

**MEMORANDUM**

TO: Company DAO's Prospective Business Partners

FROM: Jonathan Bench, Esq., Harris Bricken Sliwoski, LLP

RE: Memorandum on the Legal Standing of a Decentralized Autonomous Organization Limited Liability Company (DAO LLC)

DATE: February 15, 2023

1. Introduction

The purpose of this Memorandum is to present a specific outline of the legal structure for decentralized autonomous organization limited liability companies ("**DAO LLCs**") to help prospective business partners and clients understand the legal standing and ramifications of forming, adopting, or joining a DAO LLC formed in part using Company DAO's protocol.

Terms that we consider industry standard, such as "smart contract" are not necessarily capitalized or defined. This Memorandum is written on a prospective basis, assuming full formation of a Wyoming DAO LLC.

2. Executive Summary

A Wyoming DAO LLC's formation, its business operations, the binding nature of its agreements, its governance model, and the enforceability of its actions are determined under and governed by Wyoming law and U.S. law.

Individuals and entities that form a Wyoming DAO LLC will receive the benefit of Wyoming law and U.S. law unless otherwise agreed to by contract. These rights are most closely analogous to a traditional limited liability company, as modified by Wyoming's DAO supplement.

U.S. law permits contracting by electronic means, and Wyoming law permits organization and operation of DAO LLCs to utilize smart contract protocols for traditional ownership and management, such as formation, voting, distributing profits, and contracting internally and with third parties.

Third parties that interact with a DAO LLC can either do so in traditional arm's length transactions or by joining the DAO LLC as members through receiving its native token (the "**Token**"). These Tokens can fully function as representations of full membership interests in a DAO LLC.

Depending on the nature of the DAO LLC's business, the DAO LLC may need to apply for certain blockchain-related licensure in Wyoming or comply with U.S. federal and state securities

laws. The DAO LLC may also be able to qualify for one or more exemptions from these requirements.

When U.S. and Wyoming law are followed, the business operations of a DAO LLC are legitimate, compliant, and equal in all material respects to a traditional Wyoming limited liability company. Therefore, any organization that utilizes the Company DAO protocol adopts the structure of a legitimately established Wyoming DAO LLC, and each owner of a Token issued by a DAO LLC utilizing Company DAO's pool contract is a member of the DAO LLC.

3. DAOs: A Primer on Challenges and Opportunities

A DAO LLC is a special type of limited liability company with a decentralized autonomous organization (“*DAO*”) overlay, resulting in a comprehensive legal entity structure. A DAO is an online community that uses a blockchain to operate and transact toward a specific purpose or mission (it can be an investment or something else). DAOs are social and technical communities that virtually gather and pool resources to achieve an aim, which can be for-profit, not-for-profit, or something in between.

In a pure DAO, there is no governance hierarchy and no central control. Also, there is no corporate form and therefore no bylaws, operating agreements, subscription agreements, or similar agreements. The rules of investing and participating, just like for cryptocurrencies, are set out on the blockchain in smart contracts. In all, DAOs achieve an organization purpose that is autonomous to the group and decentralized in function and operation.

DAOs operate with significant potential legal complications due to their open structure environment. Some of these potential legal complications are outlined below.

A. Avoiding Unlimited Liability

In most legal jurisdictions, any organization of two or more people for a purpose, without corporate formalities, is a general partnership. Because corporate formalities are not followed in a general partnership, there is no liability protection for the participants, and usually organization liabilities will flow jointly (together) and severally (individually) to each of the participants (partners). That is, the general partners are each, as individuals, responsible for all partnership debts, obligations, and liabilities. This is an ominous legal reality for DAOs of any size and their participants.

B. Reaching Governance Consensus

DAOs, with their decentralized and autonomous characteristics do not fit naturally or easily into a corporate form. In fact, the primary appeals of a DAO are its decentralization, autonomy, and independence from traditional corporate formality. With no hierarchy and no centralized control, DAOs generally do not utilize traditional entity governing documents like articles of incorporation, certificates of formation, bylaws, shareholder agreements, operating agreements, and investor rights agreements. Rather, the rules of agreement, participation, execution, and performance are governed by on-chain smart contracts, also known as computable agreements,

which self-execute and self-govern according to each smart contract's established parameters. All these elements make DAO corporate form selection and strategy highly democratic, but a DAO's governance and operations can easily devolve to the slow pace of human consensus due to the large and sometimes less-involved participant base.

C. Ensuring Securities Compliance

A DAO generally engages in tokenomics and offers some type of coin or token, which some say is its own form of stock certificate and, often, its own native currency. By virtue of an extremely flexible digital medium, these tokens can take on any number of characteristics that reflect or deviate from traditional asset classes, including currencies and traditional ownership interests in a venture, such as common or preferred stock.

The creation of a defined limit of the token for scarcity purposes aims to drive up value in the DAO to make the native token, in theory, valuable. However, global securities regulators, including the U.S. SEC and CFTC, have created confusion as to whether a native DAO token is to be treated as a security, a commodity, a coupon, or something else. This has ramifications for the global treatment of DAOs and their members. DAO LLCs are no exception.

If a DAO's tokens are treated as securities, the DAO will be subject to the registration regime of U.S. securities laws. DAOs are decentralized and often receive crowdsourced funding, potentially from "autonomous" sources or anonymous sources, and this makes SEC registration, disclosure, and reporting virtually impossible in some instances.

4. DAO LLC Objectives

In addition to the specific purposes for which a DAO LLC is established, a DAO LLC often attempts to achieve and maintain the following for itself and its members:

- A decentralized, transparent operating environment;
- Participation from around the world;
- Limited liability for founders, members, developers, management, and other participants;
- An entity taxpayer capable of paying taxes in relevant jurisdictions;
- An entity capable of complying with all regulatory requirements;
- An entity capable of hiring, firing, and making important decisions;
- An entity with credibility of form for purposes of contacting, partnering, and execution with off-chain entities; and

- More certainty in interacting with unpredictable and unnecessary statutes and regulations.

5. Interacting with Smart Contract Protocols

Each prospective member that would like to join a DAO LLC will do so by interacting with the DAO LLC's protocol. The protocol contains smart contracts, which are under the DAO LLC's control and must be publicly identified in the DAO LLC's formation documents.

In the United States, smart contracts are honored as viable contracts between contracting parties. This is true for Wyoming DAOs. Replacing or supplementing the traditional LLC operating agreement with smart contract protocols is permitted under Wyoming law.

6. VASP Regulatory Compliance

In almost every potential avenue for DAO formation and venturing, various regulatory bodies exert jurisdiction and mandate compliance mechanisms, resulting in a general lack of clarity. This is especially true in the U.S., where currently there is no clear guidance from Congress, and the SEC and CFTC as the main regulatory bodies have taken contradictory positions at various times.

Several U.S. and offshore jurisdictions have a variable asset service provider ("*VASP*") regulatory regime in place specifically to address various aspects of blockchain-related businesses. Due to the initial prevalence and now overwhelming presence of cryptocurrencies, these oversight positions are mainly staffed by financial regulatory bodies, who work in conjunction with established securities regulators.

Each DAO LLC's founders and members must ensure initial and ongoing compliance with any applicable VASP regimes. Compliance will depend initially on Wyoming law and secondarily on other jurisdictions in which the DAO LLC may be obligated to comply with those laws and regulations.

7. Enforceability

As a fully recognized Wyoming entity, a DAO LLC can transact with third parties to the fullest extent permitted under Wyoming law and other jurisdictions where the DAO LLC qualifies to do business as a foreign entity or through future subsidiary entities. Third parties can transact with a DAO LLC in the same manner and with the same certainty that they transact with any established entity in any global jurisdiction.

8. Conclusion

A DAO's adoption of a Wyoming DAO LLC structure achieves the necessary off-chain corporate structure while maintaining the principles of decentralization in a growing Wyoming regulatory framework. This approach is both innovative and effective. It seeks to respect the

value and proposition of the DAO ethos while allowing some level of corporate person and protection that enables meaningful off-chain business development and execution.

In addition, this allows a DAO LLC to issue a native Token that can function as security token or governance token, with Wyoming regulatory compliance oversight.

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