GDF Industry Roundtable: CFTCs and DAOs
Wednesday 12 October 2022
15:00 BST / 10:00 ET / 22:00 HK
Via Zoom

The CFTC action against OokiDAO and bZeroX drew widespread attention in the crypto and digital assets community. In the complaint, the CFTC holds the participants of Ooki DAO liable for the actions operated by the decentralized autonomous organization (DAO), and therefore the activity of bZeroX. This is one of the first times that the holders of governance tokens in the DAO have been held accountable for the activity in question.

The issue of assigning accountability and responsibilities in decentralized finance (DeFi) activities has been central to the question of regulating the space. GDF represents its members and wishes to solidify a position which articulates an arisen consensus in the industry. We therefore sought guidance from our Advisory Council and DeFi Working Group on how to respond to the issue at hand, both in engagement with regulators and policymakers, and in supporting the industry with guidance.

The following is a summary of the points discussed, and has been arranged by theme.

1. **It is clear from this action that the direction of regulation looks to assign responsibility and hold actors accountable for DeFi activities. Using the tools available to them, regulators will look for who has control, as well as who is making a profit.**
    - It is clear that agencies are looking to enforce actions on DeFi activities, and do not consider 'decentralization' to mean that activities fall out of regulatory requirements. Where there are questions relating to how to assign responsibilities and liabilities in DeFi projects, it is understood that regulators are likely to look for who is making a profit and who has control. In this case, the CFTC has taken a broad approach to this and included everyone who is a DAO governance token holder.
    - The regulatory tools available were designed for centralized intermediaries. As regulators do not yet have the tools and frameworks that may be most appropriate for regulating digitalized and decentralized environments, regulatory action will include enforcement of existing regulation, which may have undesired consequences for many in the industry (including disincentivizing innovators from staying in the U.S.).
    - In many ways, this is a good opportunity for regulatory engagement: the action will force a conversation on the extent to which existing regulation can be applied, given the challenges surrounding accessibility, juridictions, and permissionless-ness in DeFi.
2. **Further work must be done on the appropriate legal wrappers for DAOs.**
    - In the absence of any legal wrappers, many DAOs look like unincorporated associations, in which token holders can be held liable for activities.

- The industry should look at what legal wrappers are appropriate, and how they would solve the issues of responsibilities and liabilities. It may be the case that for now, industry needs to look at what would be the "least worst" solution and look to fill any apparent gaps, rather than looking for a perfect fit.
- The challenge remains that many will want to avoid structures that either limit accessibility and participation, or make compromises on decentralized ecosystems.
- There is further work to be done on clear governance and voting structures, and ensuring that all users are fully aware of the responsibilities they are taking on.
- Further work is also needed on the definition of DAOs and decentralization, and the extent to which activities are truly decentralized. In the case of Ooki DAO, there may have been an active move from LLC to DAO with the goal of circumventing regulation.

3. **GDF supports the development of proportionate regulation, and the community is ready to continue to engage and cooperate with regulators and policymakers on these topics, especially in the design of digitally-native solutions to mitigating the risks in DeFi activities.**
    - The industry is keen to keep engaging with regulators to share knowledge on the capabilities of the technology in DeFi, and demonstrate which solutions can be built into the DeFi projects. One recommendation includes the separation of the protocol layer and the application layer, acknowledging that this is a useful regulatory touchpoint and mirrors current approaches in traditional finance. This, however, raises questions for those in the community who are keen to avoid having 'gate keepers' to DeFi activities, and protect its permissionless nature.
    - The industry is also looking for further clarity from regulators as to whether or not tokens in question fall under commodities or securities, and as a result, which regulatory body's purview they fall under.
    - The GDF community is supportive of the idea of developing co-regulatory engagement forums, such as the development of RegDAO, which would seek to further knowledge sharing for all parties as well as build digitally native-solutions to regulatory compliance for DeFi projects. Coregulation is different from an SRO, which would report back to regulators.