

# SEC Halts DAO's Registration of Two Stable Tokens as Securities, Alleging Material Deficiencies in the Disclosure

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On November 10, 2021, the SEC [announced](#) that it had instituted proceedings against a Wyoming-based decentralized autonomous organization (DAO) to halt its registration of two digital tokens, alleging that disclosure in the organization's registration statement was deficient and contained materially misleading statements. ([In the Matter of American CryptoFed DAO LLC](#), No. 3-20650 (SEC Order Nov. 10, 2021)). Without the SEC's latest action, the issuer's Form 10 filing was scheduled to become effective on November 15, 2021 (sixty days from the initial filing date). The action against American CryptoFed DAO LLC ("CryptoFed") serves as a clear reminder that cryptocurrency remains in the SEC's crosshairs, and token issuers must carefully consider regulatory risk when launching new products.

According to the SEC, the Form 10 disclosure was deficient because CryptoFed, the issuer of the Ducat and Locke tokens, failed to include mandatory information, such as audited financial statements, beneficial ownership, and MD&A disclosure. Additionally, the SEC claimed that the filing was misleading because of numerous statements that the Ducat and Locke tokens were not securities, which was inconsistent with CryptoFed's attempt to register the tokens as securities under the Securities Exchange Act of 1934. The SEC also claimed CryptoFed's statements that it would register distribution of the Locke governance tokens on Form S-8 was misleading because Form S-8 is available only to register securities offered to employees through employee benefit plans. In its order, the SEC alleged that individuals and entities intended to receive the distribution are not employees of CryptoFed since CryptoFed is a DAO and would have no employees, instead being operated automatically via smart contracts and direct voting by Locke tokens.

In September, CryptoFed took the unusual step of [filing a registration statement on Form 10 for its Ducat and Locke tokens](#), while claiming that the tokens were not securities (“CryptoFed is registering Locke and Ducat tokens with the SEC as utility tokens, not as securities, for the purpose of disclosure”). The filing describes Ducat as an “inflation and deflation protected” stable token to be used for daily transactions and a store of value. Locke is described as a governance token intended to stabilize the price of Ducat and provide Locke token holders the opportunity to participate in CryptoFed’s rulemaking per the CryptoFed DAO Constitution. (See also CryptoFed’s [news release](#) regarding its SEC filings.) CryptoFed’s disclosure indicates that Ducat holders will receive interest payments of 3% to 5% annually, while consumers and merchants will receive rewards for every purchase transaction made in Ducat. Interest and rewards will be paid in the form of Ducat tokens.

The SEC’s order provides no analysis of whether Ducat and Locke are securities, focusing instead on allegations of material misstatements and omissions in the disclosure. It is not clear whether the Commission has concluded independently that the tokens are securities or simply presumes that they are based on the fact that CryptoFed sought to register them. The action against CryptoFed stays registration of the tokens until an administrative law judge determines whether to suspend or deny registration for the Ducat and Locke tokens.

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