

FORMING CRYPTO/DIGITAL ASSET FUNDS USING WYOMING DAO/BLOCKCHAIN AND U.S. SECURITIES LAWS

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I. Executive Summary

Wyoming, a northwestern U.S. state with a population of approximately 580,000, the smallest among U.S. states, has since 2019 become a blockchain, digital assets and cryptocurrency paradise, leading the way among all U.S. jurisdictions in providing a clear - and advantageous – legal, regulatory, tax and investor privacy regime for investment vehicles focused on digital assets, including cryptocurrencies, digital tokens and certificates, non-fungible tokens (“NFTs”) and other Web 3.0 and blockchain-based asset classes. While the U.S. Congress, the Securities and Exchange Commission (“SEC”) and the Commodities Futures Trading Commission (“CFTC”) are developing a legal regulatory structure for crypto/digital asset classes that may be treated as securities or commodities (or both at once; *see* “Cryptocurrency & Digital Asset Regulation in the second Trump administration: What to Expect and How to Prepare” and other resources at [Kurtin PLLC Information Technologies, Blockchain & Internet](#)) or neither (for example, in the case of NFTs), we expect the existing securities/commodities regulatory and oversight regime to be adapted and generally apply with a deregulatory bias under the incoming Trump administration. That framework assumed, since 2019, Wyoming has developed a cutting-edge regime for investment in crypto/digital assets and Decentralized Autonomous Organizations (“DAOs”), blockchain-based decentralized entities that make and implement decisions using “smart contracts,” software code that executes programmed actions when data inputs are given and which can record the DAO’s ownership interests, governance structure and voting rights on the blockchain. We’ll first review Wyoming’s attributes as a jurisdiction to base a corporation, limited partnership (“LP”) or limited liability company (“LLC”), then review Wyoming’s pacesetter laws facilitating company and investment fund formation and investment vehicles focused on cryptocurrencies, digital assets and DAOs, and then review the federal securities laws and regulations that apply to forming Crypto/Digital Asset funds.

II. Wyoming as a Corporate and Tax Jurisdiction

We reported on Wyoming’s attractiveness as a fund and trust domicile in our “Special Purpose Vehicles (“SPVs”): Uses and Abuses” available at [Kurtin PLLC Venture Capital & Private Equity](#). Wyoming is one of several U.S. states with no income tax (the others are Alaska, Florida, Nevada, New Hampshire,

South Dakota (itself become a favorite trust domicile for U.S. and non-U.S. investors by reason of its highly protective privacy laws), Tennessee and Texas. Wyoming also offers several other attractive outside investor attributes irrespective of whether digital assets are the object of the business to be formed:

- Wyoming corporations, LPs and LLCs can be formed online, from anywhere else within or outside the U.S., using a Wyoming registered agent and then liberally structured (“organized”) in their charter documents to optimize their structure for investment fund, investor, investment asset, tax, accounting, governance and other business objectives.
- Wyoming corporations, LPs and LLCs can be formed, owned and managed by natural and legal (i.e. companies) citizens of other states and other countries, with limited liability protection for equity holders: a corporation’s shareholders, an LP’s limited partners or an LLC’s members.
- Wyoming corporations, LPs and LLCs can be vertically and horizontally “chained” - affiliated – with other corporations, LPs and LLCs, whether from Wyoming, other U.S. jurisdictions or offshore jurisdictions, and have governing or managing entities domiciled in other jurisdictions, onshore or offshore. For example, a Wyoming LP could have a Delaware LLC as its required general partner (or a Wyoming LLC could have a Delaware LLC as its managing member) to preserve Wyoming advantages while taking advantage of Delaware’s highly developed statutory scheme and jurisprudential interpretation of that scheme for company governance certainty and the potential attractiveness of that certainty for investors; and also have a British Virgin Islands (“BVI”) or Cayman Islands or other offshore jurisdiction company as its parent, with tax, accounting and further privacy advantages for investors, both onshore and offshore in what is called a “Master Feeder” structure (see, “Special Purpose Vehicles: Uses and Abuses”).
- Wyoming LPs and LLCs can be formed, including as trusts, without any public record disclosing settler or beneficiary. Wyoming also permits trusts with generation-skipping transfer taxes and “self-settled” trusts (trusts formed by a person who also becomes the trust beneficiary).

III. Wyoming has led the way among U.S. states with its laws enabling, facilitating and governing treatment of digital assets, including cryptocurrencies, NFTs and other digital assets, blockchain and DAOs. Other states are also progressing in Digital Asset/DAO laws; for example, Utah, and a bill advancing in New Hampshire. Pending new developments, we will maintain focus on Wyoming.

A. Wyoming Digital Asset Law.

In 2019, Wyoming became the first state to enact blockchain-enabling legislation and to establish the treatment of digital assets such as cryptocurrencies and NFTs as intangible property under Article 9 of the Uniform Commercial Code (“UCC”), which is enacted in all fifty states and the District of Columbia. The 2019 Wyoming Digital Asset Statute (W.S. 34-29-101 *et seq.*) (the “WY Digital Asset Law”), as amended, defines:

- “Digital Asset” as “a representation of economic, proprietary or access rights that is stored in a computer readable format and is either a digital consumer asset, digital security or virtual currency;”
- “Digital Consumer Asset” as a Digital Asset “used or bought primarily for consumptive, personal or household purposes,” including open blockchain tokens constituting intangible personal property and any other Digital Asset not constituting a Digital Security or a Virtual Currency;
- “Digital Security” as a Digital Asset that constitutes a security, as defined in the WY Statutes, but excluding Digital Consumer Assets and Virtual Currency; and
- “Virtual Currency” as a Digital Asset “used as a medium of exchange, unit of account or store of value” AND not recognized as legal tender by the United States (in other words, the Presidential Executive Order inquiry into, among other things, creating a “digital dollar” would not be Virtual Currency under the WY Digital Asset Statute (see, “U.S. Executive Order Issued to Develop Cryptocurrency/Digital Asset Regulatory Framework,” March 10, 2022, available at [Kurtin PLLC Information Technologies, Blockchain & Internet](#)).

The WY Digital Asset Law makes clear that the definitions of “Digital Consumer Asset,” “Digital Security” and “Virtual Currency” are mutually exclusive; all are “Digital Assets,” but none are more than one of the subcategories at a time, with Digital Consumer Assets forming the residue category for Digital Assets not fitting into the Digital Security or Virtual Currency categories.

The WY Digital Asset Law recognizes all three subcategories of Digital Assets as intangible property within the general Wyoming scheme of property rights, property protection and enforcement, sale, lease, licensing, assignment and any other disposition of property available to other forms of intangible property

and makes Digital Assets subject to Articles 8 and 9 of the Uniform Commercial Code (“UCC”) in which a security interest can be perfected, opposable in all U.S. jurisdictions. The WY Digital Asset Law states that it is also to be treated as a consumer protection statute under Wyoming law. Critically, although the statute allows for the typical UCC Article 9 financing statement for perfecting a security interest in intangible property, it provides that perfection of a security interest in Virtual Currency can be achieved through possession, and in a Digital Security by control, giving the holder of such a perfected security interest priority over a security interest by a party that does not have possession or control, as the case may be. To achieve possession or control, and therefore the priority security interest, the secured party must enter into a security agreement with the debtor and any other necessary parties. The security agreement may provide for the priority secured party to pledge its security interest as collateral in another transaction. After two years, a transferee for value of a Digital Asset for value takes it free of any security interest in the absence of actual notice of an adverse claim.

The WY Digital Asset Law further makes provision for use of smart contracts by secured parties to achieve the necessary “control” or “possession” in Digital Assets.

The WY Digital Asset Law further establishes an opt-in framework for bank custodial services for Digital Assets and a jurisdictional framework of Wyoming courts over Digital Asset disputes. The opt-in for bank custodial services enables use of Wyoming SPVs as investment fund vehicles holding blockchain digital assets, NFTs and cryptocurrency as fund assets, in which investors within and without Wyoming can invest. Anti-money laundering, accountant and audit provisions are also included.

The Wyoming Digital Asset Statute provides for a Wyoming bank providing custodial services to enter into an agreement with its customer as to the nature of its custodial arrangement: (i) whether the custody is a bailment, whether of a fungible or non-fungible Digital Asset, in which case the bank must strictly segregate the Digital Asset from other assets; or (ii) a statutory bailment authorizing the bank to enter into transactions with the Digital Asset based on customer instructions. Further, the bank and its customer must agree in writing specifying the source code version the bank will use for each Digital Asset and each Digital Asset’s treatment under the UCC, with any ambiguity to be resolved in favor of the customer. Various notice requirements on behalf of the bank to its customer are also included. Finally, the WY Digital Asset Statute authorizes each bank opting in to Digital Asset custodial services to operate a trust department to perform those services.

The WY Digital Asset Statute was amended by adding a new section 106, called the “WY Utility Token Act,” classifying open blockchain tokens whose primary purpose was consumptive (i.e., not as a currency or medium of exchange, etc.) as intangible personal property and therefore a Digital Asset.

**B. The Wyoming DAO (Decentralized Autonomous Organization) Law.**

The Wyoming Decentralized Autonomous Organization Supplement (the “WY DAO LLC Law”) was enacted as Wyoming Statutes, Title 17, Chapter 31, in 2021. The WY DAO LLC Law defines a “Decentralized Autonomous Organization as an LLC organized under the statute. It provides for the recognition of DAOs as LLCs separate and apart from ordinary Wyoming LLCs, although with separate and additional requirements from those of traditional LLCs.

A Wyoming DAO LLC may be formed by one or more members for any lawful purpose, and the person forming the DAO LLC need not be a member; i.e., an attorney or registered agent can form the DAO LLC. The WY DAO LLC Law requires a DAO LLC to state its status as a DAO LLC in its Articles of Organization, to maintain a registered agent in Wyoming and identify itself as a DAO LLC in its name as a DAO, DAO LLC or LAO (Limited Liability Autonomous Organization). Existing, or traditional, LLCs may also convert to DAO LLCs. The law specifically extends the LLC limited liability protection for members (the LLC equivalent of shareholders) to the DAO’s members. The DAO LLC must also include in its Articles of Organization a publicly available identifier for any smart contract used to manage, facilitate or operate the DAO LLC. Typical (for traditional LLCs) elements must also be included, such as members’ rights and duties vis-à-vis the DAO LLC and each other, voting rights, transferability of membership interests, withdrawal from the DAO LLC, distributions of profits and losses to members, amendment of the Articles of Organization and any smart contracts, dispute resolution and others. The Operating Agreement itself may be a smart contract, and management may be vested in the members or any smart contract.

The WY DAO LLC Law differs from the main Wyoming LLC statute in requiring notices in the DAO LLC Articles of Organization or Operating Agreement to the effect that the company is a DAO LLC, that its members may have different rights from member rights in traditional LLCs. DAO LLCs may restrict or eliminate fiduciary duties, transfers of membership interests, member withdrawal from the DAO LLC, return of member capital contributions and dissolution, all of which should be memorialized in the DAO LLC Operating Agreement, particularly to the extent more restrictive than equivalent member rights in a traditional LLC. DAO LLC Articles of Organization and Operating Agreements should be carefully customized to take advantage of these potential attributes unique to DAO LLCs.

The WY DAO LLC Law provides for a DAO LLC to be member-managed or managed by a smart contract when “algorithmically managed.” For algorithmically managed DAO LLCs, the enabling smart contract must be able to be modified or amended. A combination of human, contractual, statutory filing and smart contract governance structures may be used, emphasizing the nature of the WY DAO LLC Law as a technological-legal/regulatory “sandbox” for blockchain legal entity development.

Membership Interests in a WY DAO LLC are calculated by dividing a member’s contribution of Digital Assets to the DAO LLC by the total amount of Digital Assets contributed to the DAO LLC at the time of a vote, with non-contributing members at the time of a vote having one membership interest and one vote.

Other WY DAO LLC Law provisions emphasize the differences between DAO LLCs and traditional LLCs. DAO LLC members have no right to inspect or copy company records if the information is available on a public blockchain, and the DAO LLC has no obligation to provide information to members about its capital finance, activities or other attributes to the extent available on public blockchain. The DAO LLC must be domiciled in Wyoming; the WY DAO LLC Law provides that the Wyoming Secretary of State shall not authorize a foreign (non-Wyoming) DAO. In the event of conflict between Operating Agreement and smart contracts, the smart contracts govern in almost all cases. DAO LLCs must be dissolved if they do not approve any proposals or take actions within a year, or are not under the control of at least one natural person. A DAO LLC must also be dissolved if the WY Secretary of State deems it “to no longer perform a lawful purpose.”

#### C. The Wyoming DUNA (Decentralized Unincorporated Nonprofit Association) Law.

Most recently, in 2024, Wyoming has added a statutory provision for a “Decentralized Unincorporated Nonprofit Association,” or “DUNA,” as opposed to a DAO LLC (enacted as Wyoming Statutes, Title 17, Chapter 32). A DUNA must be formed exclusively under Wyoming law, have at least 100 members and provide limited liability for its members. A DUNA may not distribute profits or dividends, as is the case for traditional non-profits, but may compensate its management, members and third parties for services rendered. DUNAs may also contract, including buying and selling property.

### IV. Federal Securities Law and Regulation Issues

#### a. Investment Company Act of 1940 (ICA)

The ICA provides for the registration, disclosure and ongoing reporting obligations of “Pooled Investment Vehicles,” that are defined as Investment Companies, such as retail mutual funds, in which investors purchase equity interests with capital then used by the fund sponsor to make investments for return to the investors. ICA registration, disclosure and reporting is an expensive and time-consuming compliance burden.

However, ICA sections 3(c)(1) and 3(c)7 exclude from the ICA definition of an Investment Company that must be registered with the ICA a Pooled Investment Vehicle that is a “Private Fund.” Properly structured, Private Funds meeting the sections 3(c)(1) and 3(c)7 exemptions do not have to register as Investment Companies under the ICA, although they are subject to other securities laws and regulations. ICA section 3(c)(1) excludes from Investment Company status Pooled Investment Vehicles with no more than 100 beneficial owners (looking through investing entities to their ultimate beneficial owners), or 250 beneficial owners in the case of a “Qualifying Venture Capital Fund” (a venture capital fund with no more than \$12 million – raised from \$10 million in 2024 - in aggregate capital contributions and uncalled capital commitments). ICA 3(c)7 exempts from Investment Company status Pooled Investment Vehicles limited to investors who are “Qualified Purchasers” (investors meeting ICA financial and sophistication standards, analogous but more stringent than Securities Act Regulation D “Accredited Investor” status; currently \$5 million in investments for individuals and \$25 million for institutions); there is no limit on the number of Qualified Purchasers, so that a Private Fund exceeding the section 3(c)(1) 100 beneficial owner limit might still qualify under the section 3(c)7 exemption, as long as all beneficial owners were Qualified Purchasers. If a Pooled Investment Vehicle meets either or both the ICA section 3(c)(1) and 3(c)7 standards, it qualifies as a Private Fund and is exempt from ICA registration, disclosure and reporting.

b. Investment Advisers Act of 1940 (IAA)

The IAA requires anyone offering analysis and advice on securities for compensation to register as an investment adviser. General partners and equivalent persons at Private Funds may be required to register, so it is important to understand that while a Private Fund may be exempt from ICA registration, it is not necessarily exempt from IAA registration. The IAA does have an “Exempt Reporting Adviser” exemption pursuant to its section 203(m), which exempts from IAA registration investment advisers who (i) advise solely Private Funds that have less than \$150 million in assets under management in the United States; or (ii) advise solely venture capital funds. Even investment advisers meeting those criteria are subject to some reporting requirements, which

are filed on SEC Form ADV Part 1A, while non-exempt advisers must make a more extensive Form ADV filing.

The ICA also has a limited “Foreign Private Adviser” exemption that applies only to advisers with no place of business in the United States, fewer than 15 clients in the U.S and investors in Private Funds it advises, less than \$25 million in assets under management in the U.S., and does not hold itself out to the public in the U.S. as an investment adviser. If a Foreign Private Adviser meets those criteria, it need not make even an SEC Form ADV Part 1A filing.

c. Securities Act of 1933 (Securities Act)

Offers and sales of securities in a Private Fund are typically made with offering documents containing fund sponsor and investor protections like risk factors, use of proceeds, description of the securities and other representations, warranties and covenants pursuant to Securities Act Regulation D, Rule 506(b) or 506(c), or to institutional investors like other funds pursuant to section 4(a)(2), all exemptions from the Securities Act section 5 registration requirements (see “Raising Capital through Private Placements: Deal Points,” Sections I and V; “Raising Capital through Private Placements Appendix 1 Exemption Chart,” both available at [Kurtin PLLC Venture Capital & Private Equity](#)). Supplemental presentation documents like PowerPoint slide decks are also used.

All three exemptions have unlimited aggregate offering amounts and no restrictions on the fund’s ownership, jurisdiction or other status, compared to other Securities Act exemptions that do. Under Rule 506(b), there may be unlimited Accredited Investors, and up to, but no more than, 35 “sophisticated” but non-accredited investors. Under Rule 506(c), all purchasers must be Accredited Investors, without limitation in number. Rule 506(b) and Section 4(a)(2) do not permit general solicitation of investors (advertising to the general public); Rule 506(c) does permit general solicitation, with heightened due diligence required. Both Reg. D exemptions require an SEC Form D filing. Breaching the Securities Act exemption requirements can lead to SEC civil and criminal penalties, including investor restitution and barring the fund sponsors from the U.S. capital markets, so it is critical to take the securities laws and regulations seriously.

## V. Putting it All Together: Using the WY and Securities Laws to Form Crypto/Digital Asset Investment Funds and Trading Platforms

To put all this together, a company or investment fund of whatever kind can form a WY SPV, whether a corporation (perhaps to serve as an onshore blocking entity, since WY has no state income tax), an LP or an LLC, and including a DAO LLC or DUNA and create an enterprise or fund vehicle to issue, buy, hold, broker and sell assets, including Digital Assets, of whatever kind: a Digital Consumer Asset, a Digital Security or a Virtual Currency, engage a Wyoming bank to perform custodial and/or brokerage services typically needed by such a company or fund.

The Wyoming SPV can perfect a security interest in the Digital Assets it buys, holds, hypothecates, pledges, uses as collateral to pledge or secure another interest or sells.

The Wyoming SPV formed as the company or investment vehicle can be a standalone entity or chained in a Master Feeder structure: a hierarchy of onshore and/or offshore entities set up to isolate the tax and other liabilities of U.S. and non-U.S. investors. In either case, it, its owners and its investors will benefit from leading edge privacy rules and regulations. The enacted bank regulations and court jurisdiction give a regulatory and enforcement framework for running the investment vehicle and fund with certainty and security.

Some examples of Wyoming enterprises and funds that could be set up to benefit from Wyoming's favorable legal, regulatory and tax climate include LLCs or LPs, whether functioning as SPVs or not, and whether standalone or part of a chained hierarchy of Wyoming and/or non-Wyoming (U.S. or offshore):

- A Private Equity, Venture Capital or Hedge Fund to raise capital, including Virtual Currency, and then invest it under one or another of the registration exemptions for raising capital under the Securities Act of 1933 (see our “Raising Capital through Private Placements: Deal Points,” “Raising Capital through Private Placements Exemption Chart,” “Special Purpose Vehicles: Uses and Abuses” and “Forming Exempt Private Investment Funds,” all available at [Kurtin PLLC Raising Capital](#) or [Kurtin PLLC Venture Capital & Private Equity](#);
- A company or fund formed to offer and sell Digital Securities, such as digital tokens and certificates;
- A company or fund formed to engage in cryptocurrency mining, issuance and trading;

- A cryptocurrency or other Digital Asset brokerage or trading platform;
- A company or fund formed to buy, hold and sell NFTs or other Digital Assets;
- A company or fund formed to serve a financial engineering function in a larger consortium of enterprises by, for example, isolating assets and liabilities so as not to have them appear on a parent company's balance sheet;
- A DAO LLC used with or without smart contract governance mechanisms to achieve unusual (for onshore) levels of privacy for a company or fund; or
- A company or fund formed to buy and hold a portfolio of Digital Assets and other, more traditional intangible property, such as intellectual property like patents, copyrights, trademarks and other IP assets.

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