



December 5, 2022

SEC Seeks to Stop Allegedly Misleading Crypto Asset Securities Offering Registration

On November 18, 2022, the Securities and Exchange Commission ("SEC"), the U.S. securities regulator, instituted administrative proceedings to stop a Wyoming Decentralized Autonomous Organization ("DAO") Limited Liability Company ("LLC") from going effective with an S-1 public securities offering registration statement. A copy of the SEC's Administrative Order can be found [Here](#).

In the Order, the SEC alleges that in September 2022, American CryptoFed DAO LLC ("American CryptoFed"), a Wyoming DAO LLC, filed a Form 10 Registration Statement pursuant to s. 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and a Form S-1 Registration Statement pursuant to s. 5 of the Securities Act of 1933 (the "Securities Act"), seeking to register and offer for sale two classes of digital assets, the Ducat and Locke tokens. According to the SEC Enforcement Division, the American CryptoFed S-1 made material misstatements and omitted material information required by Form S-1 and Regulations S-K and S-X, to which Form S-1 refers. For explanation of public registration under s. 12 of the Exchange Act and s. 5 of the Securities Act, please see our "Public or Private: When Should a Company Go Public and When Should it Stay Private;" for explanation of Wyoming's Digital Asset and DAO laws, please see our "Using Wyoming's Crypto/Digital Asset and DAO Laws," both available at [Kurtin PLLC Raising Capital](#).

We have discussed this before, and it should not be controversial. Offering for sale a crypto/digital asset that meets the test of a securities investment contract is a securities offering, which must be

made pursuant to a Securities Act s. 5 Registration Statement, including the information required by Regs. S-K and S-X, or pursuant to an available exemption from the public registration requirements, such as Reg. D (see our "[Raising Capital through Private Placements](#)," also available at [Kurtin PLLC Raising Capital](#)). Crypto/Digital Assets can be offered for sale to the public or in a private placement, but to try to do so without compliance with the applicable laws and regulations is to risk civil and criminal penalties. Assumptions that an issuer, promoter, underwriter, broker or dealer can "fly under the SEC radar screen," especially when allegations of securities fraud and insider trading are concerned, are misplaced. There is nothing inherently risky about offering or trading in digital asset securities, as long principals and intermediaries don't assume that their digital character renders them exempt from securities laws and regulations in a way that would not be the case for more conventional securities.

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