

Coalition for Cooperative Blockchain Organizations

Proposed SEC Rulemaking Non-Fungible Membership Interests

Executive Summary: A growing number of decentralized autonomous organizations use cooperatives or similar legal entities as a wrapper (e.g., Coinage Media, Collab.Land, Opolis, SporkDAO). For decades, the Securities and Exchange Commission has treated non-transferable cooperative memberships and similar interests as non-securities (e.g., Green Bay Packers stock). But SEC regulations do not provide an explicit “safe harbor” for such membership interests, which means DAOs that issue non-fungible, non-transferable membership tokens must *either* obtain an SEC no-action letter with respect to the membership tokens *or* issue membership tokens subject to the risk of SEC enforcement. The SEC rulemaking proposed herein would provide a “safe harbor” for non-transferable memberships that meet certain criteria.

Potential Outcomes: The SEC rulemaking could enable the following outcomes, among others:

- DAOs could issue non-fungible, non-transferable memberships that are not deemed securities.
- DAOs could purchase real-world assets and businesses and manage them as a community, similar to what ConstitutionDAO attempted to do with an original copy of the US Constitution.
- DAOs could distribute dividends to their members proportional to each member’s participation in the project or business that the DAO manages.

Key Features of the Proposed Rulemaking

- Securities Act of 1933: Amend regulations under the Securities Act to:
 - Provide a “safe harbor” exempting memberships interests from registration if (1) the membership interests are non-transferable except to the DAO itself or to other members for a pre-approved price; (2) the membership interests provide dividends to each member solely based on the efforts of such member; and (3) each purchaser of a membership interest is a verified user or supplier of the products or services provided by (a) the DAO or (b) any company in which the DAO owns equity.
 - Provide that a DAO which (1) issued 100% of its membership interests in compliance with the Securities Act exemption above, and (2) has at least one director who is an “accredited investor,” qualifies as an “accredited investor” under Securities Act Regulation D. This would allow qualified DAOs to purchase and operate real-world businesses on the same footing as traditional investors.
- Securities Exchange Act of 1934: Amend regulations under the Exchange Act to exempt from registration any DAO that issues 100% of its membership interests in compliance with the Securities Act exemption above.
- Investment Company Act of 1940: Amend regulations under the Investment Company Act to exempt from registration as an “investment company” any DAO that issues 100% of its equity in compliance with the Securities Act exemption above.

Further Reading

- **Cooperatives: An Ownership Model for Digital Networks**, Orrick, KPMG, and Upside.Coop: Outlining Supreme Court precedents and SEC no-action letters signaling that non-transferable cooperative memberships are not securities.
- **Navigating DAO Legality: Unpacking Legal Frameworks and Proposing Limited Cooperative Associations (LCAs)**, Opolis Digital Employment Cooperative: Discussing the cooperative structure as an appropriate liability shield for DAOs.

Coalition Members

- Jeremiah Buckley, Partner at Orrick and former Minority Staff Director for US Senate Banking Committee
- Anthony Fiume, Founder of Football Club Group (f/k/a Football Club DAO); Senior Member Retention & Engagement Associate at Consumer Reports (probably participate virtually)
- Zack Guzman, Founder of Trustless Media (Coinage)
- Yev Muchnik, Managing Member of Launch Legal, LLC and Senior Of Counsel at Jason Wiener, P.C.
- Graham Novak, Founder of ConstitutionDAO; CEO of Mezzanine Labs (probably participate virtually)
- John Paller, Founder of ETHDenver
- Nathan Schneider, Assistant Professor Media Studies at University of Colorado Boulder and founder of the Media Economies Design Lab
- Dr. Tomicah Tillemann, President of Project Liberty
- Sheila Warren, CEO of Project Liberty Institute
- James Wigginton, Of Counsel at Orrick, Herrington & Sutcliffe LLP

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