, May 20, 2024, June 20, 2024, July 22, 2024 and August 22, 2024 respectively also included the following three paragraphs:

In accordance with the legal precedent discussed in the original letter, **a stay order has never existed for any not-yet-effective Form 10 registration statement, and under no circumstances, can the Securities and Exchange Commission legally issue a stay order to prevent a Form 10 registration statement from becoming effective if a token is security**. **Logically, once a stay order is issued to prevent a Form 10 registration statement from becoming effective, the token must be a non-security and outside the SEC's jurisdiction.**

On January 10, 2024, Commissioner Hester Peirce published a statement entitled **Out, Damned Spot! Out, I Say!: Statement on Omnibus Approval Order for List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units**[1]. We compiled a few sentences in Commissioner Peirce's statement into one paragraph below. It is evident that these sentences can be perfectly applied to American CryptoFed's situation if the original phrases (emphasis added in italics) were replaced by the bold phrases (American CryptoFed's edits) in parentheses.

"You need not be a seasoned securities lawyer to spot the difference in treatment of *bitcoin-related ETP* (**American CryptoFed's Form 10**) applications compared to the many other *ETP* (**Form 10**) applications that have been routinely filed and approved over the past decade." "First, our arbitrary and capricious treatment of applications in this area will continue to harm our reputation far beyond crypto. Diminished trust from the public will inhibit our ability to regulate the markets effectively." "Second, our disproportionate attention on these filings has

[1] https://www.sec.gov/news/statement/peirce-statement-spot-bitcoin-011023

diverted limited staff resources away from other mission critical work." "Third, our actions here have muddied people's understanding of what the SEC's role is. Congress did not authorize us to tell people whether a particular investment is right for them, but we have abused administrative procedures to withhold investments that we do not like from the public." "I commend *applicants' decade-long* (**American CryptoFed's two and half year**) persistence in the face of the Commission's obstruction."

For convenience, the full text of the original December 16, 2023 correspondence is included below.

We write to you regarding the Matter of American CryptoFed DAO, AP File No. 3-20650, requesting the immediate actions specified below. Such request is made because the Securities and Exchange Commission ("SEC" or "Commission"), i) has been in violation of its own Rule of Practice 250(a), 17 CFR § 201.250 (a) and the Fifth Amendment of the U.S. Constitution for more than two (2) years, and further, ii) has denied the request of American CryptoFed DAO ("American CryptoFed" or "Respondent") for appointment of an Administrative Law Judge (ALJ) in an order (Release No. 93806 / December 16, 2021)[2] at page 2 stating:

> First, Respondent requests that the Commission designate an Administrative Law Judge ("ALJ") as hearing officer to preside over this proceeding. Rule of Practice 110 provides that "[a]ll proceedings shall be presided over by the Commission" unless the Commission "so orders." **Here, the OIP set this matter "before the Commission," not an ALJ, and no subsequent order issued by the Commission in this proceeding has directed otherwise.** Respondent contends that the Commission made "a public promise to designate an administrative law judge as the Presiding officer" in a press release dated November 10, 2021. But a press release is not an "order" of the Commission, so it cannot

[2] https://www.sec.gov/files/litigation/opinions/2021/34-93806.pdf

> supersede either Rule 110's default rule (i.e., that proceedings are presided over by the Commission) or the OIP itself. Further, the Commission retains at all times the authority to designate or to re-designate the presiding officer in its administrative proceedings, and, as the Supreme Court stated in *Lucia v. SEC*, **"'[b]y law, the Commission itself may preside over' any administrative proceeding that it institutes."** (Emphasis added)

In addition to the request for immediate action by the Commission, American CryptoFed urges the Commission's Office of Inspector General to open an investigation into the impropriety by the Commission. This letter can provide an overview of the undisputable factual background and legal basis which raise significant concerns worthy of investigation.

I.
Rule of Practice 250(a), 17 CFR § 201.250 (a)

On June 7, 2023, the Commission issued an Order Denying Motion to Dismiss (Release No. 97659, "June 7, 2023 Order")[3], for which Commissioner Peirce and Commissioner Uyeda published a dissenting statement[4]. Footnote 13 of the June 7, 2023 Order at page 5 states:

> We have resolved the motion on the premise that Respondent's Form 10 is not yet effective. Here, the Commission instituted Section 12(j) proceedings before the registration statement automatically become effective 60 days after filing, and the OIP explicitly ordered that "the institution of these proceedings stays the effectiveness of the Respondent's Form 10." **Respondent's motion to lift the OIP's stay of effectiveness remains pending before the Commission.** This order should not be construed as expressing a view as to the disposition of that motion. (Emphasis added).

Because "The OIP explicitly ordered that 'the institution of these proceedings stays the effectiveness of the Respondent's Form 10,'" ("Stay Order"), American CryptoFed, pursuant to Rule of Practice 250 (a), 17 CFR § 201.250 (a) *Motion for a ruling on the pleadings* ("Rule 250

[3] https://www.sec.gov/files/litigation/opinions/2023/34-97659.pdf
[4] https://www.sec.gov/news/statement/peirce-uyeda-american-cryptofed-20230607

(a)")[5] timely filed the "Respondent's motion to lift the OIP's stay of effectiveness" ("Motion to Lift the Stay Order"),[6] on December 15, 2021, two (2) years ago. Rule 250 (a) states:

> (a) *Motion for a ruling on the pleadings*. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, **even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law**. The hearing officer shall **promptly** grant or deny the motion. (Emphasis added).

The Rule 250 (a) requires the Commission to **"promptly grant or deny the motion"**, even allowing the Commission to accept all of the SEC Division of Enforcement's factual allegations as true and to draw all reasonable inferences in the Division of Enforcement's favor. However, the Commission has not made a decision on the Motion to Lift the Stay Order, as of today, two (2) years after the filing. As a result of this extended period of indecision and non-decision, the Commission is in violation of Rule 250 (a), because in no circumstance can a delay on a critical pending motion for more than two years be considered "prompt".

II.
The Fifth Amendment of the U.S. Constitution

The Fifth Amendment of the U.S. Constitution states, "No person shall…be deprived of life, liberty, or property, **without due process of law**…" (Emphasis added). Rule 250 (a) defines the "due process of law", requiring the Commission to "promptly grant or deny the motion". The Commission's inability to come to a decision on American CryptoFed's Motion to Lift the Stay Order not only violated Rule 250 (a), but also the Fifth Amendment of the U.S. Constitution.

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[5] https://www.govinfo.gov/content/pkg/CFR-2020-title17-vol3/pdf/CFR-2020-title17-vol3-sec201-250.pdf

[6] The Motion to Lift the Stay Order can be found in the SEC website link by filing date: https://www.sec.gov/litigation/apdocuments/3-20650

The Commission's indecision and non-decision create a vague situation lacking fair notice as to what American CryptoFed should do in order to comply with the securities law. The fair notice / void for vagueness doctrine upheld by the US Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) at 2317 states:

> 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.** (Emphasis added).

As a result of the Commission's indecision and non-decision, the Commission is clearly unable to apply existing securities law to American CryptoFed by following the pre-determined due process of law which is Rule 250 (a), leading to an inevitable conclusion, from a legal perspective of as-applied constitutional challenges (not facial challenges), that the existing securities law does not apply to American CryptoFed and that the SEC does not have jurisdiction over American CryptoFed.

III.
Requirement for the Commission's Stay Order To Be Lawful.

The Commission's Stay Order can be lawful when, and only when, the Commission declares that American CryptoFed's Locke and Ducat tokens are not securities. The

Commission's June 7, 2023 Order has confirmed that a stay order has never existed for any not-yet-effective Exchange Act registration statement, by stating the following:

> Further, we are aware of **only one prior instance in which the Commission instituted a Section 12(j) proceeding as to a not-yet-effective Exchange Act registration statement**, but that proceeding settled shortly after **the Form 10 became automatically effective**, and there was no attempt to withdraw it. (Emphasis added, p.3).

This admission is pivotal, and affirms the legal path. **In the entire 89 years after the Exchange Act became law in 1934**, by the Commission's own admission, the Commission is aware of only **one case** "in which the Commission instituted a Section 12(j) proceeding as to a not-yet-effective Exchange Act registration statement", **but no Stay Order was included in the proceeding. By the Commission's own admission, "the Form 10 became automatically effective"** in accordance with Section 12 (g) of Exchange Act which states "Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct." Therefore, according to this legal precedent, American CryptoFed's Form 10 registration statement filed on September 16, 2021 would have become automatically effective on or before November 16, 2021, if American CryptoFed's Locke and Ducat tokens were, in truth, securities. Given that the Commission's Stay Order has prevented American CryptoFed's Form 10 registration statement from automatically becoming effective sixty (60) days after filing, the only legal justification for the Commission's Stay Order is that American CryptoFed's Locke and Ducat tokens are not securities. To this extent, the Commission's Stay Order amounts to proof that American CryptoFed's Locke and Ducat tokens are not securities.

IV
Conclusion

It is clear that the Commission stands in violation of both the Fifth Amendment of the U.S. Constitution and Rule of Practice 250 a), 17 CFR § 201.250 (a). For these reasons and that set forth in Section III above, American CryptoFed petitions the Commission for prompt action to declare that i) American CryptoFed's Locke and Ducat tokens are not securities; ii) no investment contract exists in the American CryptoFed business model, iii) the SEC does not have jurisdiction over American CryptoFed. In addition, American CryptoFed petitions the Commission's Office of Inspector General to open an investigation into the impropriety by the Commission and to include the result in its Semiannual Report to Congress.

We look forward to written responses from both the Commission and the Commission's Office of Inspector General respectively.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer/President
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
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zhouxm@americancryptofed.org

American CryptoFed

September 30, 2024
Via Electronic Email

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All Members of Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

It was nice chatting with Secretary Gray and Director Crossman on September 16, 2024 at the meeting of the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee"). We are writing to follow up on Director Crossman's testimony at the Select Committee's meeting, although he emphasized at the beginning that his testimony was not fully fleshed out and was not legally binding.

I
The Clarification and Update on the SEC's Proceedings

During his testimony, Director Crossman stated "We have told them numerous times that we wanted to wait and see what the SEC was going to do…".[1] American CryptoFed DAO ("CryptoFed") has continuously kept the Secretary of State's Office updated since 2021 on the SEC's proceedings. In CryptoFed's letter to the Secretary of State's Office dated July 31, 2024, CryptoFed also summarized the status of the two SEC proceedings.[2]

To be clear, the explicit purposes of the SEC's proceedings are to stop CryptoFed's disclosure, directly contradicting the spirit of SEC's disclosure mission and consequently violating Federal Securities Laws. On July 28, 2023, SEC Chairman Gensler stated "Under the securities laws, though, the SEC is merit neutral. Investors get to decide what investments they make and risks they take based upon those disclosures. The SEC focuses on the disclosures about, not the merits of, the investment."[3] On March 15, 2021, SEC Commissioner Hester Peirce emphasized that the SEC has a "limited role as a *disclosure* regulator, rather than a more interventionist merit regulator." (emphasis in original).[4] It is because the two SEC proceedings contradict the spirit of SEC's disclosure mission that, as of today, the SEC has not been able to make rulings on these two proceedings even though the deadlines for each have long passed,

[1] Available at 12:56 – 13:04, https://www.youtube.com/live/hlnJDwInl6c?t=90s

[2] Available at Exhibit B, pp. 6-7, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

[3] Available at https://www.sec.gov/news/speech/gensler-remarks-fsoc-climate-072823#:~:text=Under%20the%20securities%20laws%2C%20though,the%20merits%20of%2C%20the%20investment.

[4] Available at https://www.sec.gov/news/speech/peirce-paper-plastic-peer-to-peer-031521

depriving CryptoFed of the constitutionally guaranteed due process right and violating the *Accardi* Doctrine upheld by the US Supreme Court in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) which "requires that government officials follow agency regulations."[5] Regarding the Form S-1 Proceedings, the SEC recently issued two orders called Order Extending Time to Issue Decision on June 3, 2024[6] and September 3, 2024[7] respectively. Regarding the Form 10 Proceedings, the SEC is still unable to make a ruling on the CryptoFed's motion filed on December 15, 2021, nearly three years ago. Since December 2023, CryptoFed has sent 10 monthly letters to urge the SEC to make a ruling.[8]

After effectively deterring the SEC's unlawful proceedings, CryptoFed formally notified the SEC on September 4, 2024, that CryptoFed will launch its Locke tokens within the State of Wyoming after November 15, 2024, unless the SEC informs CryptoFed of their opposition by November 4, 2024, emphasizing, "The Commission's ongoing indecision and non-decision have proven that the Commission is unable to enforce existing federal securities laws and regulations against CryptoFed. In other words, **the Commission has no jurisdiction over CryptoFed's tokens**." [9] In this notification to the SEC, CryptoFed also attached an Invitation and Disclosure

[5] Available at https://www.ojp.gov/ncjrs/virtual-library/abstracts/guidelines-and-rule-law-claims-under-accardi-doctrine-violations#:~:text=The%20%22Accardi%22%20decision%20requires%20that,when%20it%20is%20not%20expedient.

[6] Available at https://www.sec.gov/files/litigation/opinions/2024/33-11288.pdf

[7] Available at https://www.sec.gov/files/litigation/admin/2024/33-11300.pdf

[8] *See* the ninth letter available at https://www.sec.gov/files/litigation/apdocuments/3-20650-2024-08-22-letter.pdf

[9] Available at page 2-3, the SEC's public docket, https://www.sec.gov/files/litigation/apdocuments/3-20650-2024-09-05-letter.pdf

Letter to large US merchants' attendees who participated in MAG Payments Conference 2024,[10] outlining CryptoFed's launch plan.

II
The *Howey* Test

During his testimony, Director Crossman stated, "We have asked numerous times to retain a counsel."[11] There is no such Wyoming statute or regulation which requires counsel representation as a precursor in order to receive clarity from a state government agency. Even the SEC allowed CryptoFed to represent itself in the SEC's formal proceedings, pursuant to 17 CFR § 201.102 (a).[12] To this extent, the current operation of the Secretary of State's Office is much worse than the SEC, completely denying the rule of law. Director Crossman's understanding of the *Howey* test, in which he sought to justify the legal position of the Secretary of State's Office, is not better either.

1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court emphasized, "The test is whether the scheme involves [(1)] an **investment of money** [(2)] in a common enterprise [(3)] with **profits to come solely from the efforts of others**." (emphasis added). Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely**

[10] Available at https://www.merchantadvisorygroup.org/conferences/MAG_Payments_Conference_2024

[11] Available at 12:25-12:35, https://www.youtube.com/live/hlnJDwInl6c?t=90s

[12] Available at https://www.ecfr.gov/current/title-17/chapter-II/part-201/subpart-D/subject-group-ECFRebb493a28b42e29/section-201.102

from the efforts of others," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied. However, during the testimony[13], in no instance did Director Crossman demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs in the *Howey* test.

No "**investment of money"** in CryptoFed will occur, because the Locke token distribution is free of charge. Furthermore, **"profits to come solely from the efforts of others"** will not occur, because CryptoFed's contributors will make their own efforts in exchange for Locke tokens. At least two of the three prongs required in the *Howey* test cannot be satisfied. Director Crossman stated, "we agree that CryptoFed under their proposed scheme the contributors do not invest fiat money by providing money or other assets in exchange for Locke token."[14] Director Crossman also implicitly agreed with CryptoFed that **"profits to come solely from the efforts of others"** will not occur, because he stated, "I don't have a full understanding what those services are. They did say related to services or things rendered, not money" and contributors "have made, are making and will make non-monetary contributions", quoting CryptoFed.[15] **Therefore, Director Crossman has unintentionally and unknowingly proven that the distribution of Locke tokens cannot satisfy the first and the third prongs of *Howey*, and consequently cannot be an investment contract under *Howey*.**

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[13] Available at 1:06-22:18, https://www.youtube.com/live/hlnJDwInl6c?t=90s

[14] Available at 5:05 – 5:16, *ibid.*

[15] Available at 6:01-6:12, *ibid.*

Obviously, Director Crossman failed to understand that the exchange of value, e.g. an investment of money, *alone* does not make the Locke token distribution an investment contract, when he stated, "The token distribution clearly is being made in exchange for some value. Therefore, we do not agree that the first prong of *Howey* test is avoided by their free of charge distribution."[16] Here, Director Crossman completely ignored the fact that the value of services provided by CryptoFed's contributors in exchange for Locke tokens, makes it impossible for CryptoFed's Locke token distribution to satisfy the third prong of the *Howey* test, e.g. **"**profits to come ***solely*** from the efforts of others**",** even if the first prong, e.g. an investment of money might somehow be met by the value of services. **By wrongly reducing three prongs to a single prong of the *Howey* test,** Director Crossman falsely expanded the applicable scope of the *Howey* test, resulting in absurd conclusions. Under Director Crossman's interpretation of the *Howey* test, even the value of services provided by workers in exchange for compensation (wages, salaries, etc.) would be categorized as investment contracts and workers' compensation would be deemed to be securities.

Furthermore, to become a true, decentralize and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors in a large scale. Thus, by receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary tasks on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. Therefore, the third prong of the *Howey* test, e.g. **"**profits to come ***solely*** from the efforts of others**"** will never be satisfied, to the extent that CryptoFed's contributors must make their own efforts by performing the indispensable task of receiving Locke tokens.

[16] Available at 6:12-6:23, *ibid.*

Director Crossman's testimony above failed to comprehend the fact that the inherent and core task to decentralize CryptoFed, can only be effectively performed by its contributors' own efforts through receiving Locke governance tokens, free of charge.

2) The Ruling of *SEC v. Ripple Labs*

In *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[17] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).
>
> Here, the record shows that recipients of the Other Distributions **did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).
>
> Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[18] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent,

[17] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf

[18] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

Judge Torres's ruling should be respected, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Director Crossman's interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*. In response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the Secretary of State's Office has done its best to do the exact opposite. Hence, realizing the Secretary of State's Office took a DAO-unfriendly position of arbitrary and discriminatory enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[19]

3) A Wyoming DAO under the Definition of Securities

Wyo. Stat. § 17-4-102 (a) (xxviii) (E) states, a security

> Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company…

In his testimony, Director Crossman inaccurately quoted the same definition, removing from and adding language to the statute[20], stating:

> a security includes an investment contract which itself includes both the *Howey* test and also "an interest in a limited liability company."

[19] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

[20] Available at 6:44-6:55, https://www.youtube.com/live/hlnJDwInl6c?t=90s

Therefore, it is indisputable that "an interest in a limited liability company" is categorized as an investment contract and hence is deemed a security. However, CryptoFed's Locke token **does not have** "an interest in a limited liability company."

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

CryptoFed's operating agreement which is entitled CryptoFed Constitution[21] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).

> A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[22]
>
> **A Token is a digital representation of value or rights,**
>
> (i) that has a transaction history that:
>
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
>
> (B) has transactions confirmed through an independently verifiable process; and
>
> (C) cannot be modified;
>
> (ii) that is capable of being transferred between persons without an intermediary party; and
>
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).

> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any**

[21] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

[22] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

> **individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

As a result, Locke token does not represent "**a member's ownership right in a decentralized autonomous organization"**, e.g. **an interest in American CryptoFed DAO, LLC,** defined by Wyo. Stat. § 17-31-102 (a) (vi) cited above. Hence, CryptoFed's Locke token is not an investment contract and thus not a security.

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:

> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[23] (emphasis added). By eliminating the underlying fiduciary duties, no member acts in other members' or the DAO's best financial interests. Hence, in a Wyoming DAO, each member acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming DAO to satisfy the third prong of *Howey* test, e.g. **"profits to come *solely* from the efforts of others."** *As a result, in a statutorily established Wyoming DAO, such as CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities*.

[23] Available at https://www.law.cornell.edu/wex/fiduciary_duty

During his testimony, Director Crossman incorrectly stated, "The Wyoming DAO is merely an instance of limited liability company,"[24] and furthermore "the Locke token is a per se security, at least under this analysis." These statements of Director Crossman not only completely deny a Wyoming DAO's unique characteristics as required, defined and created by the Wyoming legislation for DAOs, but also completely ignored Locke token's unique characteristics as defined by CryptoFed's Constitution, e.g. CryptoFed's operating agreement. The fiduciary duty in a traditional LLC is eliminated by Wyo. Stat. § 17-31-110 for Wyoming DAOs. An interest in a Wyoming DAO is eliminated by Section 4.6 of CryptoFed Constitution under the guidance of the definition of Wyo. Stat. § 17-31-102 (a) (vi). Hence the Wyoming legislation for DAOs enables CryptoFed to organize a collection of individuals and entities around the principles of decentralization, autonomy, independence and transparency which are sufficient to nullify the fundamental characteristics of a traditional Wyoming LLC. Thus, it is impossible to brush away the legal innovation empowered by the Wyoming legislation for DAOs and simply categorize CryptoFed as "merely an instance of limited liability company," and Locke token as "a per se security", as Director Crossman did in his testimony.

4) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors

During his testimony, Director Crossman stated, "as CryptoFed explicitly laid out in their plan, their idea is for the recipient to create a secondary market…" and then quoted the SEC to justify his position.[25]

[24] Available at 6:56 -7:02 & 7:44 -7:51, https://www.youtube.com/live/hlnJDwInl6c?t=90s

[25] Available at 8:35 - 9:06, *ibid.*

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[26], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[27]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but that element alone is not sufficient. **What about the investment of money?** (emphasis added).

When testifying on the issue of a secondary market, Director Crossman completely ignored the first prong of the *Howey* test. Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money."** *As a result, an investment contract does not exist, and consequently*

[26] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[27] Available at p.43, *ibid*.

CryptoFed's Locke tokens cannot be considered as securities in secondary market sales of crypto tokens.

III
Conclusion

For all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the Secretary of State's Office. Please officially inform CryptoFed whether the Secretary of State's Office agrees with CryptoFed's conclusion by November 30, 2024 or the next Select Committee meeting, whichever is earlier. If the Secretary of State's Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statues and legally binding precedents.

Currently, the only legal binding responses received from the Secretary of State's Office were Deputy Secretary Naiman's two emails dated December 8, 2023 and August 1, 2024, respectively, which: declined to provide clarification; created a vague situation lacking fair notice as to what CryptoFed should do in order to comply with the Wyoming Uniform Securities Act; and consequently invalidated the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.[28] Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the Secretary of State's Office.

[28] Available at Exhibit C, p. 6-7, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the Secretary of State's Office and appreciates all the help of the Secretary of State's Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

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October 28, 2024
Via Electronic Email

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Re: Request for Clarity on Intrastate Token Issuance within Wyoming

Dear Secretary Gray, Deputy Secretary Naiman, Director Janes and Director Crossman,

Thank you for the legal analysis dated October 17, 2024 ("SoS Legal Analysis") which was sent to American CryptoFed DAO ("CryptoFed") by Deputy Secretary Naiman via email. The SoS Legal Analysis stated at the first page and the last page the following respectively.

> However, based on your testimony during the **Blockchain Committee's meeting on September 16**, the following analysis is intended to articulate, in writing, what we have discussed multiple times with you and in front of the committee. (p.1, emphasis added).
>
> We are currently engaging with the **Wyoming Attorney General's Office** about this issue, and our authority to enforce the Wyoming Uniform Securities Act under W.S.17-4-604. (p.5, emphasis added).

Therefore, in this rebuttal letter, CryptoFed has copied the Wyoming Attorney General's Office (AG Office) and the Wyoming Legislature Select Committee on Blockchain, Financial Technology and Digital Innovation Technology ("Select Committee") to bring all stakeholders together to seek indisputable clarity from the Wyoming Secretary of State's Office ("SoS Office"), to narrow down the core differences, and to search for a constructive solution, because the SoS Legal Analysis creates more confusion than clarity.

The SoS Legal Analysis misapplied the Wyoming Limited Liability Company Act ("LLC Act"), even without citing any provisions of the LLC Act or any legally binding precedent, by completely disregarding the core provisions of the Wyoming Decentralized Autonomous Organization Supplement ("DAO Law") in its so-called *per-se* analysis (pp.2-3). In addition, the SoS Legal Analysis misinterpreted the case of *International Bhd. of Teamsters. v Daniel, 439 U.S. 51, 560 (1979)* in its so-called flexible and less strict *Howey* test by disregarding the US Supreme Court's opinion holding, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." After rebutting, point-by-point, the arguments of the SoS Legal Analysis, CryptoFed urges the SoS Office to answer the nine (9) essential questions which are inevitably raised by the SoS Legal Analysis by November 8, 2024, to provide clarity. People in the State of Wyoming as a DAO-friendly jurisdiction demand and deserve this legal clarity which will have a decisive and profound impact on the prosperity of Wyoming DAOs in general and CryptoFed in particular.

I
Public Hearing before the Office of Administrative Hearings

Given that the SoS is already engaging with the AG Office to enforce the Wyoming Uniform Securities Act under Wyo. Stat. § W.S.17-4-604, unless the SoS Office and CryptoFed

can reach an agreement on or before November 8, 2024, here in this rebuttal letter, CryptoFed proactively and formally submits its request for a public hearing pursuant to Wyo. Stat. § 17-4-604 (b). For this purpose, CryptoFed further requests that,

1) the SoS Office issues a **cease and desist order** pursuant to Wyo. Stat. § 17-4-604 (a)(i) on or before November 8, 2024.
2) the SoS Office issues an order for public hearing pursuant to Wyo. Stat. § 17-4-604 (b) on or before November 8, 2024 to make CryptoFed's request for public hearing effective.
3) this public hearing will be conducted by and before the Office of Administrative Hearings ("OAH") rather than the SoS Office, because the OAH's Mission Statement[1] declares its function as below:

> The sole function of the OAH is to conduct fair and impartial contested case hearings statewide in disputes between Wyoming's residents or guests and state governmental agencies. The OAH is uniquely situated to act as an independent, impartial hearing authority because it is a separate operating agency with no agency interest in the substantive issues presented in any of the cases it hears. The parties are therefore assured a neutral process that will favor neither side.

4) the hearing officer be an independent and impartial hearing examiner from the OAH, instead of any presiding officer designated by the SoS Office.
5) the SoS Office and CryptoFed stipulate that there is no need for discovery, and there is no factual dispute over the characteristics of the Locke token distribution and relevant elements which were summarized in the the SoS Legal Analysis (pp.1-2).
6) the SoS Office and CryptoFed stipulate to resolve the key differences through summary disposition as a matter of law, pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 19, because there is no factual dispute.

[1] Available at https://oah.wyo.gov/

7) the SoS Office and CryptoFed stipulate that the public hearing will be held in the early January 2025 so that a final order pursuant to Wyo. Stat. § 17-4-604 (c) will be issued on or before January 31, 2025. This expediency is needed, given that the SoS Office has declined to answer CryptoFed's specific question in writing on December 8, 2023 and August 1, 2024 respectively, and finally delivered its written opinion on October 17, 2024, only after CryptoFed's two prior testimonies before the Select Committee on July 1, 2024 and September 16, 2024 regarding the SoS Office's obligation to provide clarity, and under the admonishment by both of the Select Committee's Chairs.

8) the SoS Office and CryptoFed stipulate that the filing and service of papers can be accomplished electronically via email pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 11.

As CryptoFed's organizers, Scott Moeller and Xiaomeng Zhou will appear as CryptoFed's representatives pursuant to the practice and procedure of OAH Rules, Chapter 2, Section 2 (i) and Section 9 (a).

II
The Wyoming Statutory Analysis

The SoS Legal Analysis provided a statutory analysis on CryptoFed's Locke token. However, the analysis completely ignored the core provisions of the DAO Law and misapplied the LLC Act to the specific situation of CryptoFed's Locke token.

1) The Departure of a Wyoming DAO from a Traditional Wyoming LLC

The SoS Legal Analysis stated:

> The Wyoming DAO is **merely an instance of a Limited Liability Company** (W.S. 17-31-102(a)(ii)). (emphasis added, p. 2).

This is not so, to the extent that the LLC Act does not apply to a Wyoming DAO.

The DAO Law codified as Wyoming Statutes, Title 17, Chapter 31, enables a new type of organization which is fundamentally different from a traditional Wyoming LLC.

i. Wyo. Stat. § 17-31-104 requires a notice to appear in the Articles of Organization to explicitly state:

> The rights of members in a decentralized autonomous organization **may differ materially from the rights of members in other limited liability companies**. (emphasis added).

ii. To ensure the DAO Law prevails where there is any conflict between the provisions of the DAO Law and the LLC Act, Wyo. Stat. § 17-31-103(a) explicitly states:

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Therefore, a Wyoming DAO can be completely different from a traditional Wyoming LLC in nature, because under the DAO Law, a Wyoming DAO, such as CryptoFed, can have a particular arrangement of member's rights so that CryptoFed can lawfully eliminate membership in CryptoFed and become a DAO with no members, which is impossible under the LLC Act. Simply put, the DAO Law will trump a conflicting provision in the LLC Act.

2) An Interest in an LLC under the DAO Law

Wyo. Stat. § 17-31-102 (a) (vi) defines "an interest in a limited liability company" as below:

> "Membership interest" means **a member's ownership right in a decentralized autonomous organization**, **which may be determined by** the organization's articles of organization or **operating agreement** or ascertainable from a blockchain on which the organization relies to determine a member's ownership right. (emphasis added).

Therefore, pursuant to Wyo. Stat. § 17-31-102 (a) (vi) above, a member's interest must be **a member's ownership right** in a DAO which is economic in nature, because "Ownership is the legal right to use, possess, and give away a thing."[2] Therefore, the SoS Legal Analysis' statement that "An interest in a limited liability company need not be economic in nature" is incorrect.

3) Elimination of Locke Token's Interest in CryptoFed

Under Wyo. Stat. § 17-31-102 (a) (vi), "'Membership interest' means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**…". (emphasis added). Therefore, Wyo. Stat. § 17-31-102 (a) (vi) allows a DAO's operating agreement to enjoy full flexibility and freedom to determine a member's ownership right. Therefore, it is permissible for CryptoFed's operating agreement to explicitly eliminate Locke token's interest in CryptoFed by extinguishing the ownership right, e.g. the membership in CryptoFed.

CryptoFed's operating agreement which is entitled CryptoFed Constitution[3] and was filed on September 16, 2021 with the SEC, states:

> This American CryptoFed DAO LLC Constitution ("Constitution"), including the future smart contracts to execute them, is **the operating agreement for CryptoFed**, effective on September 15, 2021. (emphasis added, Section 2, p.2).

[2] Available at https://www.law.cornell.edu/wex/ownership#:~:text=Ownership%20is%20the%20legal%20right,such%20as%20intellectual%20property%20rights.

[3] Available at Section 4.6, p.4, https://www.sec.gov/Archives/edgar/data/1881928/000188192821000001/Exhibit1_ACFDAOConstitution.pdf

A token is defined as below, adopting the definition in the Token Safe Harbor Proposal 2.0 published by the U.S. Securities and Exchange Commission (SEC) commissioner Hester Peirce:[4]

> **A Token is a digital representation of value or rights,**
> (i) that has a transaction history that:
> (A) is recorded on a distributed ledger, blockchain, or other digital data structure;
> (B) has transactions confirmed through an independently verifiable process; and
> (C) cannot be modified;
> (ii) that is capable of being transferred between persons without an intermediary party; and
> (iii) **that does not represent a financial interest in a company, partnership, or fund, including an ownership or debt interest, revenue share, entitlement to any interest or dividend payment.** (emphasis added, Section 3.3, pp.2-3).

> **Locke tokens represent citizenship, not ownership**. Locke tokens represent voting power on the future of CryptoFed. No matter how acquired, simply holding Locke tokens grants access to voting in governance matters. **Under no circumstances, should any individuals, entities, natural persons or legal persons claim ownership of CryptoFed**." (emphasis added, Section 4.6, p.4).

As a result, Locke token holders' interest in CryptoFed is eliminated by Section 3.3 and Section 4.6 of CryptoFed Constitution under the guidance, permission and definition of Wyo. Stat. § 17-31-102 (a) (vi). Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, the elimination of Locke token's interest in CryptoFed will prevail, because Wyo. Stat. § 17-31-103(a) explicitly states,

> The Wyoming Limited Liability Company Act applies to decentralized autonomous organizations **to the extent not inconsistent with the provisions of this chapter**… (emphasis added).

Hence, given that Locke token does not represent **an interest in American CryptoFed DAO, LLC, e.g. "a member's ownership right in a decentralized autonomous organization"** defined by Wyo. Stat. § 17-31-102 (a) (vi), even if the SoS Legal Analysis' statement that "an

[4] Available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20

interest in a DAO is *per se* a security under W.S. 17-4-102(a)(xxviii)(E)," is correct, Wyo. Stat. § 17-4-102 (a) (xxviii) (E) stating "an interest in … a limited liability company …" as an investment contract, does not apply to CryptoFed's Locke tokens.

As a matter of fact, Sections 3.3, 4.1 and 4.6 of CryptoFed Constitution collectively have the effectiveness to eliminate membership of MShift, Inc. which is the sole member of CryptoFed as the founding organization. As a result, CryptoFed will become a DAO with no members in full compliance with the DAO Law.

4) Membership Interest, Voting Right and Economic Right

Under the DAO Law, **a voting right can exist independently without a membership interest and an economic right**.

The term "**Membership Interest**" appears on Wyo. Stat. § 17-31-102(a)(v), (vi) & (ix); Wyo. Stat. § 17-31-106(c)(vi); Wyo. Stat. § 17-31-111(i) & (ii); and Wyo. Stat. § 17-31-113(c), (d)(i) & (ii). The term "**Voting Right**" appears on 17-31-106(c)(v) and 17-31-113(d)(i) & (ii). The term "**Economic Right**" appears on 17-31-113(c) and (d)(i) & (ii). **Each of these terms must have its own particular and independent meaning,** according to the interpretive canon of the rule against surplusage, e.g. surplusage canon, which requires courts to give each word and clause of a statute operative effect, if possible. Both the Wyoming Supreme Court and the US Supreme Court have upheld the surplusage canon.

In *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), the Wyoming Supreme Court held, "Furthermore, it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and **every word, clause, and sentence must be construed so that no part is inoperative or superfluous**." (emphasis added). In *Montclair v. Ramsdell,* 107 U. S.

147, 152 (1883), the US Supreme Court held, "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed." In *Bailey v. United States*, 516 U.S. 137, 146 (1995), the US Supreme Court held, "We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."

Moreover, the provisions of the DAO Law permit CryptoFed's operating agreement, e.g. CryptoFed Constitution, to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**.

Wyo. Stat. § 17-31-102 (a) (vi) stated,

> "Membership interest" means a member's ownership right in a decentralized autonomous organization, which **may be determined by … operating agreement**...

Wyo. Stat. § 17-31-113 (d) states:

> Where the articles of organization, **operating agreement**…for a decentralized autonomous organization **do not specify the manner** by which a person:
>
> (i) Becomes a member of a decentralized autonomous organization, a person shall be considered a member if the person purchases or otherwise assumes a right of ownership of **a membership interest** or **other property** that confers upon the person **a voting or economic right** within the decentralized autonomous organization. (emphasis added).

Given that the provisions of the DAO Law cited above permit a DAO's operating agreement to enjoy full flexibility and freedom to determine the particular and independent meaning of "**Membership Interest", "Voting Right" and "Economic Right"**, it is permissible for CryptoFed's operating agreement, e.g. CryptoFed Constitution, to explicitly create Locke token's voting right without "**Membership Interest"** and **"Economic Right"**. CryptoFed Constitution has done so through Section 3.2, p. 2, Section 3.3, pp.2-3, and Section 4.6, p.4.

Even if somehow, there is any conflict between provisions of the LLC Act and the CryptoFed Constitution lawfully established under the DAO Law, CryptoFed Constitution will prevail, pursuant to Wyo. Stat. § 17-31-103(a) cited above. As a result, under the DAO Law, the following statements of the SoS Legal Analysis are incorrect:

> "It is an extremely common practice in the LLC world to classify **membership interests**, resulting in the bifurcation of LLC interests into **voting (governance) rights** and **economic rights**. (emphasis added, p.2)."
>
> Even a total severing of the economic rights does not save the Locke token from W.S. 17-4-102(a)(xxviii)(E). This is both because the voting rights ***are themselves an interest in the LLC*** which satisfies that provision, and also because through application of the voting rights the economic rights can be later recombined with the voting rights. (emphasis in original, p.3).

The statements above may not be deemed true even under the LLC Act, because the SoS Legal Analysis did not provide any statutory provision of the LLC Act, or any legally binding precedent (case law) to substantiate the statements. However, here, whether the statements of the SoS Legal Analysis above are correct under the LLC Act, is irrelevant. It is the DAO Law that governs.

As a result, an essential question must inevitably be raised as below.

Question 1:

Given that "it is a fundamental rule of statutory interpretation that all portions of an act must be read in pari materia, and every word, clause, and sentence must be construed so that no part is inoperative or superfluous," *Deloges v. State,* 750 P.2d 1329, 1331 (Wyo. 1988), what is the legal basis for the SoS Legal Analysis to **completely disregard the core provisions of the DAO Law**, such as Wyo. Stat. § 17-31-102 (a) (vi), 17-31-113 (d), 17-31-104 and 17-31-103(a), and solely apply the LLC Act, without citing any statutory provisions of LLC Act or any legally binding precedent, to CryptoFed's Locke token to reach the conclusion that "the voting rights ***are themselves an interest in the LLC"*** (emphasis in original, p.3)?

The misapplication of the LLC Act and the disregard for the DAO Law have led to unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.

III
The *Howey* Test

While the SoS Legal Analysis completely misapplied the LLC Act and disregarded the DAO Law in its so called *per-se* analysis (pp.2-3), its application of the *Howey* test was not any better.

1) The Three Prongs of the *Howey* Test

In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) at 301, the US Supreme Court emphasized, "The test is whether the scheme involves [(1)] an **investment of money** [(2)] in a common enterprise [(3)] with **profits to come solely from the efforts of others**." (emphasis added). Fifty-seven years after *Howey*, the US Supreme Court repeated that it looks to "whether the scheme involves an **investment of money** in a common enterprise with **profits to come solely from the efforts of others**," *SEC v. Edwards*, 540 U.S. 389, 393 (2003), quoting *Howey*, 328 U.S. at 301. (emphasis added). An investment contract exists in a specific transaction, when, and only when the three prongs are simultaneously satisfied.

The SoS Legal Analysis at p. 3 and p. 4 stated respectively:

> First, as mentioned above, Wyoming's statutes incorporate a less strict variant of the *Howey* test (W.S. 17-4-102(a)(xxviii)(D)).
>
> Here, we note that the Wyoming statutory instantiation of the *Howey* test in W.S. 17-4-102(a)(xxviii)(D) is significantly broader on all metrics than the federal test. It requires "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from others. (emphasis added).

To narrow down the core disputable differences, CryptoFed agrees to the SoS Legal Analysis' statements above. As a result, the so called "a less strict variant of the *Howey* test"

(p.3) becomes: "an investment" (with no mention of money), in a "common enterprise", with "profits to be derived *primarily*" from the efforts of others.

However, as proved in the following analysis, even measured by this "a less strict variant of the *Howey* test", in no instance did the SoS Legal Analysis demonstrate that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, would simultaneously satisfy all the three prongs. As a result, in CryptoFed, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities. Given that at least the first prong and third prong required in the less strict variant of the *Howey* test cannot be satisfied, it is not necessary to reach the analysis of the second prong, for the time being.

A) The First Prong – An Investment

No "**investment"** in CryptoFed will occur, because not only is the Locke token distribution free of charge, but also because the services provided by the contributors are the acts of i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting.

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in which the US Supreme Court stated, "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment." *Ibid*. Hence, clearly not **any exchange of value** can be categorized as "making an investment". At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs. As a result, the following statement of the SoS Legal Analysis at p. 3 is incorrect:

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services.") (emphasis added).

As a result, an essential question must inevitably be raised as below.

Question 2:

What is the legal basis for the SoS Legal Analysis to conclude through the above statement that the "investment of money" is **any exchange of value**?

By categorizing **"any exchange of value"** as an "investment of money", the SoS Legal Analysis failed to provide clarity as to what exchange of value is an "investment of money" or "an investment" and what is not. **This failure has led to an unlawful, arbitrary and discriminatory handling of CryptoFed by the SoS Office for more than a year.**

CryptoFed's contributors provide their services by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting. It is reasonable to determine that CryptoFed's contributors, both individuals and entities, perform their services by "selling [their] labor primarily to obtain a livelihood, not making an investment". *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979). Hence, the first prong of *Howey* test cannot be satisfied in CryptoFed's distribution to its contributors.

As a result, an essential question must inevitably be raised as below.

Question 3:

How can CryptoFed contributors' service of receiving Locke tokens to decentralize CryptoFed be an investment in CryptoFed by the contributors, not being paid by CryptoFed for their services instead?

B) The Third Prong - Profits to Be Derived Primarily from the Efforts of Others

Because CryptoFed's contributors must primarily depend on their own efforts by i) receiving Locke tokens for achieving CryptoFed's decentralization and ii) performing governance functions via proposing and voting, **"profits to be derived *primarily* from" the efforts of others** will not occur.

To become a true, decentralized and autonomous organization, CryptoFed must distribute its governance tokens to a mass of contributors on a large scale. Thus, by simply receiving Locke governance tokens from CryptoFed alone, CryptoFed's contributors already perform one of the most primary services on behalf of CryptoFed, so that CryptoFed can move closer and closer towards a true DAO. The inherent and core task to decentralize CryptoFed, can only be effectively performed by its contributors' own voluntary efforts through receiving Locke governance tokens, free of charge. For this specific decentralization service, it is impossible for CryptoFed's contributors, without receiving the Locke tokens, to expect profits from the efforts of others. In other words, if CryptoFed's contributors elected to depend on the efforts of others by refusing to receive Locke tokens, they would not own any Locke tokens to expect "**profits to be derived *primarily* from" the efforts of others**. Thus, the third prong of *Howey* test will never be satisfied.

As a result, an essential question must inevitably be raised as below.

Question 4

For the specific decentralization service, how is it possible for CryptoFed's contributors, without their own primary efforts of performing the services of receiving the Locke tokens, to

expect their own "**profits to be derived primarily from the efforts of a person other than the investor"** specified in Wyo. Stat. § 17-4-102(a)(xxviii)(D)?

In addition, in a process of ongoing decentralization, potentially, every vote and every proposal may have an important impact on CryptoFed's future. Because CryptoFed's contributors are the holders of the Locke tokens, it is impossible for them to expect others to provide the services of performing governance functions via proposing and voting. CryptoFed's contributors themselves **must** provide the services of performing governance functions via proposing and voting. In other words, it is impossible for them to expect "**profits to be derived *primarily*" from the efforts of others.**

Furthermore, a Wyoming DAO by statute has a fundamental difference compared to a traditional Wyoming LLC. Wyo. Stat. § 17-31-110 entitled "standards of conduct for members" specified:

> Unless otherwise provided for in the articles of organization or operating agreement, **no member of a decentralized autonomous organization shall have any fiduciary duty to the organization or any member** except that the members shall be subject to the implied contractual covenant of good faith and fair dealing." (emphasis added).

To be clear, "When someone has a fiduciary duty to someone else, the person with the duty must act in a way that **will benefit someone else financially**."[5] (emphasis added). By eliminating the underlying fiduciary duties, in a Wyoming DAO, no matter whether a participant is members or not, no participant acts in other's or the DAO's best financial interests. Hence, in a Wyoming DAO, such as CryptoFed, each participant acts for his own best financial interests. To this extent, a Wyoming DAO's departure from a traditional Wyoming LLC is foundational and goes to the core of its existence. Thus, Wyo. Stat. § 17-31-110 makes it impossible for a Wyoming

[5] Available at https://www.law.cornell.edu/wex/fiduciary_duty

DAO to satisfy the third prong of *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others.**

To the extent that CryptoFed's contributors must rely on their own efforts by performing the indispensable service of receiving Locke tokens for achieving CryptoFed's decentralization and performing important governance functions via proposing and voting, and to the extent that in a Wyoming DAO, due to the elimination of fiduciary duty, each participant acts for his own best financial interests, the third prong of the *Howey* test, e.g. with the expectation of "**profits to be derived *primarily*" from the efforts of others** will never be satisfied.

As a result, an essential question must inevitably be raised as below.

Question 5

How can CryptoFed contributors' service of performing governance functions via proposing and voting be categorized as an investment in CryptoFed by the contributors, and not be categorized as an action of executing Locke token holders' own voting rights instead?

2) The Ruling of *SEC v. Ripple Labs*

The SoS Legal Analysis at p. 3 cited *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979) to justify the following statement,

> That flexibility has been interpreted to incorporate situations where the "investment of money" is **any exchange of value**, which would include compensation for services or other value provided to the issuer. *See International Bhd. of Teamsters .v Daniel, 439 U.S. 51, 560 n.12 (1979)* ("This is not to say that a person's investment, in order to meet the definition of an investment contract, must take the form of cash only, rather than of goods and services."). (emphasis added, p.3).

However, to the contrary, the US Supreme Court rejected the SoS Legal Analysis' view that **any exchange of value** is an investment, by emphasizing "Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an

investment." *Ibid*. At least, services "selling his labor primarily to obtain a livelihood", are not "making an investment", although an exchange of value occurs.

Similarly, citing the same *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), in *SEC v. Ripple Labs*, Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued an order on July 13, 2024,[6] finding that distributions of digital assets to employees and third parties as compensation do not satisfy the first prong of *Howey*:

> These Other Distributions include **distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger**. (emphasis added, p.26).
>
> "In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551, 560 (1979). **Here, the record shows that recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.** (emphasis added, p.26).
>
> Therefore, having considered the economic reality and totality of circumstances, the Court concludes that **Ripple's Other Distributions did not constitute the offer and sale of investment contracts.** (emphasis added, p.27).

In an order dated October 3, 2023,[7] Judge Torres denied the SEC's request for certifying interlocutory appeal, further emphasizing:

> Applying that standard, the Court concluded that "the record shows that recipients of the Other Distributions **did not pay money *or* 'some tangible and definable consideration' to Ripple**." Order at 26 (emphasis added, p.8).

Judge Torres of the U.S. District Court for the Southern District of New York has jurisdiction over Wall Street, the epicenter of the securities market in the U.S and the world. To this extent,

[6] Available at p. 26-27, https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%207-13-23.pdf

[7] Available at p.8, https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0_1.pdf

Judge Torres's ruling should be respected by the SoS Office, although the State of Wyoming is under the jurisdiction of a different U.S. District Court. Surprisingly, the SoS Legal Analysis' interpretation of *Howey* directly contradicts Judge Torres's ruling in *SEC v. Ripple Labs*.

As a matter of a fact, more than one year ago, in response to CryptoFed's request for Director Colin Crossman's comments on Judge Torres's ruling, Deputy Secretary Naiman responded in an email dated October 16, 2023, "Unfortunately, Colin is indisposed and is unable to provide comment on this matter." To this extent, instead of drawing all reasonable inferences in a Wyoming DAO's favor, the SoS Office has done its best to do the exact opposite. Hence, realizing the SoS Office took a DAO-unfriendly position of arbitrary and discriminatory enforcement, in November 2023, CryptoFed had no choice but to petition the Select Committee to incorporate Judge Torres's ruling into Wyoming DAO legislation.[8]

Given that the SoS Legal Analysis, to justify its argument, cited court cases of the US Court of Appeals for the Ninth Circuit at note 4, p.4 and the US District Court for the Southern District of Ohio at p. 4, both of which have no jurisdiction over the State of Wyoming, the court's jurisdiction should not be an issue for the SoS Legal Analysis. Given that the order of Judge Analisa Torres and the SoS Legal Analysis cited the same case of the US Supreme Court, *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979), but reached the opposite conclusion, the SoS Office failed to provide clarity as to why the difference could occur; as to why a conclusion that differs from a ruling by a U. S. District Court judge should be valid; as to why the order of Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued on July 13, 2024 in *SEC v. Ripple Labs*, cannot be adopted and applied to Wyoming

[8] Available at https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

DAOs in general and CryptoFed in particular. This difference in applying the same case of the US Supreme Court to Wyoming DAOs matters, because it may decide the future of all Wyoming DAOs in general and CryptoFed in particular. It is highly possible the SoS Office misinterpreted the case of the US Supreme Court, as CryptoFed has demonstrated.

As a result, an essential question must inevitably be raised as below.

Question 6

What criteria has the SoS Legal Analysis used in applying the same case of the US Supreme Court to CryptoFed, and how could this difference occur unless the Wyoming Secretary of State's Office misinterpretted the case of the US Supreme Court's opinion in *International Bhd. of Teamsters. v Daniel*, 439 U.S. 51, 560 (1979)?

3) A Secondary Market of Locke Tokens Created by CryptoFed's Contributors

The SoS Legal Analysis' secondary market arguments at pp.4-5, assumed that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4). However, as proved in this CryptoFed point-by-point rebuttal, the SoS Legal Analysis' assumption is incorrect. Furthermore, the SoS Legal Analysis' secondary market arguments were also based on a few hypothetical conditions surmised by the SoS Office below:

> CryptoFed may choose to abandon a system of providing the Locke token in exchange for such services, and instead attempt a generally "free" distribution unlinked to any services or contribution. This kind of distribution is commonly called a "free security" or an "Airdrop." (p.4).
>
> Furthermore, styling the airdrop as a "gift" does not provide any relief. (p.5).

These hypothetical conditions not only are untrue, but also relied on the incorrect assumption that "the Locke token is a security under both a *Howey* and a Wyoming statutory analysis." (p.4).

Therefore, at least for the time being, there is no need to further discuss the SoS Legal Analysis' secondary market arguments based on an incorrect assumption and untrue hypothetical conditions, which unnecessarily cause more confusion than clarity. What is really needed is the analysis as to whether the transaction of Locke tokens in the secondary market could satisfy the three prongs of *Howey* test simultaneously, under the condition that Locke token itself is not a security.

In *SEC v. Binance*, on June 28, 2024, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia, issued an order[9], dismissing the SEC's claims relating to secondary market sales of crypto tokens:

> **Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the *Howey* framework that leaves the Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren't**. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract." (emphasis added).

Judge Jackson further pointed out that in secondary market sales of crypto tokens, the common enterprise does not receive the investment of money, meaning that the first prong of the *Howey* test cannot be met:[10]

> The SEC argues in its opposition and at the hearing that there were ongoing representations about the superiority of the platform that allegedly gave the tokens their value, but more is needed. It may well be, as the government maintains, that the "common enterprise" is ongoing, since the fortunes of all token holders rise and fall together and that their fortunes are largely tied to those of the company and its platform or "ecosystem," but

[9] Available at p. 42-43, https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.248.0_1.pdf

[10] Available at p.43, *ibid*.

> that element alone is not sufficient. **What about the investment of money?** (emphasis added).

Independent of the values exchanged in secondary market sales of crypto tokens, the fundamental fact is that CryptoFed will not receive an **"investment of money" or "an investment",** making it impossible to satisfy the first prong of *Howey* test, e.g. the **"investment of money" or "an investment".** As a result, an investment contract does not exist, and consequently CryptoFed's Locke tokens cannot be considered as securities in secondary market sales of crypto tokens. Unless the SoS Office considers all crypto tokens to be securities except Bitcoin, it has failed to provide clarity as to what is security and what is not in the secondary market.

As a result, an essential question must inevitably be raised as below.

Question 7

Unless the SoS Office considers all crypto tokens are securities except Bitcoin, regarding secondary market sales of crypto tokens, why can't the order of Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia issued on June 28, 2024 in *SEC v. Binance*, be adopted and applied to Wyoming DAOs in general and CryptoFed in particular, under the condition that a crypto token is not security?

IV
The SoS Office's Obligation to Provide Clarity

The SoS Legal Analysis stated at p. 1,

> Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law.

This is not so.

The Wyo. Stat. § 17-4-605(d) authorizes the SoS Office to provide CryptoFed with clarity, but it does not authorize the SoS Office to decline to provide CryptoFed with clarity. On August 12, 2024, CryptoFed asked the SoS Office to provide **at least one legally binding precedent (case law)** to substantiate the legal position of the SoS Office that the government agencies of the State of Wyoming in general and the SoS Office in particular are allowed by law to decline to provide CryptoFed with clarity.[11] However, after more than 70 days passed since this request, the SoS Office has been unable to provide one legally binding precedent to substantiate its statement above. As the following legal binding precedents demonstrate, the SoS Office is **mandated** by the Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity.

1. The Wyoming's Supreme Court stated in *Sanchez v. State*, Wyo., 567 P.2d 270, 274 (1977) (emphasis added):

> In *State v. Gallegos,* Wyo., 384 P.2d 967, 968, we categorized some of the principles of due process previously discussed in *Day v. Armstrong*, Wyo., 362 P.2d 137, 147-148, as follows:
>
> "1. The requirement of a **reasonable degree of certainty in legislation**, especially in the criminal law, is a well-established element of the **guarantee of due process of law**.
> "2. No one may be required at peril of life, liberty or property to **speculate as to the meaning of penal statutes**.
> "3. All are entitled to be informed **as to what the state commands or forbids**.
> "4. 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.**
> "5. The constitutional guarantee of equal rights under the law (see Art. 1, §§ 2 and 3, Wyoming Constitution) will not tolerate a criminal law **so lacking in definition that each defendant is left to the vagaries of individual judges and juries**."

[11] Available at Exhibit C, p.2, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

2. The Wyoming's Supreme Court stated in *Griego v. State*, Wyo., 761 P.2d 973, 976 (1988) (emphasis added):

> We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides **sufficient notice to a person of ordinary intelligence that appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

3. The U.S. Supreme Court's opinion stated in *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358 (emphasis added):

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.** *Hoffman Estates v. Flipside, Hoffman Estates, Inc*., supra; *Smith v. Goguen*, 415 U. S. 566 (1974); *Grayned v. City of Rockford*, 408 U. S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U. S. 156 (1972); *Connally v. General Construction Co*., 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that **the more important aspect of the vagueness doctrine** "is not actual notice, but the other principal element of the doctrine — **the requirement that a legislature establish minimal guidelines to govern law enforcement**." *Smith*, 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id*., at 575.

4. The US Supreme Court's opinion stated in *Lanzetta v. New Jersey*, 306 U. S. 451 (1939) at 453, (emphasis added):

> **No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.** The applicable rule is stated in *Connally v. General Construction Co.*, 269 U.S. 385, 391: **"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement,** consonant alike with ordinary notions of fair play and the settled rules of law. And 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**."

Given that the SoS Legal Analysis has generated more questions than clarity, the SoS Office's obligation to comply with the mandate of Wyoming's Supreme Court and the U.S. Supreme Court to provide CryptoFed with clarity is far from over. However, the SoS Legal Analysis at p.1 emphasized, "Our office maintains that WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion, especially where, as explained during numerous meetings with you, such an opinion would be contrary to Wyoming law."

As a result, an essential question must inevitably be raised as below.

Question 8

Can the Secretary of State's Office provide **at least one legally binding precedent (case law)** to substantiate the legal position that the government agencies of the State of Wyoming in general and the Secretary of State's Office in particular are allowed by law to decline to provide CryptoFed with clarity regarding state laws and regulations?

V
Due Process and Void of Vagueness Doctrine

If, going forward, the SoS Office declines to provide CryptoFed with clarity, CryptoFed assumes that the SoS Office acts in good faith. Good faith here is used to encompass honest dealing and requires an honest belief, faithful performance of duties, and observance of fair dealing standards. Therefore, acting in good faith means that the SoS really does *not* know the answers to CryptoFed's questions. In other words, if the SoS had known the answers, it would have informed CryptoFed in good faith rather than declining to answer CryptoFed's questions.

In *Giles v. State*, Wyo. 96 P.3d 1027 (Wyo. 2004) ¶ 15, the Supreme Court of Wyoming stated (emphasis added):

> As identified in *Alcalde v. State*, 2003 WY 99, ¶ 13, 74 P.3d 1253, ¶ 13 (Wyo. 2003), a statute may be challenged for vagueness "on its face" or "as applied" to particular conduct. When a statute is challenged for vagueness on its face, the court examines the statute not only in light of the complainant's conduct, but also as it might be applied in other situations. **On the other hand, when a statute is challenged on an "as applied" basis, the court examines the statute solely in light of the complainant's specific conduct.**

In *Griego v. State*, 761 P.2d 973, 976 (Wyo. 1988), the Supreme Court of Wyoming stated (emphasis added):

> We must next decide whether the statute is **unconstitutionally vague as applied to appellant's conduct**. In making this determination we must decide whether the statute provides sufficient notice to **a person of ordinary intelligence** that **appellant's conduct was illegal** and whether the facts of the case demonstrate **arbitrary and discriminatory enforcement**.

Going forward, if the SoS Office is unable to answer CryptoFed's questions, not only is it impossible for CryptoFed as "a person of ordinary intelligence" (*Supra*, *Griego v. State*) to know whether its intended conduct is illegal, but also it is impossible for the SoS Office to enforce the law without "arbitrary and discriminatory enforcement". (*Supra*, *Griego v. State*). Therefore, in no event can the SoS Office enforce the Wyoming Uniform Securities Act, without violating the Due Process Law of Art. 1, § 6, of the Wyoming Constitution and the parallel Due Process Clause of the Fourteenth Amendment of the US Constitution. As a result, CryptoFed can make an as-applied constitutional challenge to the Wyoming Uniform Securities Act, and can argue that the Wyoming Uniform Securities Act is void for vagueness as applied to CryptoFed's specific conduct of distributing its Locke tokens to its contributors within the State of Wyoming (intrastate token issuance or distribution), free of charge, because the Wyoming Uniform Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the SoS Office and AG Office.

The Wyoming Legislative Service Office in a memorandum dated July 24, 2023[12] also emphasized:

> In Wyoming, **a statute is void for vagueness "if it fails to give a person of ordinary sensibility fair notice that the contemplated conduct is forbidden."** *Keser v. State*, 706 P.2d 263, 265-266 (Wyo. 1985). A statute violates **due process** if people "must necessarily guess at its meaning and differ as to its application." *Id.* at 266. **A statute may be challenged as void for vagueness** as a facial challenge (which is available only when the statute reaches a substantial amount of constitutionally protected conduct or when the statute specifies no standard of conduct at all) or **an as-applied challenge**. *Giles v. State*, 2004 WY 101, ¶ 15, 96 P.3d 1027, 1031-32 (Wyo. 2004).

It is an indisputable fact that Deputy Secretary Naiman stated in an email on August 1, 2024, "I would note that we previously declined to answer this question, per my email dated December 8, 2023."[13] Going forward, by declining to provide clarification sought by CryptoFed, the SoS Office will not only violate the Due Process Clause of the Fourteenth Amendment of the US Constitution, the Due Process Law of Art. 1, § 6, of the Wyoming Constitution, the legally binding precedents of Wyoming's Supreme Court and the U.S. Supreme Court, but also will invalidate the Wyoming Uniform Securities Act as applied to CryptoFed's specific conduct.

However, without being able to provide **one legally binding precedent** (case law) to substantiate its legal position, the SoS Legal Analysis still insisted that "WS.17-4-605(d) is unambiguous in that it does not require our office to provide an interpretive opinion" for clarity. Hence, pursuant to the Due Process and Void of Vagueness Doctrine outlined above, the sole logical outcome will be the invalidation of the Wyoming Uniform Securities Act.

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[12] Available at p.3, https://wyoleg.gov/InterimCommittee/2023/04-2023080806-02_24LSO-0076_Parentalrightsineducation-1WD0.2.pdf

[13] Available at Exhibit C, p.8, https://wyoleg.gov/InterimCommittee/2024/S19-20240916AmericanCryptoFedDAOsTestimony.pdf

As a result, an essential question must inevitably be raised as below.

Question 9

If the SoS Office is in essence, unable to answer CryptoFed's questions, in order to comply with the Due Process and Void of Vagueness Doctrine, can the SoS Office explain why the Wyoming Uniform Securities Act should not be voided for vagueness as applied to CryptoFed's specific conduct of Locke token's distribution, because the Wyoming Uniform Securities Act not only fails to provide fair notice of forbidden conduct to CryptoFed, but also allows arbitrary and discriminatory enforcement by the SoS Office?

VI
Conclusion

Unless the SoS Office provides clarity by answering the nine (9) questions above, for all the reasons set forth above, it is reasonable to conclude that CryptoFed's distribution of its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, will not be an investment contract and thus will not be considered as a security under the jurisdiction of the SoS Office. **Please officially inform CryptoFed whether the SoS Office agrees with this CryptoFed's conclusion by November 8, 2024 or the next Select Committee meeting, whichever is earlier.** If the SoS Office disagrees with CryptoFed's conclusion, please also provide CryptoFed with legal arguments together with supporting statutes and legally binding precedents.

Going forward, if the SoS Office declines to provide clarification by refusing to answer the nine (9) questions, pursuant to the Due Process and Void of Vagueness Doctrine, it will create a vague situation lacking fair notice as to what CryptoFed should do to comply with the Wyoming Uniform Securities Act, and consequently will invalidate the Wyoming Uniform

Securities Act as applied to CryptoFed's specific conduct. Therefore, CryptoFed should be able to distribute its Locke governance tokens to contributors within the State of Wyoming (intrastate token issuance), free of charge, without filing a registration with the SoS Office.

CryptoFed seeks to resolve all differences through fruitful discussions guided by the spirit of the Rule of Law in good faith. CryptoFed looks forward to a written response from the SoS Office and appreciates all the help of the SoS Office in exploring the crypto frontier, as always.

Sincerely,

/s/ Scott Moeller

DocuSigned by:
Scott Moeller
A82E97EDD0C44FD...

Name: Scott Moeller
Title: Organizer
scott.moeller@americancryptofed.org

/s/ Xiaomeng Zhou

Signed by:
Xiaomeng Zhou
6F7F189BD770455...

Name: Xiaomeng Zhou
Title: Organizer
zhouxm@americancryptofed.org

STATE OF WYOMING * SECRETARY OF STATE
BUSINESS DIVISION

Herschler Bldg East, Ste.100 & 101, Cheyenne, WY 82002-0020
Phone: 307-777-7311 · Website: https://sos.wyo.gov · Email: business@wyo.gov

Filing Information

Please note that this form CANNOT be submitted in place of your Annual Report.

Name	**American CryptoFed DAO LLC**
Filing ID	**2021-001017260**
Type	Limited Liability Company
Status	Active

General Information

Old Name		Sub Status	Current
Fictitious Name		Standing - Tax	Good
		Standing - RA	Good
Sub Type	Decentralized Autonomous Organization	Standing - Other	Good
Formed in	Wyoming	Filing Date	07/01/2021 12:11 AM
Term of Duration	Perpetual	Delayed Effective Date	
		Inactive Date	

Principal Address

1908 Thomes Ave
Cheyenne, WY 82001

Mailing Address

1908 Thomes Ave
Cheyenne, WY 82001

Registered Agent Address

AAA Corporate Services, Inc.
1908 Thomes Ave
Cheyenne, WY 82001

Parties

Type	Name / Organization / Address
Organizer	Marian Orr 1607 Capitol Ave, Suite 327, Cheyenne, WY 82001
Organizer	Scott Moeller 1607 Capitol Ave., Suite 327, Cheyenne, WY 82001
Organizer	Xiaomeng Zhou 1607 Capitol Ave., Suite 327, Cheyenne, WY 82001

Notes

Date	Recorded By	Note

Filing Information

Please note that this form CANNOT be submitted in place of your Annual Report.

Name	**American CryptoFed DAO LLC**
Filing ID	**2021-001017260**
Type	Limited Liability Company
Status	Active

Most Recent Annual Report Information

Type	Original			AR Year	2025
License Tax	$60.00	AR Exempt	N	AR ID	11281500
AR Date	5/3/2025 12:58 PM				
Web Filed	Y				

Officers / Directors

Type	Name / Organization / Address

Principal Address

1908 Thomes Ave
Cheyenne, WY 82001

Mailing Address

1908 Thomes Ave
Cheyenne, WY 82001

Annual Report History

Num	Status	Date	Year	Tax
07367247	Original	06/10/2022	2022	$60.00
08669045	Original	06/10/2023	2023	$60.00
09856786	Original	05/09/2024	2024	$60.00
11281500	Original	05/03/2025	2025	$60.00

Amendment History

ID	Description	Date
2024-005461357	Change of Agent	12/27/2024

Registered Agent # Changed From: 0213981 To: 0174126
Registered Agent Organization Name Changed From: Hathaway & Kunz, LLP To: AAA Corporate Services, Inc.
Registered Agent Physical Address 1 Changed From: 2515 Warren Ave Ste 500 To: 1908 Thomes Ave
Registered Agent Physical Address 2 Changed From: PO Box 1208 To: No Value
Principal Address 1 Changed From: 1607 Capitol Ave., Suite 327 To: 1908 Thomes Ave

2022-003860749	RA Information Change	10/04/2022
See Filing ID	Initial Filing	07/01/2021

NOTE: THIS COPY HAS BEEN EDITED TO REMOVE DUPLICATE MATERIAL IN REPLY CHAINS

Colin Crossman <colin.crossman@wyo.gov>

American CryptoFed's Launch Schedule for ERC 20 Locke Tokens

21 messages

Xiaomeng Zhou <zhouxm@americancryptofed.org> Wed, Jul 26, 2023 at 10:59 PM
To: Kelly Janes <kelly.janes@wyo.gov>
Cc: Scott Moeller <scott.moeller@americancryptofed.org>, jesse.naiman1@wyo.gov, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Hello Kelly

Given that the SEC does not have jurisdiction over CryptoFed, we should be able to launch our tokens. Attached is **American CryptoFed Launch Schedule for ERC 20 Locke Tokens,** which outlines the legal justification in accordance with Judge Analisa Torres's ruling in *SEC v. Ripple.* The launch schedule will guide our actions for the next 12 months.

Are you available on September 14 or September 15, 2023?

We would like to have an in-person meeting and update you and your office of our launch plan in detail. For our token launch, we want to make sure that we comply with Wyoming laws and regulations under your office's oversight and address possible issues and concerns raised by your office in advance.

Last week, Cowboy State Daily published an article below.

Digital Currency Ruling Could Bolster Case For Wyoming-Based American CryptoFed
https://cowboystatedaily.com/2023/07/18/digital-currency-ruling-could-bolster-case-for-wyoming-based-american-cryptofed/

As always, thank you for your help.

Best regards
Zhou

Locke Token Launch Schedule.pdf
246K

Jesse Naiman <jesse.naiman1@wyo.gov> Wed, Aug 9, 2023 at 8:15 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Dear Mr. Zhou,

I hope this email finds you well. I am writing to inform you of our findings after a thorough examination of the draft launch schedule you provided to us on July 27, 2023.

While we understand that you only sent us a draft, some of the actions you lay out, such as the issuance of ERC 20 Locke tokens on Ethereum by the middle of Q2 2024 (page 5), might violate the SEC's stop order (*see* 15 USC 77e(c)). Even if that order is improper, I recommend consulting legal counsel to navigate this complex issue.

Moving to the substance of your argument, your draft relies heavily on Judge Torres' ruling in *SEC v. Ripple Labs* (1:20-cv-10832, S.D.N.Y. July 13, 2023) concerning both programmatic sales and compensation incentives. While this ruling may seem relevant to your situation, the *Ripple* decision has been met with significant skepticism in the legal field. *SEC v. Terraform Labs* (1:23-cv-01346, S.D.N.Y. July 31, 2023).

Judge Rakoff's analysis specifically detailed how the subjective "manner of sale" distinction made by Judge Torres is not supported under the *Howey* Test, and Judge Rakoff held that such a distinction is unsustainable (p. 41). Judge Rakoff's focus on the totality of circumstances means that the analysis is not confined to the characteristics of the token itself. Instead, the Court will consider the entire system or scheme in which the token is embedded, including the marketing, management, and economic relationships involved.

This perspective is critical to consider, especially given our understanding that the CryptoFed model you have proposed appears more analogous to the model used by Terraform Labs, rather than that used by Ripple Labs. Judge Rakoff's analysis may be more pertinent to your situation, even if both Torres' and Rakoff's decisions can be seen to coexist.

In light of these considerations, your team should retain skilled and competent counsel in this matter before proceeding any further with affirmative actions to implement the draft you provided. The legal landscape in this area is complex, and expert guidance will be crucial to navigate it successfully.

We do not currently agree that the current state of the case law supports your contention that the SEC does not have jurisdiction over CryptoFed. This stance may require further exploration and legal consultation.

Given the above, we have chosen not to address the FinCEN components of your draft at this time. Regarding the money transmitter aspects of those regulations, the Wyoming Banking Commission would also need to render an opinion after the overarching SEC issue has been resolved.

Lastly, I would like to emphasize that this is a rapidly moving area of law. It appears near certain that both higher courts and Congress will need to intervene to provide clarity.

Please feel free to reach out if you have any questions or need further clarification on any of the points mentioned above.

Wishing you all the best in your endeavors.

Sincerely,

Jesse Naiman
Deputy Secretary of State

[Quoted text hidden]

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Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

Xiaomeng Zhou <zhouxm@americancryptofed.org> Thu, Aug 10, 2023 at 8:40 AM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Good morning, Jesse and Team.

Thank you very much for your email which raised some important issues.
We can build consensus on these issues in our discussions.

Here are my initial responses to address key issues.

1. Comparison between *SEC v. Ripple Labs* and *SEC v. Terraform Labs*

In my initial letter to you on July 27th, 2023, the Terraform decision had not been made. Today, I compare the *SEC v. Terraform Labs* decision with *SEC v. Ripple* decision. Out of the three prongs of Howey test, *[(1)] invests his money [(2)] in a common enterprise and [(3)] is led to expect profits solely from the efforts of the promotor or a third party."* (*SEC v. Terraform Labs*, p.30), the only difference lies in the Third Prong.

The difference in applying *Howey's* Third Prong can only be resolved by the US Appeals Courts and the US Supreme Court, I believe. Until then, the SEC will continue going after crypto players, based on the SEC's own interpretation about the Third Prong, such as Coinbase, Binance, etc.

In anticipation of these conflicting interpretations of different courts or judges, American CryptoFed has taken an unusual approach by ensuring that American CryptoFed's transactions do not satisfy the First Prong of *"investment of money"*. The ruling of *SEC v. Ripple* is very helpful by clarifying what is *"investment of money"* as below:

The Other Distributions do not satisfy Howey's first prong that there be an "investment of money" as part of the transaction or scheme. 328 U.S. at 301. Howey requires a showing that the investors "provide[d] the capital," id. at 300, "put up their money," Glen-Arden, 493 F.2d at 1034, or "provide[d]" cash, Telegram, 448 F. Supp. 3d at 368–69. "In every case [finding an investment contract] the purchaser gave up some tangible and definable consideration in return for an interest that had substantially the characteristics of a security." Int'l Bhd. of Teamsters v. Daniel, 439 U.S. 551, 560 (1979). Here, the record shows that

recipients of the Other Distributions did not pay money or "some tangible and definable consideration" to Ripple. To the contrary, Ripple paid XRP to these employees and companies.

However, regarding the First Prong, the ruling of *SEC v. Terraform Labs* is silent by stating, "*Because the defendants do not dispute that each purchaser of the defendants' crypto-assets made an "investment of money" in exchange for these crypto-assets, the Court's analysis focuses exclusively on the two remaining Howey prongs."*

Given that the ruling of *SEC v. Terraform Labs* is silent about the First Prong, the ruling of *SEC v. Ripple* regarding the First Prong should prevail. There is no authoritative challenge to the ruling of *SEC v. Ripple* regarding theFirst Prong. As a result, American CryptoFed should be able to distribute ERC 20 Locke tokens, free of charge. American CryptoFed itself will never sell Locke tokens itself as Ripple and Terraform have done. It is impossible for American CryptoFed to satisfy the First Prong. After these contributors who receive Locke tokens and create a secondary market of Locke via UniSwap by themselves, American CryptoFed will be able to continue paying compensation to contributors with Locke on an ongoing basis, free of charge. Given that the secondary market will be established by contributors themselves, Locke's refundable auction will no longer be needed. I will remove it from the next version of CryptoFed's Constitution.

American CryptoFed will not issue Ducat tokens on EOS protocol until Q3 2026. Therefore, until then we do not even need to discuss Ducat tokens in detail. We fully agree with your position "this is a rapidly moving area of law." We will revisit Ducat in late 2025 or early 2026. For the time being, the only focus should be the distribution of ERC 20 Locke tokens, free of charge. The only case law for interoperating *Howey's* First Prong in the context of crypto industry, is *SEC v. Ripple Labs,* which supports American CryptoFed's distribution of ERC 20 Locke tokens, free of charge. I really want to know whether you agree with our position on *Howey*'s First Prong.

Furthermore, even after Ducat tokens will be launched and Open Market Operation will be conducted in accordance with CryptoFed's Constitution, *Howey*'s First Prong will never be met, because the *"investment of money"*does not exist in any of the following transactions of Open Market Operation. If *"investment of money"* exists, the money raised must be able to be reflected in the balance sheet in accordance with Generally Accepted Accounting Principle (GAAP).

i) CryptoFed will sell Locke tokens for buying back Ducat on crypto markets (both centralized and decentralized crypto exchanges) to support the price of Ducat and to raise the Ducat price to a Target Exchange Rate, in order to maintain zero inflation. CryptoFed will burn (destroy) these Ducat tokens.

ii) CryptoFed will sell Ducat tokens for Wyoming Stable Tokens (WST) on crypto markets (both centralized and decentralized crypto exchanges) to meet the demand of Ducat and to drive the Ducat price down to a Target Exchange Rate, in order to maintain zero inflation. CryptoFed will use these WST tokens to buy back Locke tokens based on CryptoFed's Constitution (to be

explained below). CryptoFed will sell WST for buying back Locke tokens on crypto markets (both centralized and decentralized crypto exchanges) to support the price of Locke, whenever the Locke's price falls 3% below its previous price for a 24-hour period or falls 5% below its previous price for a 1-hour period, pursuant to CryptoFed's Constitution, following investment strategy of "Buying the Dip". CryptoFed will burn (destroy) these Locke tokens.

2) The SEC's Stop Order (Initial Decision on Form S-1 Filing)

The SEC issued an order instituting administrative proceedings against our Form 10 filing ("Form 10 OIP") and Form S-1 filing ("Form S-1" OIP). We have two great opportunities to obtain an Affirmative Confirmation (an order) through either Form 10 OIP and/or Form S-1 OIP or both, to prove that CryptoFed's transactions, including but not limited to, distribution of ERC 20 Locke tokens, free of charge, will not satisfy *Howey's* First Prong. It is unthinkable that the SEC has authority or legal argument to overturn the ruling of *SEC v. Ripple* regarding the First Prong.

The briefing schedule on Form S-1 OIP has been decided by ORDER GRANTING PETITION FOR REVIEW AND SCHEDULING BRIEFS. Please see the following link for the Order. We anticipate that the final decision will be around Q1 2024.
https://www.sec.gov/files/litigation/opinions/2022/33-11214.pdf

Regarding Form 10 OIP, we are pushing the SEC to comply with their own rules (Rules of Practice) to make decisions on our motions and provide a schedule for public hearing. The SEC already violated their own Rule 250(a), 17 C.F.R. § 201.250(a), for more than 18 months which mandates *"even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion."* The SEC knowingly and willfully violates the law by not making any decisions. The implication is that we will prevail, because the SEC knows that the Exchange Act does not authorize them to stay our Form 10 filing which would have automatically become effective 60 days after filing. The only way for the SEC to stop the automatic effectiveness is to declare that the SEC has no jurisdiction over CryptoFed's transactions defined by CryptoFed's business model. Please see the following link to see the four motions we filed on June 15 and 19 2023.
https://www.sec.gov/litigation/apdocuments/3-20650

3) Money Transmitter Exemption

All American CryptoFed transactions should be exempted from money transmitter regulations, pursuant to Wyoming statute **40-22-104. Exemptions; applicability** below:

Buying, selling, issuing, or taking custody of payment instruments in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States by any means;

We would like to meet Wyoming Banking Commission to discuss the exemption.
Can you make an introduction?

For the reasons set forth above, we believe that we should be able to distribute our ERC 20 Locke tokens in Q2 or Q3 2024 after we obtain Affirmative Confirmation from the SEC that American CryptoFed's transactions are not securities.

If you are available, we would like to have an in-person meeting with you and your team. We are available on September 8, 13 (afternoon) 14, and 15.

Best regards
Zhou
[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Mon, Aug 21, 2023 at 3:05 PM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Good afternoon, Jesse and Team

I hope that you and your team had time to read my previous email which addressed the issues you raised in your previous email.

Attached is the RESPONDENT AMERICAN CRYPTOFED DAO LLC'S BRIEF IN SUPPORT OF PETITION FOR REVIEW OF INITIAL DECISION ("Brief"), which we filed yesterday and is effective today (Aug. 21, 2023).

The attached Brief can further address the issue you raised regarding the SEC's Stop Order of the Initial Decision. I am confident that the SEC's Stop Order of the Initial Decision will be reversed.

Additionally, the Brief also requested the SEC to fulfil their obligations mandated by *SEC v. Howey Co*., 328 US (1946) at 298, *FCC v. Fox Television Stations, Inc*.,567 US 239 at 2317, Administrative Procedure Act ("APA", codified in 5 U.S. Code § 556 (d)), to prove that Locke and Ducat tokens are securities in CryptoFed's business model. As of today, the SEC failed to do so, although we have repeatedly requested for about two years.

The SEC's inability to prove that Locke and Ducat tokens are securities in CryptoFed's business model, lies in the fundamental differences between CryptoFed and Terraform Labs in business model. The fundamental differences between CryptoFed and Terraform Labs make it impossible for the SEC to prove that Locke and Ducat tokens are securities.

I am very grateful to your following statement, although it is based on misunderstanding:
"This perspective is critical to consider, especially given our understanding that the CryptoFed model you have proposed appears more analogous to the model used by Terraform Labs, rather than that used by Ripple Labs. Judge Rakoff's analysis may be more pertinent to your situation, even if both Torres' and Rakoff's decisions can be seen to coexist."

The misunderstanding happens quite often. To avoid the misunderstanding, since last year, right after the collapse of UST/Luna of Terraform Labs, I have specifically addressed the misunderstanding through FAQ #8 on our website titled: **How different is CryptoFed (Locke/Ducat) from other two-token models, such as TerraProtocol (Luna/TerraUSD) and Maker Protocol (MKR/DAI)?** Please see the link below.
https://www.americancryptofed.org/q-a

As you can see from FAQ #8, Ducat's stability does not depend on Locke. Ducat has its own mechanism of stability and sustainability which is independent of Locke.

Furthermore, as I explain in FAQ #8, from a perspective of economics, no Fixed Exchange Rate (stablecoin or currency peg) can survive without 100% reserve of the pegged currencies or assets, which has been proven by history. Here are just two examples.

- i). The peg between the US Dollar and Gold was broken by economic dynamics.

Nixon Ends Convertibility of U.S. Dollars to Gold and Announces Wage/Price Controls
https://www.federalreservehistory.org/essays/gold-convertibility-ends

- 2) The peg between British Pound and ERM was broken economic dynamics.

Who Broke the Bank of England?
https://www.hbs.edu/faculty/Pages/item.aspx?num=36754
"In the summer of 1992, hedge fund manager George Soros was contemplating the possibility that the European Exchange Rate Mechanism (ERM) would break down. Designed to pave the way for a full-scale European Monetary Union, the ERM was a system of **fixed exchange rates** linking together twelve members of the European Union, including Britain, France, Germany, and Italy." (Emphasis added).

Therefore, if you are available, we would like to have an in-person meeting with you and your team, to address your concerns on our business model and our 2024 launch plan. We can further discuss Terraform Labs which was just a very, very small Fixed Exchange Rate economic zone, much smaller than the two examples above.

We are available on September 8, 13 (afternoon), 14 and 15.

We have a strong desire to completely remove your concerns and address all issues you raised, in advance. We believe that we can close our gap once we can fully understand your concerns. Currently, as far as I can see, the misunderstanding is the only issue.

Best regards
Zhou
[Quoted text hidden]

2 attachments

Filing Confirmation 08202023 .pdf
107K

3-21243_2023_08_20_AmericanCryptoFed's Brief in Support of Petition for Review of Initial Decision.pdf
535K

Kelly Janes <kelly.janes@wyo.gov> Tue, Aug 22, 2023 at 9:02 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Jesse Naiman <jesse.naiman1@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Hello Zhou,

Does September 14h at 2:00 work for a meeting at the SOS?
Thanks,
Kelly

Kelly Janes
Compliance Division Director
Wyoming Secretary of State's Office
Phone: (307) 777-6621
Email: Kelly.Janes@wyo.gov
Website: sos.wyo.gov

[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Tue, Aug 22, 2023 at 9:45 AM
To: Kelly Janes <kelly.janes@wyo.gov>
Cc: Jesse Naiman <jesse.naiman1@wyo.gov>, Scott Moeller <scott.moeller@americancryptofed.org>, chuck.gray@wyo.gov, colin.crossman@wyo.gov

Good morning, Kelly.

Yes, September 14h at 2:00 works. Thank you for arranging the meeting.
Scott and I will visit your office for the in-person meeting.
I just sent a calendar invite.

I will prepare an agenda and materials as needed.
If you and your team have specific questions or agenda items, please let me know.

We are looking forward to our discussion.

Best regards
Zhou

[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Tue, Sep 5, 2023 at 2:15 PM
To: Kelly Janes <kelly.janes@wyo.gov>
Cc: Jesse Naiman <jesse.naiman1@wyo.gov>, chuck.gray@wyo.gov, colin.crossman@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good afternoon, Kelly.

We hope you had a great Labor Day weekend.

In preparation for our Sep. 14 meeting, we created an agenda for your review. The agenda is to address all topics raised by Jesse's email dated Aug. 9, 2023. I am sending you both the word version and PDF version of the agenda. If you and your team have additional items for discussion, please use the word version to add these items to the agenda and return it to us. We will prepare accordingly.

We also include our written public comments which were submitted to the Wyoming Legislative Select Committee on Blockchain and the Wyoming Stable Token Commission respectively. We will make oral public comments based on these written comments at their next meetings scheduled on Sep. 7 (the Commission) and Sep. 11 (the Select Committee) respectively. Both public comments are related to the Wyoming Stable Token Commission's Business Plan (Draft 1.0) which is also attached for your convenience.

Troy Carrothers, advisor to American CryptoFed DAO (former Chairman of MAG as well as former Kohl's Senior Vice President for Credit, Payments & Customer Service) will attend our Sep. 14 meeting remotely. He is copied in this email thread.

Is it possible for him to participate in the meeting via Zoom?

You or I can send him a Zoom invite and I am not sure whether your conference room has a camera to show all of us to him. Otherwise, we can just use the speakerphone at your conference room to connect him after Scott and I arrive at your office.

We are looking forward to our discussion.

Again, we are very grateful for your and your team's help.

Best regards
Zhou

[Quoted text hidden]

5 attachments

American CryptoFed Written Testimony before Wyoming Legislature Blockchain Select Committee 08302023.pdf
308K

American CryptoFed's Public Comments for WST Commission's Business Plan Draft 1.0 08252023 fv.pdf
378K

Wyoming Stable Token Business Plan - DRAFT 1.1.pdf
609K

Agenda for Sep 14 meeting 09052023 fv.docx
40K

Agenda for Sep 14 meeting 09052023 fv.pdf
253K

Jesse Naiman <jesse.naiman1@wyo.gov> Wed, Sep 6, 2023 at 8:58 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, chuck.gray@wyo.gov, colin.crossman@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Gentlemen,

We have no issue if Mr. Carrothers participates in our meeting next week.

Thank you,

Jesse
[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Sun, Sep 10, 2023 at 3:10 PM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, chuck.gray@wyo.gov, colin.crossman@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good afternoon, Jesse.

Thank you very much for your confirmation.

Troy will attend the Sep. 14 meeting remotely, while Scott and I will visit your office to attend the meeting in-person.

We will print out necessary documents I cited in the agenda.

If you and your team have any questions or topics which are not covered by the agenda, please do not hesitate to let me know.

Best regards

Zhou

[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Thu, Sep 14, 2023 at 11:59 AM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, chuck.gray@wyo.gov, colin.crossman@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Hi Kelly and All.

The sharelink below includes all documents I printed out for today's meeting.
The links for these documents have been included in the agenda (9 pages) I sent out on Sep. 5, 2023, except 5 of them. It is unnecessary to read these documents now. I will walk you through them. The Document List is numbered 0. There are 21 documents in total, including the Document List #0.

https://mshift.sharefile.com/share/view/sa9de37ffa2d9430f82b39ce7101570ae

When Troy uses the following Zoom info to attend the meeting, he can click the sharelink above to see the documents.

Scott will open the Zoom so that Troy can join via Zoom screen or phone.

******
American CryptoFed Launch Plan Discussion with Wyoming Secretary of State:
Zoom
login is below.

Join
Zoom Meeting
https://us02web.zoom.us/j/6508922999?pwd=WlZLblczZHBZMkxQcDBaQ2RlYUg5QT09

Meeting
ID: 650 892 2999
Passcode:
8558

One
tap mobile
+17193594580,,6508922999#,,,,*8558#
US

+12532158782,,6508922999#,,,,*8558#
US (Tacoma)

Dial
by your location
• +1
719 359 4580 US
• +1
253 215 8782 US (Tacoma)
• +1
346 248 7799 US (Houston)
• +1
669 444 9171 US
• +1
669 900 9128 US (San Jose)
• +1
253 205 0468 US
• +1
360 209 5623 US
• +1
386 347 5053 US
• +1
507 473 4847 US
• +1
564 217 2000 US
• +1
646 558 8656 US (New York)
• +1
646 931 3860 US
• +1
689 278 1000 US
• +1
301 715 8592 US (Washington DC)
• +1
305 224 1968 US
• +1
309 205 3325 US
• +1

312 626 6799 US (Chicago)

Meeting
ID: 650 892 2999
Passcode:
8558

Find
your local number: https://us02web.zoom.us/u/kertDRtypq
****

Best regards
Zhou
[Quoted text hidden]

Colin Crossman <colin.crossman@wyo.gov> Thu, Sep 14, 2023 at 1:47 PM
To: "sos-wy@wyo.gov" <sos-wy@wyo.gov>

[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Fri, Oct 13, 2023 at 6:36 PM
To: Jesse Naiman <jesse.naiman1@wyo.gov>, Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov
Cc: chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good afternoon, Jesse, Kelly and Colin

Thank you very much for the 90-minute fruitful discussion on Sep. 14, 2023, about one month ago. Here are some quick updates for recent developments and a request.

1). SEC Form S-1 Proceedings

On Oct. 3, 2023, we filed the Reply Brief with the SEC to rebut the SEC Division of Enforcement's Opposition (filed on Sep. 20, 2023) to our opening Brief in support of Petition for Review (filed on Sep 20, 2023, effective Sep. 21). All three documents can be downloaded from the following link of the SEC website (please scroll down to the bottom).

https://www.sec.gov/litigation/apdocuments/3-21243

Per SEC's procedure, the five SEC Commissioners will make a ruling in 8-10 months, around Q3 2024. You can tell from our Oct 3, 2023 Reply Brief that we will win this case.

2). Judge Torres' Order for SEC vs. Ripple Issued on October 3, 2023

The SEC's Request for Certifying Interlocutory Appeal was denied by Judge Torres of the Southern District of New York. This latest Order by Judge Torres can be found in the following link.

https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0.pdf

Regarding "Other Distributions" which included "distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger" (Judge Torres' July 13, 2023 Order), during our Sep. 14, 2023 meeting, Colin stated that Judge Torres was wrong. However, if Colin were correct, the SEC would have included arguments and evidence, (including arguments similar to Colin's arguments), in the SEC's Request for Certifying Interlocutory Appeal. The reality was that the SEC failed to do so. Below are a few citations from Judge Torres' October 3, 2023 Order.

P.9: *The SEC failed to provide evidence that the development of "use cases" for the XRP Ledger constitutes "tangible and definable" consideration to Ripple. Id. at 26. The Court also rejected the SEC's argument that XRP provided to Ripple employees as compensation and bonuses satisfies Howey's first prong where the SEC did not identify or explain what "tangible and definable" employee labor was provided in exchange for XRP.6 Id.*

P.12: *Likewise, the Court rejects the argument that there is substantial ground for difference of opinion about the Court's holding as to the Other Distributions. See SEC Mot. at 16. The SEC cites one out-of-circuit digital-asset case for the proposition that courts "have held that issuers sold investment contracts in exchange for non-cash consideration such as labor, service, or other assets." Id. (citing SEC v. LBRY, Inc., 639 F. Supp. 3d 211 (D.N.H. 2022)).7 But in that case, the parties did not dispute Howey's first prong. See LBRY, 639 F. Supp. 3d at 216 ("Here, only the third component of the Howey test is in dispute."). The Court cannot draw any conclusions about the LBRY court's reasoning as to an issue that was never litigated. Therefore, the SEC fails to point to any digital-asset cases which conflict with the Court's holding as to the Other Distributions and, thus, cannot show beyond "[m]ere conjecture that courts would disagree on the issue." Bellino, 2017 WL 129021, at *3.*

Given that Judge Torres' October 3, 2023 Order reconciled Judge Rakoff's decision in *Terraform Labs* (p. 10-11) and denied all other cases cited by the SEC, I am confident to conclude that Colin's position is incorrect.

Can Colin review Judge Torres' October 3, 2023 Order and provide us with a brief comment?

I am looking forward to Colin's comment.

Best regards
Zhou

[Quoted text hidden]

Jesse Naiman <jesse.naiman1@wyo.gov> Mon, Oct 16, 2023 at 8:47 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Zhou,

Unfortunately, Colin is indisposed and is unable to provide comment on this matter. We wish you the best of luck. Please keep us posted.

Jesse
[Quoted text hidden]

Xiaomeng Zhou <zhouxm@americancryptofed.org> Thu, Nov 16, 2023 at 10:48 PM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good morning, Deputy Jesse.

It will be tomorrow's morning when you read this email, I think.
I apologize for not getting back to you sooner. I have been overwhelmed.

I see that Secretary Gray and Director Crossman will attend the Wyoming Legislative Select Committee on Blockchain scheduled on Nov 20, 2023. We will go to the meeting too.

https://wyoleg.gov/InterimCommittee/2023/S19-20231120830AgendaPreview.pdf

Below is a written testimony we delivered to the Committee. You can see the signatures of Troy, Dodd, Scott and mine at the bottom. We believe that legally, because Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued two orders in *SEC v. Ripple Labs* on July 13, 2023 and October 3, 2023 respectively, we should be able to distribute our Locke tokens to our contributors, free of charge. We just hope that the Wyoming Legislature can codify the Judge's rulings into Wyoming DAO law which will provide more clarity to the Wyoming DAO community.

https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

SEC is still unable to make a decision on our Motion to Lift the Stay Order filed on Dec. 15, 2021 pursuant to Rule 250 (a) *Motion for a ruling on the pleadings*, 23 months ago. You can find the motion in the following link by the filing date.
https://www.sec.gov/litigation/apdocuments/3-20650

The Rule 250 (a) *Motion for a ruling on the pleadings* (17 CFR § 201.250 Dispositive motions) states:

> *(a) Motion for a ruling on the pleadings. No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion.*

https://www.govinfo.gov/content/pkg/CFR-2020-title17-vol3/pdf/CFR-2020-title17-vol3-sec201-250.pdf

We are entitled to a ruling more than one year ago. Next month, we will send a letter to the SEC and push them to make a decision. The SEC's indecision and nondecision on our Dec. 15, 2021 Motion mean that the SEC is unable to apply the existing securities law to our Form 10 filing, leading to an inevitable conclusion that the existing securities law does not apply to us.

I will keep you updated on our progress.

Best regards
Zhou

On Mon, Oct 16, 2023 at 7:47 AM Jesse Naiman <jesse.naiman1@wyo.gov> wrote:

> Zhou,
>
> Unfortunately, Colin is indisposed and is unable to provide comment on this matter. We wish you the best of luck. Please keep us posted.
>
> Jesse
>
> On Fri, Oct 13, 2023 at 6:36 PM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:
>
> > Good afternoon, Jesse, Kelly and Colin
> >
> > Thank you very much for the 90-minute fruitful discussion on Sep. 14, 2023, about one month ago. Here are some quick updates for recent developments and a request.
> >
> > 1). SEC Form S-1 Proceedings
> > On Oct. 3, 2023, we filed the Reply Brief with the SEC to rebut the SEC Division of Enforcement's Opposition (filed on Sep. 20, 2023) to our opening Brief in support of Petition for Review (filed on Sep 20, 2023, effective Sep. 21). All three documents can be downloaded from the following link of the SEC website (please scroll down to the bottom).
> > https://www.sec.gov/litigation/apdocuments/3-21243
> > Per SEC's procedure, the five SEC Commissioners will make a ruling in 8-10 months, around Q3 2024. You can tell from our Oct 3, 2023 Reply Brief that we will win this case.
> >
> > 2). Judge Torres' Order for SEC vs. Ripple Issued on October 3, 2023
> > The SEC's Request for Certifying Interlocutory Appeal was denied by Judge Torres of the Southern District of New York. This latest Order by Judge Torres can be found in the following link.
> > https://storage.courtlistener.com/recap/gov.uscourts.nysd.551082/gov.uscourts.nysd.551082.917.0.pdf
> > Regarding "Other Distributions" which included "distributions to employees as compensation and to third parties as part of Ripple's Xpring initiative to develop new applications for XRP and the XRP Ledger" (Judge Torres' July 13, 2023 Order), during our Sep. 14, 2023 meeting, Colin stated that Judge Torres was wrong. However, if Colin were correct, the SEC would have included arguments and evidence, (including arguments similar to Colin's arguments), in the SEC's Request for Certifying

of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

--
Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

3 attachments

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Jesse Naiman <jesse.naiman1@wyo.gov> Fri, Nov 17, 2023 at 8:02 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Thank you for the update, Zhou. I wish you the best!

On Thu, Nov 16, 2023 at 10:49 PM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:

Good morning, Deputy Jesse.

It will be tomorrow's morning when you read this email, I think.
I apologize for not getting back to you sooner. I have been overwhelmed.

I see that Secretary Gray and Director Crossman will attend the Wyoming Legislative Select Committee on Blockchain scheduled on Nov 20, 2023. We will go to the meeting too.

https://wyoleg.gov/InterimCommittee/2023/S19-20231120830AgendaPreview.pdf

Below is a written testimony we delivered to the Committee. You can see the signatures of Troy, Dodd, Scott and mine at the bottom. We believe that legally, because Judge Analisa Torres of the U.S. District Court for the Southern District of New York issued two orders in *SEC v. Ripple Labs* on July 13, 2023 and October 3, 2023 respectively, we should be able to distribute our Locke tokens to our

3 attachments

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Xiaomeng Zhou <zhouxm@americancryptofed.org> Sat, Nov 25, 2023 at 9:14 AM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good morning, Deputy Jesse,

I hope that you had a wonderful Thanksgiving.

Our testimony before the Select Committee on Blockchain on Nov. 20, 2023 went well. The lawmakers did show understanding of our difficulties. Therefore, we would like to continue petitioning the Select Committee to create a clarity as to what tokens are securities and what are not, for all Wyoming DAOs.

For this purpose, we hope that the Secretary of State Office can answer our question below:
As of today, can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?

We believe we can, pursuant to the two orders issued on July 13, 2023 and October 3, 2023 by Judge Analisa Torres of the U.S. District Court for the Southern District of New York in *SEC v. Ripple Labs*. For our detailed arguments, please see our written testimony below:
https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf

According to your office's opinion during the in-person meeting on Sep. 14, 2023, the Secretary of State Office may disagree with us. Therefore, your office's written answer to our question above will be a good justification for us to petition the Select Committee to create clarity through legislation. Without clarity as to what tokens are securities and what are not, it is impossible for any Wyoming DAO to operate and grow on a large scale within the State of Wyoming. In a worst-case scenario, we hope that we can start distributing Locke tokens, free of charge, within the State of Wyoming, although we are still in litigation with the SEC.

The 14th Amendment of the U.S. Constitution states "nor shall any state deprive any person of life, liberty, or property, without due process of law…" **The Fifth Amendment of the U.S. Constitution** states "No person shall…be deprived of life, liberty, or property, without due process of law…"

The fair notice / void for vagueness doctrine upheld by the US Supreme Court's opinion in *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) at 2317 states:

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.** (Emphasis added).

For the reasons set forth above, we are entitled to a clarity from your office.

I am looking forward to your office's answer to our question above.

Best regards
Zhou

On Fri, Nov 17, 2023 at 7:02 AM Jesse Naiman <jesse.naiman1@wyo.gov> wrote:
> Thank you for the update, Zhou. I wish you the best!
>
> On Thu, Nov 16, 2023 at 10:49 PM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:
>
> Good morning, Deputy Jesse.
>
> It will be tomorrow's morning when you read this email, I think.
> I apologize for not getting back to you sooner. I have been overwhelmed.
>
> I see that Secretary Gray and Director Crossman will attend the Wyoming Legislative Select Committee on Blockchain scheduled on Nov 20, 2023. We will go to the meeting too.

Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

--

Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

--

Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

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Kelly Janes <kelly.janes@wyo.gov> Sun, Nov 26, 2023 at 3:20 PM
Cc: Jesse Naiman <jesse.naiman1@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Joe Rubino <joe.rubino1@wyo.gov>

Chuck, Jesse, Joe, and Colin,

Can I set up a meeting for some time this week to discuss this one question?
Thanks,
Kelly

Kelly Janes

Compliance Division Director
Wyoming Secretary of State's Office
Phone: (307) 777-6621
Email: Kelly.Janes@wyo.gov
Website: sos.wyo.gov

On Sat, Nov 25, 2023 at 9:15 AM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:

> Good morning, Deputy Jesse,
>
> I hope that you had a wonderful Thanksgiving.
>
> Our testimony before the Select Committee on Blockchain on Nov. 20, 2023 went well. The lawmakers did show understanding of our difficulties. Therefore, we would like to continue petitioning the Select Committee to create a clarity as to what tokens are securities and what are not, for all Wyoming DAOs.
>
> For this purpose, we hope that the Secretary of State Office can answer our question below:
> As of today, can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?
>
> We believe we can, pursuant to the two orders issued on July 13, 2023 and October 3, 2023 by Judge Analisa Torres of the U.S. District Court for the Southern District of New York in *SEC v. Ripple Labs*. For our detailed arguments, please see our written testimony below:
> https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf
>
> According to your office's opinion during the in-person meeting on Sep. 14, 2023, the Secretary of State Office may disagree with us. Therefore, your office's written answer to our question above will be a good justification for us to petition the Select Committee to create clarity through legislation. Without clarity as to what tokens are securities and what are not, it is impossible for any Wyoming DAO to operate and grow on a large scale within the State of Wyoming. In a worst-case scenario, we hope that we can start distributing Locke tokens, free of charge, within the State of Wyoming, although we are still in litigation with the SEC.

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Jesse Naiman <jesse.naiman1@wyo.gov> Mon, Nov 27, 2023 at 8:25 AM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Gentlemen,

We will review your request and get back to you. I hope you all enjoyed your Thanksgiving weekend.

Jesse

On Sat, Nov 25, 2023 at 9:15 AM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:

> Good morning, Deputy Jesse,
>
> I hope that you had a wonderful Thanksgiving.
>
> Our testimony before the Select Committee on Blockchain on Nov. 20, 2023 went well. The lawmakers did show understanding of our difficulties. Therefore, we would like to continue petitioning the Select Committee to create a clarity as to what tokens are securities and what are not, for all Wyoming DAOs.
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> As of today, can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?
>
> We believe we can, pursuant to the two orders issued on July 13, 2023 and October 3, 2023 by Judge Analisa Torres of the U.S. District Court for the Southern District of New York in *SEC v. Ripple Labs*. For our detailed arguments, please see our written testimony below:
> https://wyoleg.gov/InterimCommittee/2023/S19-202311209-02AmericanCryptoFedTestimony.pdf
>
> According to your office's opinion during the in-person meeting on Sep. 14, 2023, the Secretary of State Office may disagree with us. Therefore, your office's written answer to our question above will be a good justification for us to petition the Select Committee to create clarity through legislation. Without clarity as to what tokens are securities and what are not, it is impossible for any Wyoming DAO to operate and grow on a large scale within the State of Wyoming. In a worst-case scenario, we hope that we can start distributing Locke tokens, free of charge, within the State of Wyoming, although we are still in litigation with the SEC.

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Jesse Naiman <jesse.naiman1@wyo.gov> Fri, Dec 8, 2023 at 5:22 PM
To: Xiaomeng Zhou <zhouxm@americancryptofed.org>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Gentlemen,

We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"

Your request is governed by W.S. 17-4-605(d), which states:

> The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.

After reviewing your request, the Secretary of State's Office declines to answer your question at this time.

Should you desire to register your tokens, apply for the FinTech Sandbox, or have any issues concerning your DAO's registration with our office, we are happy to help you.

Sincerely,

Jesse Naiman

On Mon, Nov 27, 2023 at 8:25 AM Jesse Naiman <jesse.naiman1@wyo.gov> wrote:

> Gentlemen,
>
> We will review your request and get back to you. I hope you all enjoyed your Thanksgiving weekend.
>
> Jesse
>
> On Sat, Nov 25, 2023 at 9:15 AM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:
>
> > Good morning, Deputy Jesse,
> >
> > I hope that you had a wonderful Thanksgiving.
> >
> > Our testimony before the Select Committee on Blockchain on Nov. 20, 2023 went well. The lawmakers did show understanding of our difficulties. Therefore, we would like to continue petitioning the Select Committee to create a clarity as to what tokens are securities and what are not, for all Wyoming DAOs.
> >
> > For this purpose, we hope that the Secretary of State Office can answer our question below:

of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

--
Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

--
Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
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Xiaomeng Zhou <zhouxm@americancryptofed.org> Sun, Dec 10, 2023 at 4:18 PM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good afternoon, Deputy Jesse.

Thank you very much for your response dated December 8, 2023 ("December 8, 2023 Response"). From a legal perspective, the December 8, 2023 Response amounts to proof that American CryptoFed DAO can legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge. Below is our legal argument in support of this conclusion.

1. The December 8, 2023 Response was unable to raise any statute or binding precedent to prove that American CryptoFed DAO can not legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge. The 14th Amendment of the U.S. Constitution states "nor shall any state deprive any person of life, liberty, or property, **without due process of law**…" Given that there is no "due process of law" in place to prohibit American CryptoFed DAO from distributing Locke tokens to its contributors within the State of Wyoming, free of charge, American CryptoFed DAO should have freedom to do so, pursuant to the 14th Amendment of the U.S. Constitution.

2. The W.S. 17-4-605(d) cited in the December 8, 2023 Response authorizes the Wyoming Secretary of State office to provide clarity, but the December 8, 2023 Response was unable to provide clarity by stating "After reviewing your request, the Secretary of State's Office declines to answer your question at this time." As a result, the vagueness as to how to apply existing Wyoming securities law to the American CryptoFed DAO's question remains unaddressed. However, the US Supreme Court's opinions repeatedly confirmed that the vagueness violates the due process clause of the 14th Amendment of the U.S. Constitution.

In *Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939) at 453, the US Supreme Court's opinion states (emphasis added):

> **No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.** The applicable rule is stated in *Connally* v. *General Construction Co.,* 269 U.S. 385, 391: "**That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement**, consonant alike with ordinary notions of fair play and the settled rules of law. And 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**."

In *Musser v. Utah*, 333 U.S. 95 (1948) at 96, the US Supreme Court's opinion states (emphasis added):

> On argument in this Court, inquiries from the bench suggested a federal question which had not been specifically assigned by defendants in this Court, nor in any court below, although general transgression of **the Fourteenth Amendment** had been alleged. **This**

> **question is whether the Utah statute, for violation of which the appellants are amerced, is so vague and indefinite** that it fails adequately to define the offense or to give reasonable standards for determining guilt.

In *Kolender v. Lawson*, 461 U.S. 352 (1983) at 357-358, the US Supreme Court's opinion states (emphasis added):

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement**. *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc., supra; Smith* v. *Goguen,* 415 U. S. 566 (1974); *Grayned* v. *City of Rockford,* 408 U. S. 104 (1972); *Papachristou* v. *City of Jacksonville,* 405 U. S. 156 (1972); *Connally* v. *General Construction Co.,* 269 U. S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and **arbitrary enforcement**, we have recognized recently that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine — the requirement that a legislature establish minimal guidelines to govern law enforcement." *Smith,* 415 U. S., at 574. **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."** *Id.,* at 575.

Given that even the Wyoming Secretary of State office was unable to provide clarity, in the December 8, 2023 Response, as to how to apply the existing Wyoming securities law to American CryptoFed DAO's question, "men of common intelligence must necessarily guess at its meaning and differ as to its application". (*Lanzetta v. New Jersey*). "As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." (*Kolender v. Lawson*). Here, the key issue is whether the existing Wyoming securities law, "is so vague and indefinite that it fails adequately to define the offense or to give reasonable standards for determining guilt. (*Musser v. Utah*).

The vagueness caused by the fact that the December 8, 2023 Response was unable to provide clarity, "violates the first essential of due process of law." (*Lanzetta v. New Jersey*). "All are entitled to be informed as to what the State commands or forbids." (*id)*. Therefore, the inability of the Wyoming Secretary of State office to apply the existing Wyoming securities law to American CryptoFed DAO's question, leading to an inevitable conclusion, from a legal perspective of as-applied constitutional challenges (not facial challenges), that the existing Wyoming securities law does not apply to American CryptoFed DAO's question and the Wyoming Secretary of State office has no jurisdiction over this matter.

3. The December 8, 2023 Response states "Should you desire to register your tokens, apply for the FinTech Sandbox, or have any issues concerning your DAO's registration with our office, we are

happy to help you." However, the precondition for the token registration or application for the FinTech Sandbox is that the Wyoming Secretary of State office has to establish its jurisdiction over this matter, by expressly declaring that American CryptoFed DAO is not allowed to distribute Locke tokens to its contributors within the State of Wyoming, free of charge, without the said token registration or application for the FinTech Sandbox. However, this precondition can not be met, because in the December 8, 2023 Response, the Wyoming Secretary of State office expressly stated "the Secretary of State's Office declines to answer your question at this time." Given that even the Wyoming Secretary of State office is unable to know whether the said token registration or application for the FinTech Sandbox is required by the existing Wyoming securities law, it is impossible for American CryptoFed DAO to know either. Without knowing whether the said token registration or application for the FinTech Sandbox is required by the existing Wyoming securities law, the Wyoming Secretary of State office is unable to enforce the law without "arbitrary and discriminatory enforcement". (*Kolender v. Lawson*). To this extent, in no event, can the Wyoming Secretary of State office enforce the law, without violating the due process clause of the 14th Amendment of the U.S. Constitution.

For the reasons set forth above, we concluded that the December 8, 2023 Response amounts to proof that American CryptoFed DAO can legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge.

If the Secretary of State office disagrees with our conclusion, please let us know and provide your arguments together with supporting statues and legal binding precedents. We are looking forward to your written response. We would like to resolve our differences through fruitful discussion guided by the spirit of Rule of Law.

We are very grateful for your response and help.

Best regards
Zhou

On Fri, Dec 8, 2023 at 4:22 PM Jesse Naiman <jesse.naiman1@wyo.gov> wrote:

> Gentlemen,
>
> We have received your request for an answer to this question: "As of [November, 25, 2023], can American CryptoFed DAO legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge?"
>
> Your request is governed by W.S. 17-4-605(d), which states:
>
> > The secretary of state **may** provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.
>
> After reviewing your request, the Secretary of State's Office declines to answer your question at this time.
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> Should you desire to register your tokens, apply for the FinTech Sandbox, or have any issues concerning your DAO's registration with our office, we are happy to help you.

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Xiaomeng Zhou <zhouxm@americancryptofed.org> Sun, Dec 31, 2023 at 2:59 PM
To: Jesse Naiman <jesse.naiman1@wyo.gov>
Cc: Kelly Janes <kelly.janes@wyo.gov>, colin.crossman@wyo.gov, chuck.gray@wyo.gov, Troy Carrothers <troy@tacconsultingservices.com>, Scott Moeller <scott.moeller@americancryptofed.org>

Good afternoon, Deputy Jesse.

I hope that you have had time to digest my email dated December 10, 2023. In the email, I requested, "If the Secretary of State office disagrees with our conclusion, please let us know and provide your arguments together with supporting statues and legal binding precedents." As of today, we have not received your opposition. Therefore, it is reasonable for me to assume that the Secretary of State office does not oppose our legal arguments and our conclusion in my email dated December 10, 2023.

For the sake of legal certainty and legal clarity, we would like to seek a Declaratory Judgement from the Wyoming Chancery Court regarding our conclusion that your "December 8, 2023 Response amounts to proof that American CryptoFed DAO can legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge." Of course, we will submit our legal arguments to the Chancery Court, most of which are the same as we detailed in my December 10, 2023 email. Given that there are no factual disputes, the Chancery Court should be able to make a quick ruling as a matter of law.

Attached is a letter we sent to the five SEC Commissioners and Inspector General. We are pushing them to make a decision too. Our goal for 2024 is to seek legal clarity and legal certainty from our own governments, both Federal Government and State Government. In order to open a clear, safe, legal path for Wyoming DAOs in general and in particular American CryptoFed, we have no choice but to actively explore this legal frontier.

If the Secretary of State office disagrees with our conclusion in my December 10, 2023 email, please provide your arguments together with supporting statues and legal binding precedents on or before January 11, 2024. If you need more time, please also let us know.

Thank you very much for your office's help.
New beginnings are just around the corner.
Happy New Year!

Best regards
Zhou

On Sun, Dec 10, 2023 at 3:18 PM Xiaomeng Zhou <zhouxm@americancryptofed.org> wrote:

Good afternoon, Deputy Jesse.

Thank you very much for your response dated December 8, 2023 ("December 8, 2023 Response"). From a legal perspective, the December 8, 2023 Response amounts to proof that American CryptoFed DAO can legally distribute Locke tokens to its contributors within the State of Wyoming, free of charge. Below is our legal argument in support of this conclusion.

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Jesse Naiman
Deputy Secretary of State
Wyoming Secretary of State's Office
Phone: (307) 777-5873
Email: jesse.naiman1@wyo.gov
Website: sos.wyo.gov

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Filing Confirmation.pdf
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3-20650_2023_12_16_AmericanCryptoFed's Letter to Commissioners and Inspector General.pdf
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