**GRANT 291:**

**WHITEPAPER: Registration of DAO's in Wyoming**

**Milestone #1**

Last Updated: Monday, June 20, 2022 @ 9:00am

**MILESTONE 1 (OF 3)**

**Title**: Legal Brief on Registered DAO’s (at least two (2) examples)

**Summary**: The law firm of NYC CyberLaw Group, PLLC shall deliver a legal brief on DAO registration in Wyoming, commencing with a general overview, followed by two comprehensive briefs on the process, impact, and lessons, from at least two (2) registered DAOs.

**Acceptance Criteria**:

Milestone 1 shall be considered completed upon submission and acceptance of the DEVxDAO of the “Legal Brief on Registered DAO’s”

**NOTE FOR REVIEWERS: THIS REPORT IS LIMITED TO MILESTONE 1 OF 3. REVIEWERS MUST LIMIT SCOPE OF REVIEW OF THIS MILESTONE TO THE SUMMARY & ACCEPTANCE CRITERIA ABOVE.**

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# OVERVIEW

This whitepaper is provided in accordance Grant #291 entitled *WHITEPAPER: Registration of DAO’s in Wyoming*, submitted by the NYC CyberLaw Group, PLLC and voted on and accepted by the Developer’s DAO (DevXDAO). (Full text of the grant is attached as Attachment A). This whitepaper constitutes the first of three milestones under this grant. This first milestone focuses solely on Wyoming DAO Registration. The second milestone consists of interviews of sector specialists. The third milestone ad seeks provide a global perspective on the risks, rewards, trends, and procedures for registering DAO’s in other jurisdictions around the world.

There are varying definitions of Decentralized Autonomous Organizations (“**DAOs**”), and just as many opinions as to whether or not a DAO should register as a legal entity or not. Entities seeking to regulate DAO’s often take an “organization-first” vantage point, defining a DAO as “a “virtual” organization embodied in computer code and executed on a distributed ledger or blockchain”.[[1]](#footnote-1) Inversely, technical organizations take the “technology-first” perspective, such as the International Systems Audit and Control Association (ISACA) which defines a DAO as “A computer program on a blockchain that utilizes smart contracts to set organizational rules via decentralized means.”[[2]](#footnote-2) These disparate approaches are illustrative of the broader issue that the somewhat untested nature of legal or regulatory frameworks and/or guidance has created risks for Regulators, DAO Members, and DAO Affiliates (e.g. investors; contributors) alike. In order to address this ambiguity and risk, Regulators (and sector organizations) around the world have been working to establish more clear legislation and guidance to enable DAO’s to register, be governed by clear applicable standards of corporate law, and be recognized by national and international authorities.  At the same time, DAO Members and Affiliates alike have explored and continue to balance the costs and benefits of registering their DAO with local authorities. For instance, on the one hand, an unregistered DAO may expose Members to potential personal or financial liability for the actions of the DAO itself. On the other hand, a registered DAO that mitigates for that risk may raise questions about governance, tax reporting, and the ability to be subjected to a lawsuit.

In an effort to address these concerns and provide more clarity to the future of DAO’s, on April 21, 2021, Wyoming passed one of the first DAO-related laws in Bill 38, which recognizes decentralized autonomous organizations (DAOs) as limited liability companies. The Wyoming DAO law permits DAOs to incorporate as LLC’s, an entity whereby the members of the company might not held personally or financially liable for the debts or liabilities of the company. Alternatively, registration might also expose the DAO or DAO Members themselves to increased exposure to lawsuits and liabilities from securities regulators seeking to pierce the corporate veil. In short, proponents of the law say that it will protect DAOs from being sued as general partnerships in court and makes the rights of DAOs as legal persons enforceable in court.[[3]](#footnote-3) This research paper will identify and document the reasonably foreseeable risks and rewards of registering a DAO, while providing such research in a comprehensive context of DAO’s and the Law.

# METHODOLOGY

Grant 291 is intended to provide advisory research and reporting to assist individuals, DAO Members, and regulatory bodies alike in understanding the implications of DAO registrations in Wyoming, and ultimately around the world.

This milestone will provide a high-level overview of DAO’s, some of the considerations that DAO’s face in registering themselves as a legal entity, and then focus on the Wyoming legislation to permit DAO’s to be registered in the state. This will be followed by an analysis of the process, impact, and lessons, that at least two (2) registered DAO’s have experienced. Ultimately, this whitepaper may provide DAO’s and their Members with a clearer understanding of some of their own legal and regulatory liabilities and benefits. This paper is NOT an endorsement by the ETA or DEVxDAO, but is merely be a research whitepaper.

# DAO FUNCTIONS AND THE IMPACT OF REGISTRATION

## DAO Structures

When reviewing DAO components and frameworks, it is important to consider the technical, financial, and governance frameworks applicable to DAO’s. The configuration of each one of these components may expose DAO’s to significant vulnerabilities. And it is when those vulnerabilities are exploited that most often the DAO becomes exposed to legal liability.

### *Technical Functions & Vulnerabilities*

Two principal considerations in the technical architecture of a DAO that may prompt individuals to seek remedy in courts are (i) the vulnerability of that architecture to external exploit[[4]](#footnote-4); and (ii) the ability of the technical architecture to be controlled from within the DAO[[5]](#footnote-5).

In the case that DAO technical architecture is vulnerable to external exploit, the DAO itself may face significant damages. One of the most notable instances of such an exploited vulnerability was when “The DAO” was hacked due to vulnerabilities in its code base. One of the most recent instances of such a DAO being hacked and facing legal ramifications was in the case of a hack is in the case of Sarcuni et al v. bZx DAO, where a class action suit was brought against the Members fo the DAO under joint and several liability.[[6]](#footnote-6)Alternatively, one instance wherein a DAO was purported to be decentralized, but over which a select few had the capability to unilaterally change smart contracts, was in the case of OlympusDAO Wenjin Liang v. Barr, discussed later herein.

### *Financial Functions & Liabilities*

Another key component of a DAO that may expose it to significant regulatory liability is the determination as to whether the tokens in a DAO are a security or a utility, as defined under the Securities Act of 1933 and the Securities Exchange Act of 1934. If a token is deemed to be a security, then a DAO must undergo a rather costly and time-consuming process to properly register with a corresponding regulatory authority, which in the United States is the Securities and Exchange Commission. As a result, DAO’s will contort their tools and operations in order to try and fit their tokens snugly into the definition of a “utility”. The theory behind these enterprises is that investments into a “DAO” in the form of purchasing tokens or other investments do not constitute “securities” because the project is “decentralized” and thus the investor is not making its investment “in a common enterprise” with the expectation of “profits to be derived solely from the efforts of others.” *See SEC v. W.J. Howey Co*., 328 U.S. 293 (1946).

In the case *of SEC v. W.J. Howey Co.,* the United States Supreme Court set forth a “test” (the Howey Test) to assist individuals, organizations, and governmental bodies, in determining whether or not an investment vehicle was a “security”. In that case, as the Court defined whether or not an “investment contract” in question was a security, they took 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,” 328 U.S. 293, 299 (1946), defining “investment contracts” as “instruments, schemes, or transactions through which a person invests money in a common enterprise and reasonably expects profits or returns derived from the entrepreneurial or managerial efforts of others.”

Building upon the Courts determination in *Howey*, the the SEC has issued guidance[[7]](#footnote-7) to assist in the determination of whether or not the activity in question involves a security or a utility. In short, the three components that serve as the bases of the determination of a status as a security are that the transaction is an 1) investment of money in a (2) common enterprise with a (3) reasonable expectation of profits to be derived from the efforts of others.

### *Governance Functions and Liabilities*

Improper governance structures are one of the most recognized risk factors in predicting the success of a DAO. In fact, unless true decentralization occurs, an improperly governed DAO may rather quickly devolve into an organization where all power is disproportionately centered around the few individuals who have the most votes, resulting in an oligarchy. A DAO must determine the best form of membership and voting structures because, if a court determines that a DAO is no longer by its very governance nature *decentralized*, then the Members of the DAO may be pursued for the liabilities of the DAO.

The three principle forms of membership are[[8]](#footnote-8):

1. **Token Based Membership** - Usually fully permissionless, depending on the token used. Mostly these governance tokens can be traded permissionlessly on a decentralized exchange. Others must be earned through providing liquidity or some other ‘proof-of-work’. Either way, simply holding the token grants access to voting.
2. **Share-based membership -** Share-based DAOs are more permissioned, but still quite open. Any prospective members can submit a proposal to join the DAO, usually offering a tribute of some value in the form of tokens or work. Shares represent direct voting power and ownership. Members can exit at any time with their proportionate share of the treasury.
3. **Reputation-based membership** Reputation represents proof of participation and grants voting power in the DAO. Unlike token or share-based membership, reputation-based DAOs don't transfer ownership to contributors. Reputation cannot be bought, transferred or delegated; DAO members must earn reputation through participation. On-chain voting is permissionless and prospective members can freely submit proposals to join the DAO and request to receive reputation and tokens as a reward in exchange for their contributions.

### *Management.*

In addition to the form of governance or control of a DAO mentioned above, the management of a DAO also has key implications for the potential liabilities of a DAO. In many cases, a DAO can be either *Member Managed* or *Algorithmically Managed*.

An *Algorithmically Managed* DAO is one where the “underlying smart contracts are able to be updated, modified, or otherwise upgraded. Further, these types of algorithmically managed entities must have articles of organization and specifically controlled and configured smart contracts. These include:

1. Relations among the members and between the members and the decentralized autonomous organization;
2. Rights and duties under this chapter of a person in their capacity as a member;
3. Activities of the decentralized autonomous organization and the conduct of those activities;
4. Means and conditions for amending the operating agreement;
5. Rights and voting rights of members;
6. Transferability of membership interests;
7. Withdrawal of membership;
8. Distributions to members prior to dissolution;
9. Amendment of the articles of organization;
10. Procedures for amending, updating, editing, or changing applicable smart contracts; and
11. All other aspects of the decentralized autonomous organization.” [[9]](#footnote-9)

A Member Managed DAO is one where the interests of a Member are “calculated by dividing a member’s contribution of digital assets to the organization, divided by the total amount of digital assets contributed to the organization at the time of a vote.”`[[10]](#footnote-10)

### *Legal Wrappers*

DAO’s can operated without any legal entity. But to be able to “connect” to real world functions, DAO’s often leverage “service providers” or “legal wrappers”. The three primary functions for which a DAO may need to register a legal entity are to (i) be able to maintain a presence in a financial sector (e.g. be able to maintain a bank account); (ii) be able to conduct an operational audit of activities by stakeholders; and (iii) to be able to provide legal services.

## Strategic Implications of Registering a DAO

The act of “Registering” a DAO by creating an affiliated legal entity, or set of entities, has a significant impact on the strategic legal, risk, and compliance, posture of the DAO. The three most notable implications are on (i) the joint and several liability of DAO Members, the (ii) susceptibility of the DAO to lawsuits from DAO Members, and the (iii) jurisdiction of disputes.

*Member Liability*

Registering a legal entity hay help shield its Members from joint and several liability. If a DAO does not register a legal entity, and faces litigation in the United States, then the DAO may be seen by some courts as a general partnership wherein the Members can be exposed to joint and several liability.[[11]](#footnote-11) “Unincorporated entities have no independent citizenship and instead take on the citizenship of each of their members. *See Carden v. Arkoma Assocs*., 494 U.S. 185 (1990)”[[12]](#footnote-12) For instance, in a case involving an investor into (the “Olympus DAO” Case), individual Members of the DAO were able to be sued for fraud, breach of contract, conversion, fraud, and civil conspiracy. The logic was first that since Olympus DAO did not have any “legitimate corporate structure”, Plaintiff sought to have it considered a general partnership because it is ‘the association of two or more persons to carry on as co-owners a business for profit forms a partnership.’ This is true ‘whether or not the persons intend to form a partnership.”[[13]](#footnote-13) And if a DAO is a general partnership with a binding contract with a third party, then “the individual purporting to act on behalf of the unformed entity will be held personally liable under the contract. *See, e.g., BRJM, LLC v. Output Sys*., Inc., 100 Conn. App. 143, 153, 917 A.2d 605, 612 (2007).”[[14]](#footnote-14) So, in the Olympus DAO case, Plaintiff was able to allege a basis for imputing liability on the Member because “A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership… Furthermore, ‘all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.’”[[15]](#footnote-15)

# DAO Registration in Wyoming

## Generally

This grant milestone is limited to the filing details for a Wyoming DAO.

## Registering a DAO in Wyoming

### The Process

The Wyoming Decentralized Autonomous Organization Supplement (WY-DAOS) defines a DAO as a Limited Liability Company organized under the WY-DAOS.[[16]](#footnote-16) As a result, an organization seeking to register a DAO in Wyoming goes through the similar process of filing an LLC, but has to undertake the additional following steps particular to a DAO registration:[[17]](#footnote-17)

1. **Registered Name**: The registered name of the DAO has to have the word DAO in it to show denote its status as a decentralized autonomous organization, specifically "DAO", "LAO", or "DAO LLC”.
2. **Articles of Organization:** The Articles of Organization (AO) of the DAO MUST include the following:

* **DAO STATEMENT**: The Articles of Organization of the DAO must contain a statement that the company is a decentralized autonomous organization[[18]](#footnote-18) whether or not filing as a new LLC or modifying an existing LLC.
* **MANAGEMENT DESCRIPTION**: the Articles of Organization have to state whether or not the DAO is Member Managed or Algorithmically Managed. If there is no specification, it will be assumed the DAO is Member Managed.
* **SMART CONTRACT IDENTIFIER:** publicly available identifier of any smart contract directly used to manage, facilitate or operate the decentralized autonomous organization
* **NOTICE**: Furthermore, the Articles of Organization must conspicuously include the following information:

NOTICE OF RESTRICTIONS ON DUTIES AND TRANSFERS

The rights of members in a decentralized autonomous organization may differ materially from the rights of members in other limited liability companies. The Wyoming Decentralized Autonomous Organization Supplement, underlying smart contracts, articles of organization and operating agreement, if applicable, of a decentralized autonomous organization may define, reduce or eliminate fiduciary duties and may restrict transfer of ownership interests, withdrawal or resignation from the decentralized autonomous organization, return of capital contributions and dissolution of the decentralized autonomous organization.

* **ADDITIONAL TERMS**: Additionally, the Articles of Organization should state the (i) Relations among the members and between the members and the decentralized autonomous organization; (ii)  Rights and duties of a person in their capacity as a member; (iii)  Activities of the decentralized autonomous organization and the conduct of those activities;(iv)  Means and conditions for amending the operating agreement;(v)  Rights and voting rights of members; (vi)  Transferability of membership interests; (vii)  Withdrawal of membership; (viii)  Distributions to members prior to dissolution; (ix)  Amendment of the articles of organization; (x)  Procedures for amending, updating, editing or changing applicable smart contracts; and (xi)  All other aspects of the decentralized autonomous organization.
* **SUPPLEMENTARY OPERATING AGREEMENT:** If the Articles of Organization or Smart Contract don’t fulfill the terms herein, the Articles can be supplemented by a smart contract.
* **FILING**: One or more members of the DAO have to sign and deliver one original and one copy of the Articles of Organization to the Secretary of State.

1. **Operations**

* **REGISTERED AGENT**: the DAO must assign and maintain a Registered Agent in Wyoming
* **TECHNICAL MANAGEMENT**: For algorithmically managed DAO’s, the underlying smart contracts must be able to be updated, modified or otherwise upgraded.
* **MANAGEMENT:** Member-Managed is controlled by Members, and algorithmically managed is managed by the smart contract unless Articles of Organization provide otherwise.
* **CODE OF CONDUCT**: 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.

1. **Voting**

* Membership interests in a member managed decentralized autonomous organization shall be calculated by dividing a member's contribution of digital assets to the organization divided by the total amount of digital assets contributed to the organization at the time of a vote; (ii)  If members do not contribute digital assets to an organization as a prerequisite to becoming a member, each member shall possess one (1) membership interest and be entitled to one (1) vote; (iii)  A quorum shall require not less than a majority of membership interests entitled to vote.

1. **Other**

* **FOREIGN DAOS**: No Certificates of Authority will be provided for a foreign DAO[[19]](#footnote-19)
* **AUDIT**: The DAO doesn’t have to provide records to a Member to the extent its available on a blockchain
* **WITHDRAWAL**: A member may only withdrawal from a DAO as described in the Articles, Smart Contracts, or Operating Agreement.
* **DISPUTE**: A Member cannot dissolve a DAO for failure to get contribution returned; a withdrawn member forfeits all membership interests in the decentralized autonomous organization, including any governance or economic rights
* **DISSOLUTION**: A DAO will dissolve if the time period ends for the organization, a majority vote, upon the occurrence of events in documentation or smart contracts; DAO failed to take action for a year; By order of the Secretary of State;

### Impact

As of the latest version of this document there are approximately 484 DAO’s that have been registered in the State of Wyoming. So, clearly, many DAO’s have been seeking to leverage the Wyoming DAO law to try and address some of the risks that have been mentioned in this report. Yet, given the very recent nature of WY-DAOS regulation, there have not yet been a significant number of cases in local chancery court that could provide insight into some of the lessons of the DAO’s that have actually registered in Wyoming.[[20]](#footnote-20)

### Case Study 1: Process, Impact, Lessons - The “American CryptoFed DAO”.

The American CryptoFed DAO (“**CryptoFed**”) was allegedly the first DAO that was registered in the State of Wyoming under WY-DAOS.[[21]](#footnote-21) The business of CryptoFed is to “create a new monetary system with fee-free trading, via its native algorithmic stable token.”[[22]](#footnote-22) At the time of registration, CryptoFed CEO, and former Mayor of the City of Cheyenne Wyoming, Marian Orr, was able to take CryptoFed through the outlined process in WY-DAOS and was able to secure a DAO registration. One key point in the registration process was that she clearly stated in interviews at the time “that in time, her role as CEO would become obsolete, as decisions would be made based on votes by the DAO's governance token holders.”[[23]](#footnote-23)

The impact of CryptoFed registration was most importantly to signal to DAO communities that the registration process was now available and live. Another impact was to illustrate to those companies that wanted to create DAO structures that they could maintain their corporate governance and slowly transition to a DAO. In fact, in the CryptoFed application, “the proposal suggests a three-year grace period before developers become subject to existing securities laws. This would allow time for a project to form, evolve, and become “sufficiently decentralized”—in much the same way that former SEC Director William Hinman described Ethereum in his reasoning for not considering the asset a security.”[[24]](#footnote-24) This paved the way for traditional corporations to explore migrating to DAO’s or otherwise developing business functions that could be launched separately as DAO’s and become self-governing.

The case study of CryptoFed also has resulted many lessons being learned since the company registered. The most notable lesson is that, even though Wyoming might recognize the CryptoFed DAO and the corresponding business plan as valid, there is still no adequate measure at the federal level to register and recognize a DAO. In this instance, the SEC stopped CryptoFed from registering two digital tokens on the basis that CryptoFed filed a **“materially deficient and misleading registration form.”[[25]](#footnote-25)**

### Case Study 2: Blocks DAO LLC

Blocks DAO is the first DAO to register under the WY-DAOS law with the suffix “DAO LLC”. It is a network that alleges to provide the “infrastructure for decentralized solutions and automation around industry-agnostic blockchain solution building”, and which registered with Wyoming in order to address issues of liability and compliance/regulatory exposure.

The impact of Blocks DAO registration is that it clearly stated that the mission of the DAO was to “serve as a model of compliance and accountability”[[26]](#footnote-26) sending a signal that one of the means by which compliance and accountability could be achieved was via registration. Yet, in some additional interviews with Blocks DAO, it was noted that “By combining blockchain and non-blockchain partnerships, BLOCKS aims to grow the utility of its digital asset to become a unit of measure for blockchain.”[[27]](#footnote-27) By taking this approach, the DAO also implicitly recognizes that DAO’s need legal wrappers to engage in “non-blockchain” partnerships in order to achieve business goals. Though there has not been much media since their registration, one lesson that one can take from their registration process and the description of their motives for doing so is the fact that registered DAO’s are recognizing the necessity of creating legal wrappers not just to mitigate liability, but also to pursue broader business objectives.

# Conclusion

The ability to register DAO’s in Wyoming is relatively new, and therefore the case law at the Wyoming level is scarce. At the federal level, there is clearly a resistance to DAO’s that hopefully may be addressed as federal agencies update their approaches to comply with President Biden’s Executive Order on Digital Assets. In the meantime, this whitepaper is intended to be an introductory example using Wyoming (which shall also serve as the starting point for interviews), for a broader whitepaper that will explore more in depth the different ways that countries around the world are approaching the registration of DAO’s, what the costs and benefits are of such registration, and generally how regulators and DAO’s alike are working to try and make the fact of registration itself harmonize with the spirit of a DAO.

**ATTACHMENT A**

**ORIGINAL TEXT OF GRANT APPLICATION**

**Grant Name**:  WHITEPAPER: Registration of DAO's in Wyoming

**Describe your project in detail. Please include what it does and what problem it solves. (limit 1500 words)**:

The existing ambiguity regarding the role of DAO’s within legal or regulatory frameworks creates unsustainable risk for both regulators and DAO Members alike.  Regulators (and sector organizations) around the world are developing legislation and other vehicles to identify the most effective means to have DAO’s recognized by national and international authorities, and generally afford those DAO’s the ability to engage in contracts and other legal agreements that are legitimate and enforceable in the eyes of the law.  At the same time, this regulatory ambiguity also exposes DAO Members to potential personal or financial liable for the actions of the DAO itself.  This “chilling effect” may slow the growth and acceptance of DAO’s in general, while also exposing DAO Members themselves to complex legal questions arising from DAO ambiguity (e.g. identifying the best means to report DAO grant earnings on tax returns – something that will be addressed in a subsequent grant).  Risk is mitigated with certainty.

In an effort to address these concerns, on April 21, 2021, Wyoming passed one of the first DAO-related laws in Bill 38, which recognizes decentralized autonomous organizations (DAOs) as limited liability companies. (Other entities are working to address similar efforts, such as the proposed regulation of the Australia Law Association working to create the “DAO Limited” addition to the Australian Corporations Act of 2001, or the sector guidance set forth by the Coalition of Automated Legal Applications (COALA) in their “Model Law for Decentralized Autonomous Organizations”.) The new Wyoming DAO law permits DAOs to incorporate as LLC’s, an entity whereby the members of the company *might* not held personally or financially liable for the debts or liabilities of the company.  Alternatively, registration might also expose the DAO or DAO Members themselves to increased exposure to lawsuits and liabilities from securities regulators seeking to pierce the corporate veil.  In contrast with the unattested to conjecture set forth by armchair experts one way or another amidst this ambiguity, this research paper will provide a fully researched and attested to legal opinion identifying and documenting all the reasonably foreseeable risks and rewards of registering a DAO, while providing such research in a comprehensive context of DAO’s and the Law.

This grant will be used to cover three (3) critical components in as many Milestones: 1.) Legal research, interviews, and a resulting brief on the process and impacts of at least (2) DAO’s that have registered in Wyoming; 2.) Interviews with key leaders in this space, including, but not limited to, at least one Wyoming Lawmaker, and at least two (2) other leaders who have worked directly in either drafting, implementing, or launching DAO’s in Wyoming. These interviews shall include in-depth legal questions on the basis for the law, the perceived impact of the Wyoming DAO Law before implementation, the actual impact, and any actual or proposed next steps being taken to mitigate for any outstanding risks. These interviews shall result in a transcript that shall inform and serve as an addendum to the whitepaper; and (3) A completed whitepaper, informed by the DAO briefs and interview transcripts, themselves attached as addenda.

The whitepaper will serve as an advisory research paper to assist individuals, DAO Members, and regulatory bodies alike in understanding the implications of DAO registrations in Wyoming.  This will include: (i) A review of the structure of DAO’s based on existing documentation, vehicles, and; (ii) An assessment of the legal framework that may already be applicable to DAO’s and DAO Members either directly, directly, or by analogy (i.e. an assessment of how regulators, individuals, and courts, can try and go after DAO and DAO Members amidst regulatory ambiguity); (iii) An assessment of the strategic implications – pros and cons for the DAO and DAO Members both in the U.S. and around the world – of registering a DAO *in general practices and theory*; (iv) An assessment of the strategic implications – pros and cons for the DAO and DAO Members both in the U.S. and around the world – of registering a DAO *in Wyoming* (as well as key examples and metrics from at least two (2) already registered DAO’s); (v) a brief review of some of the other actual or proposed DAO registration regulations or regulatory trends around the world, and how they either augment or mitigate risks in comparison to the Wyoming regulation; and finally, (vi) a step by step guide outlining how a DAO may register in Wyoming (and how to maintain that registration in good standing or modify such an application effectively if, for example, a DAO needed to modify their registration from a Member managed entity to one that is algorithmically managed).  AGain, this whitepaper will include consultations with (but not limited to) regulatory agencies, DAO Members, and sector experts, in order to ensure a comprehensive report of the highest value to the most readers.

Ultimately, this whitepaper will provide DAO’s and their Members with a clearer understanding of some of their own legal and regulatory liabilities, and how DAO registration might impact those risks, or raise even newer risks. This paper will NOT be an endorsement by the ETA or DEVxDAO, but this will merely be a research whitepaper that will be maintained on the website of the NYC CyberLaw Group, PLLC, made available to DAO communities, and updated to reflect global legal and regulatory trends and/or impacts for a period no less than six (6) months from the date of publication.

**Explanation as to how your proposed project would benefit the DEVxDAO ecosystem AND/OR support transparent and open source scientific research and/ or development if applicable.**

DAO’s are facing increasing legal and regulatory scrutiny, while DAO Members themselves are concomitantly exposed to increasing considerable personal and financial risk.  Risk is mitigated with certainty.

The Wyoming DAO Law presents *one avenue* by which DAO and DAO Members *may* be able to mitigate their risks.  At the same time, such registration *may* also present the DAO and its Members with new and potentially even greater risks.  This research paper will provide DAO’s and DAO Members with answers and much needed clarity on those issues, starting with the Wyoming DAO Law.  Furthermore, this whitepaper will benefit DAO’s and the DAO community as a whole by presenting the “Wyoming DAO Law” assessment as a framework by DAO’s and their Members can understand and contextualize risks amongst other existing laws and emerging regulations.

This whitepaper will also indirectly serve DAO ecosystem(s) (including the DEVxDAO) as a whole, by providing regulatory agencies considering such legislation, which some much needed analysis. The Wyoming DAO law addressed in this whitepaper arose as certain key members of the law and crypto community recognized the risks of the regulatory ambiguity of DAO’s, and worked diligently to educate regulators about DAO’s and inform them about a responsible way to address risks without stifling innovation.  Their efforts led Wyoming to be one of the first states to issue a “DAO Regulation”, with already more than thirty-six (36) confirmed DAO registrations.  The regulation, along with these (and the increasing number of) registrations, help serve as guidance to the Wyoming regulator. This whitepaper will go one step beyond, by addressing the risks/rewards of Wyoming DAO regulation, and establishing a framework to help track and guide the global industry standard on DAO regulation.

Lastly, it would be irresponsible to overlook the fact that the decentralized nature of DAO’s and DeFi in general seem santithetical to the concept of “registration” with or as a government entity.  In spite of that, the efforts by government agencies, regulatory bodies, and potential individual or corporate litigants, will no doubt seek to utilize any means to pierce the veil of unregistered DAO’s for their own respective means.  Consequently, the potential benefits of Wyoming DAO registration (or registration with other potential entities) for Members of the DAO ecosystem are clear – **Risk is mitigated with certainty**. And though registration will not fix everything, it may or may not lend an extra modicum of peace of to DAO’s and DAO Members (who may be able to limit their personal and financial liability while participating in the DAO ecosystem), allowing them to instead be able to focus more clearly on innovation and development.

**Under which open source license(s) will you publish any research and development associated with your proposed Project? All research papers or the like should be Creative Commons.**

Creative Commons

**Please link your resume (Linkedin) or Git (For developers)**

<https://www.linkedin.com/in/cyber-lawyer/>

**Please add any notes or reference about the project, such as similar projects or web pages about APIs to be integrated with your build**

The legal services of NYC CyberLaw Group. PLLC.

**Please enter team member details for all central project members:**

1 - Paul

Education/Experience

New York licensed attorney, information systems architect, & executive with global expertise in cybersecurity, privacy, and technology law, specializing in the financial and healthcare sectors. Expert in understanding and assisting companies and governments alike in navigating the dialogue between technical code (e.g. architecture, data flows) and legal code (regulatory requirements, case laws), to (i) identify and address legal or compliance issues; (ii) establish evergreen legal and compliance documentation and governance; (iii) draft, review, and facilitate technology transactions; (iv) effectively execute digital transformation; and (v) otherwise best situate emerging technologies (e.g. DeFi, AI/ML) to promote innovation and provide sector guidance.

**I hereby declare that my team has sufficient qualifications, experience and capacity to actually finish the proposed project.**

**Please enter the total amount you are requesting as a grant:**

50,000 Euro

**Will payments for this work be made to a entity such as your company or organization instead of to you personally?**

Yes

**Please select all planned uses for your grant funds. Select all that apply and enter the estimated portion of grant funds allocated for each. All totals must equal the upper amount**

·      **Salary and other personal compensation**

* **Legal, accounting, recruiting (50,000 keeping 100%)**

**Did a Voting Associate of the DEVxDAO assist you during the grant application process as a mentor?**

No.

**Milestone Details**

Projects are typically divided into milestones. Please propose the milestones in which the total project will be delivered:

**Milestone #1:**

**Title of Milestone (10 word limit)**– Legal Brief on Registered DAO’s (at least two (2) examples)

**Milestone Deadline**- December 15, 2021

The law firm of NYC CyberLaw Group, PLLC shall deliver a legal brief on DAO registration in Wyoming, commencing with a general overview, followed by two comprehensive briefs on the process, impact, and lessons, from at least two (2) registered DAO.

**Acceptance criteria: Please enter the specific details on what the deliverable must do to prove this milestone is complete and also detail the KPIs (Key Performance Indicators) for each milestone and your project overall if appropriate. Any KPIs should measure your delivery's performance if KPIs are applicable to your project. This field is where you provide your "definition of done so provide as many details as possible.**

Milestone 1 shall be considered completed upon submission and acceptance of the DEVxDAO of the “Legal Brief on Registered DAO’s”

**Milestone #2:**

**Title of Milestone (10 word limit)**– Interviews and Transcripts

**Milestone Deadline**– January 15, 2021

The law firm of NYC CyberLaw Group, PLLC shall interview at least three (3) individuals involved in DAO Governance, Registration, and/or Regulation (one of who must have been involved in drafting the Wyoming DAO regulation). Interview subjects shall include, but not be limited to, in-depth and thorough questions (i) DAO governance, (ii) lessons; and (iii) regulatory intent. The results shall be either recorded video or audio, the transcripts of either of which shall be provided in fulfillment of the milestone.

**Acceptance criteria: Please enter the specific details on what the deliverable must do to prove this milestone is complete and also detail the KPIs (Key Performance Indicators) for each milestone and your project overall if appropriate. Any KPIs should measure your delivery's performance if KPIs are applicable to your project. This field is where you provide your "definition of done so provide as many details as possible.**

Milestone 2 shall be considered completed upon submission and acceptance of the transcripts of the interviews as indicated above.

**Milestone #3**

**Title of Milestone (10 word limit)**- Delivery of “Registration of DAO's in Wyoming” Whitepaper

**Milestone Deadline**– February 1, 2021

The law firm of NYC CyberLaw Group, PLLC shall coordinate with regulators and other firms to ensure delivery of the most comprehensive whitepaper addressing DAO Registration in Wyoming.  This whitepaper shall include Milestone 1 (Legal Briefs on at least two (2) Registered DAO) and Milestone 2 (interview recordings and/or transcripts) as attachments. The whitepaper shall address all the issues as indicated above but reiterated here:

The whitepaper will include: (i) A review of the structure of DAO’s based on existing documentation, vehicles, and; (ii) An assessment of the legal framework that may already be applicable to DAO’s and DAO Members either directly, directly, or by analogy (i.e. an assessment of how regulators, individuals, and courts, can try and go after DAO and DAO Members amidst regulatory ambiguity); (iii) An assessment of the strategic implications – pros and cons for the DAO and DAO Members both in the U.S. and around the world – of registering a DAO *in general practices and theory*; (iv) An assessment of the strategic implications – pros and cons for the DAO and DAO Members both in the U.S. and around the world – of registering a DAO *in Wyoming* (as well as key examples and metrics from at least two (2) already registered DAO’s); (v) a brief review of some of the other actual or proposed DAO registration regulations or regulatory trends around the world, and how they either augment or mitigate risks in comparison to the Wyoming regulation; and finally, (vi) a step by step guide outlining how a DAO may register in Wyoming (and how to maintain that registration in good standing or modify such an application effectively if, for example, a DAO needed to modify their registration from a Member managed entity to one that is algorithmically managed).  Again, this whitepaper will include consultations with (but not limited to) regulatory agencies, DAO Members, and sector experts, in order to ensure a comprehensive report of the highest value to the most readers.

**Acceptance criteria: Please enter the specific details on what the deliverable must do to prove this milestone is complete and also detail the KPIs (Key Performance Indicators) for each milestone and your project overall if appropriate. Any KPIs should measure your delivery's performance if KPIs are applicable to your project. This field is where you provide your "definition of done so provide as many details as possible.**

Milestone 1 shall be considered completed upon submission and acceptance of the “Registration of DAO's in Wyoming” Whitepaper

**Grant portion requested for this milestone in Euros -**$50,000

**Relationships and previous work**

I am affiliated with the ETA or a sponsor to the ETA

X I am a Contributor to the ETA.

My Project Plan exclusively supports the business and/or activities of a Contributor of ETA.

I have a close relationship with a Contributor of ETA and my Project Plan largely supports the business and/or activities of that Contributor.

I am a director, officer, or employee of the ETA.

None of the above

**Have you ever received a Grant under this program before?**No  
**Yes**

**If the answer to the previous question is YES, have you entirely fulfilled your contractual obligations?**  
**No**  
Yes

LEGAL and COMMUNITY BUILDING

**Please cite any previous work anyone else performed that is foundational to your proposed project. (If your grant uses any part of work built by another grant holder, you must cite them here and assign a % of the minted rep to them. You may  choose this %.)**

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1. Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO. SECURITIES AND EXCHANGE COMMISSION. Release No. 81207 / July 25, 2017. Available at: <https://www.sec.gov/litigation/investreport/34-81207.pdf> (Last Accessed Sunday, June 19, 2022) [↑](#footnote-ref-1)
2. <https://www.isaca.org/en/resources/glossary> (Last Accessed Sunday, June 19, 2022) [↑](#footnote-ref-2)
3. https://www.coindesk.com/policy/2021/04/22/state-lawmaker-explains-wyomings-newly-passed-dao-llc-law/ [↑](#footnote-ref-3)
4. Case where people came in and ..Sazerac case [↑](#footnote-ref-4)
5. Secret back end Control: While marketing itself as a DAO, Olympus is run by an internal circle of promoters, including Bara and Zeus, who can unilaterally withdraw smart contracts.10 These individuals maintained secret back-end control of the pOHM Smart Contract and used it to damage Mr. Liang while enriching themselves. [↑](#footnote-ref-5)
6. *Sarcuni et al v. bZx DAO et al.* (S. D. Cal., May 2, 2022) [↑](#footnote-ref-6)
7. *See* SEC, *Framework for “Investment Contract” Analysis of Digital Assets,* (April 3, 2019) https://www.sec.gov/files/dlt-framework.pdf [↑](#footnote-ref-7)
8. ***Decentralized autonomous organizations (DAOs).*** <https://ethereum.org/en/dao/> (Last accessed 6/30/22) [↑](#footnote-ref-8)
9. https://heitnerlegal.com/2021/10/15/how-and-why-to-create-a-dao-decentralized-autonomous-organization-company/ [↑](#footnote-ref-9)
10. https://heitnerlegal.com/2021/10/15/how-and-why-to-create-a-dao-decentralized-autonomous-organization-company/ [↑](#footnote-ref-10)
11. *Sarcuni et al v. bZx DAO et al.* (S. D. Cal., May 2, 2022) [↑](#footnote-ref-11)
12. OlympusDAO *Wenjin Liang v. Barr*, No. 17-71319 (9th Cir. Apr. 18, 2019) [↑](#footnote-ref-12)
13. OlympusDAO *Wenjin Liang v. Barr*, No. 17-71319 (9th Cir. Apr. 18, 2019) [↑](#footnote-ref-13)
14. OlympusDAO *Wenjin Liang v. Barr*, No. 17-71319 (9th Cir. Apr. 18, 2019) [↑](#footnote-ref-14)
15. OlympusDAO *Wenjin Liang v. Barr*, No. 17-71319 (9th Cir. Apr. 18, 2019) [↑](#footnote-ref-15)
16. WY-DAOS [↑](#footnote-ref-16)
17. Wyoming Decentralized Autonomous Organization Supplement [↑](#footnote-ref-17)
18. WY-DAOS Section **17‑31‑104** [↑](#footnote-ref-18)
19. WY-DAOS (17‑31‑116) [↑](#footnote-ref-19)
20. In fact, there has only been one case. [↑](#footnote-ref-20)
21. This is contested by a few other players including Blocks DAO, LLC, which prominently states on their website that they are the world’s first “DAO LLC” https://www.blocks.io/ [↑](#footnote-ref-21)
22. https://decrypt.co/75222/americas-first-dao-approved-in-wyoming [↑](#footnote-ref-22)
23. https://decrypt.co/75222/americas-first-dao-approved-in-wyoming [↑](#footnote-ref-23)
24. https://decrypt.co/75222/americas-first-dao-approved-in-wyoming [↑](#footnote-ref-24)
25. [The SEC] alleged that the Form 10 misstated and omitted information, including whether the ducat and locke tokens are securities. merican CryptoFed CEO Marian Orr wrote in an email to CoinDesk that the company had sent a letter to the SEC on Oct. 12 that “rebutted point by point the deficiencies raised” by agency. Orr added: “If the SEC is unready to make a declaration that CryptoFed’s two tokens are not securities, to meet the spirit of Securities Laws’ transparency and disclosure, we shall argue SEC should allow our Form 10 filing to become effective in time so that we may continue disclosing material and substantial information to the SEC, related parties and the general public.” https://www.coindesk.com/policy/2021/11/11/sec-stops-wyoming-based-dao-from-registering-2-digital-tokens/ [↑](#footnote-ref-25)
26. https://cryptomode.com/blocks-a-dao-with-traction/ [↑](#footnote-ref-26)
27. https://cryptomode.com/blocks-a-dao-with-traction/ [↑](#footnote-ref-27)