

Background

On April 3, 2024, a class-action lawsuit by a private plaintiff was filed in Case No. 3:23-cv-06492 in the United States District Court for the Northern District of California (the “Complaint”), naming “LIDO DAO, a general partnership,” as a defendant.

In the Complaint, Lido DAO is alleged to be a “general partnership” which “runs an Ethereum staking business,” and LDO tokens or transactions in LDO tokens are alleged to be securities or securities transactions that Lido DAO is alleged to offer or sell to the public in violation of securities laws.

On June 27th, the court held that Lido DAO had been properly served legal process regarding the Complaint through various public postings made by the plaintiffs and has 14 days to respond or risk a default judgment on the plaintiffs’ claims. Although various venture capital funds are also named defendants in the Complaint, none are responding as or on behalf of Lido DAO, and in fact they are denying they are part of Lido DAO. Thus, the risk of a default judgment against Lido DAO is real if a response is not filed by “Lido DAO”.

Lido DAO has never characterized itself as a partnership, unincorporated association or other legal entity, and lacks many of the common features of a partnership (such as the alleged ‘partners’ knowing who one another are and a sharing of the profits and losses of an enterprise). There is no partnership agreement or other legal document providing for explicit mechanisms for Lido DAO to appear in or appoint a representative in a litigation. Nevertheless, because Lido DAO is alleged to be such an entity (specifically, a general partnership) in this complaint, Lido DAO tokenholders should pass this vote to enable someone to argue that Lido DAO has not been and cannot be served properly, is not a general partnership or other legal entity, is not a proper defendant to this lawsuit, and that the case should be dismissed.

Accordingly, this proposal, without admitting and expressly disagreeing that Lido DAO is a partnership, association or other legally cognizable group or entity, is to appoint and fund Dolphin CL, LLC, a Delaware limited liability company (“Dolphin”) to engage legal counsel (currently expected to be Brown Rudnick, led by partner Stephen Palley) and make a limited appearance as “Lido DAO” in the aforementioned case and, without admitting jurisdiction of the court or any other adverse legal fact (including but not limited to the notion that Lido DAO is a legal person), make all necessary or desirable legal arguments to cause the case to be dismissed against Lido DAO on any grounds deemed reasonable, appropriate and non-prejudicial by Dolphin and its counsel. The requested funding is 200,000 DAI, which is expected to be sufficient to pay Dolphin and its legal counsel for services sufficient to draft, file and argue in favor of a motion to dismiss the Complaint as it pertains to Lido DAO.

Risks

There are two types of risks relating to the proposal:

1. Risk of Not Passing the Proposal.

If “Lido DAO” does not make filings in the case, there is a risk the court will enter a default judgment against “Lido DAO” due to no response to the Complaint being filed. While the ultimate implications of this would be unclear (in part because the legal status of ‘Lido DAO’ is unclear), in a recent case by the CFTC against Ooki DAO, the CFTC obtained a court order for the collection of damages from Ooki DAO and ordering “any third party providing web-hosting or domain-name registration services to shut down the Ooki DAO’s website and remove its content from the internet,” which has resulted in successful takedowns of Ooki-DAO-related web2 infra.

On the other hand, a default judgment likely cannot be entered until the case is fully concluded against all parties, and the other parties to the litigation—if they are not dismissed from the case per their motions—would presumably continue litigating in their own defense for some time, even if Lido DAO does not appear to defend itself. However and even though those defendants have an excellent track record of supporting the blockchain industry, none of them are responding to the case as if they are

part of Lido DAO, and due to potentially conflicting fiduciary duties there can be no guarantee their arguments will be crafted toward sustainability of Lido DAO and the systems it governs, versus being tailored to eliminate their own likelihood of liability or garnering an early dismissal of themselves from the case while leaving Lido DAO itself as a defendant.

If a default judgment is ultimately entered against Lido DAO, we cannot predict whether the court would enter similar orders in this case to those in Ooki DAO (one notable difference is that the plaintiffs here are class-action attorneys, not a government agency), but it is a material risk—particularly if the default judgment is weaponized to cause third parties to deny Lido-DAO-related access to web2 infrastructure, to delist LDO from trading venues, etc.

Furthermore, third-parties could seek to use a default judgment against Lido DAO or other parties in other legal actions. This can occur via the doctrine of res judicata or non-mutual offensive collateral estoppel which has sometimes been used by the SEC and other regulators. These doctrines are complex so it is not guaranteed they will apply—for example, it could be argued that “Lido DAO” lacks a fair opportunity to litigate here or that the remedies are sufficiently different that res judicata principles would not apply. But a court may ultimately disagree and may apply such doctrines adversely to Lido DAO.

Generally, a default judgment is a potential attack vector against Lido DAO and the systems it governs. While there may be various counterattacks to the judgment at various stages, and enforcing the judgment may be difficult for the plaintiffs, it is better if the attack vector does not materialize in the first place.

1. Risks of Passing the Proposal

The main risk of passing the proposal is that the claimant in this case might try to build an argument that Lido DAO is capable of being a litigant and therefore should be viewed as legal person that can ultimately suffer an adverse judgment. However, in the Ooki DAO case, the Ooki DAO took the strategy of having no one appear for the DAO, and this fact in itself did not help Ooki DAO—it was still deemed to be a cognizable legal person and still suffered a default judgment and had critical web2 infra dismantled by government orders levied against third parties.

A second general risk is that if Lido DAO appears and is not dismissed from the case, Lido DAO will face additional expenses and risks as the litigation proceeds. By contrast, if no response is entered for Lido DAO and the other defendants are not dismissed, the other defendants may keep litigating the case and Lido DAO could ‘free ride’ on their efforts to some extent (albeit there is no guarantee their arguments will be optimal for Lido DAO).

About Dolphin CL, LLC

Entity Name: Dolphin CL, LLC

Entity Type: Limited liability company

Jurisdiction: Delaware

About Brown Rudnick/Stephen Palley

Stephen Palley is a litigation partner and co-chair of Brown Rudnick’s Digital Commerce group and leads its Digital Assets disputes practice. Stephen is a seasoned litigator with over 25 years of extensive courtroom experience litigating and trying complex commercial matters. He has deep technical and U.S. regulatory knowledge, particularly in the digital asset space, and assists clients working on the frontiers of technology, including on deal work for blockchain and other technology enterprises, as well as product development guidance. His current practice is devoted nearly exclusively to the Digital Asset space, and current cases include several involving disputes involving DAO-related conflicts, in state and federal courts, as well as private arbitration and mediation. He also defends clients in regulatory matters involving blockchain protocols and token projects. He is an editor of the International Journal of Blockchain Law (IJBL), a law journal launched in November 2021 to help non-legal communities better understand Blockchain applications and digital assets. Before joining Brown Rudnick, Stephen founded his prior law firm’s Technology, Media and Distributed Systems Practice Group in 2017, which he also chaired. He serves as an outside general counsel to technology and media startups and as a trusted advisor to established businesses across a range of industries, with a focus on securities and financial regulatory law, and has been recognized by Legal 500 (2024) for his acumen in this space.

Proposal

Without admitting any alleged legal classification of Lido DAO as a general partnership or otherwise, Lido DAO hereby authorizes Dolphin CL, LLC to file a motion to dismiss the aforementioned legal case against Lido DAO as promptly as practicable. Dolphin CL, LLC is not authorized to serve as a general representative or proxy of Lido DAO or LDO token holders or to receive notices or other legal process on behalf of LDO tokenholders or Lido DAO, but only to make a limited appearance and file a motion to dismiss the complaint against Lido DAO as summarized herein. If the proposal passes, the funding of up to 200,000 DAI is to be provided through RCC EasyTrack motions.