SPDI's, Crypto Banking, and DAO's in Wyoming. Matt Kaufman, Partner at Hathaway & Kunz PC

[00:00:00] **Eric:** This week we had Matt Kaufman on the show. Matt is one of the primary attorneys who's been representing applicants for Wyoming, special purpose depository institution or SPDI, Speedy's. And one of the architects behind Wyoming's decentralized autonomous organization, LLC statute, or the DAO LLC statute.

If you aren't aware that Wyoming is one of the most progressive jurisdictions in the country with regards to digital assets, you clearly didn't listen to my first ever podcast with Joel Revill, where we discuss the history and what Wyoming has done in the digital asset space. So, if you're not aware, not a bad time to put that on your playlist and listen to it.

I certainly hope to have Joel back as a guest on the podcast soon. So, we start off with. How can a banking system accommodate virtual currencies in a responsible regulated manner, and still provide the ability to conduct business across jurisdictions without the need to have to register as a money services business in each state.

Now we talked about this in another podcast. With Felix Shipkevich, where we talked about the need for registration of state-by-state regulation for money services, business, under FinCEN. This is one of the areas that Wyoming's SPDI, framework can help solve for, in the context of a banking relationship and imagine when they can get access to the federal funds window, I think SPDI is a great area, a great growth area for Wyoming.

And I think a lot of institutions are going to take advantage of. We also discuss Wyoming's Dow LLC statute, which is something, you know, I've also been involved with a little bit myself in what it's intended to accomplish and how it's still very much a work in progress. And we also talk about the kinds of inquiries that Matt receives regarding it.

So this was a great podcast. I think you're going to learn a lot about it and, I'm excited to bring you Matt Kaufman.

This is Eric Hess with The Encrypted Economy. And today I'm excited to have Matt Kaufman. He's a partner at Hathaway and Kunz on the show. He focuses on business corporate technology, capital formation, intellectual property protection, mergers and acquisitions. Matt. Welcome.

[00:02:25] **Matt:** Thank you, Eric. It's great to be here.

[00:02:27] **Eric:** Great to have you on the show. Last week was the blockchain stampede. I know you went to it. How was that?

[00:02:35] **Matt:** It was a fantastic event, obviously. Would love it if you could join us one of these years. And, it was good to be back in person this year. After of course, last year, everything was virtual, but it was a great event.

It's, it's fun to see, all the industry folks coming to Wyoming and getting together and seeing a lot of friendly faces. So it was great.

[00:02:56] **Eric:** Excellent. I didn't do the background bit so I’m mixing it up from my normal routine here, but, Hathaway in Kunz is in Wyoming. And Matt is going to talk to us today about things that are unique to Wyoming.

We're gonna get into his background first, but I'm going to stick on the stand paid for it for a moment or two. So there's also a hackathon that runs alongside the Stampede, right?

[00:03:17] **Matt:** Yeah. So there's actually a four or maybe even five parallel conferences that all happened at the same time. So yeah, Wyoming, uh, hosts, uh, the hackathon, at the blockchain stampede, they put together a tremendous number of sponsors prize money and have a full-blown hackathon event.

And then simultaneously they do a financial conference, a business conference, a legal conference. And then also, the Wyoming legislative committee, it's called the select committee on blockchain, financial technology and digital innovation. Which is a committee I'm on. But they also have those legislative hearings at the same time.

So there's all of this stuff happening at the university of Wyoming at the same time. So it makes for a pretty good

[00:04:05] **Eric:** event. So is it like going to Disney world where you can get like a magic park passing, he hit go to any of the parks or do you have to register for a specific one?

[00:04:14] **Matt:** No, you can. You can, you can mix and match.

So it makes it easy to kind of participate in all that.

[00:04:20] **Eric:** Excellent. So that's even more of a draw and you're in Wyoming.

[00:04:25] **Matt:** which this time of year is great. Yeah. If it was, if it was February, that might be different, but, but right now it's great.

[00:04:32] **Eric:** Yeah. Well said, so Matt, before we start getting down into it, why don't you tell us a little bit about your background?

I know you've sort of grown up with the blockchain space there in Wyoming.

[00:04:43] **Matt:** yeah. Excellent. I'm a partner with Hathaway and Koons based here in Cheyenne, Wyoming. I've been practicing for gosh, almost 17 years. I'm a graduate of the university of Wyoming university of Wyoming law school.

I did go back and get a graduate law degree in LLM from the university of Colorado in Boulder. And really for the first 10 years or so of my practice, I was predominantly focused in the startup space, doing a lot of corporate formation, capital formation. A lot of private placement, securities work, dabbling in representing technology companies, dealing with all the issues that scaling technology companies have to face.

I have done some litigation, so litigation has been sprinkled in there, but, I've really been focused kind of in the tech space. The roundabout story of how I got involved in this space is a number of years ago. Our then governor, governor, Matt Mead put together a task force of people in Wyoming to help basically create a business plan for the state of Wyoming to help make recommendations to the state on how to diversify away from carbon industries.

And I was fortunate to be selected as the only attorney on that task force. And, that taskforce was called ENDOW. And about the same time that endow was, was taking place. And we were putting together this plan and make you recommendations, Caitlin long. And some others started to become very vocal, in the state of Wyoming creating some momentum behind blockchain industries specifically.

And so, at that time, governor meats said, you know, what I'm going to do is I'm going to put together, a subset of these blockchain people and these endow people. And he asked me to be one of the governor appointees on this newly created blockchain task force. And so myself and Caitlin long, were both appointed.

We have a third appointee. His name is Joel Revill, who has been a guest on your show. So we are the first governance. Yeah. We are the three governor appointees. Then the rest of the people on the committee are legislators. And so that committee was. And that has been the committee. It's now been turned from a task force into a permanent legislative committee, that has created essentially all of the legislation that has come out of Wyoming.

And so, that's kinda how I got my start in this space back in 2015, you know, just being one of the higher profile, or more visible, I should say securities firms in the state, we tend to do a lot of the volume that Wyoming sees in terms of private placements. And so our phone was ringing off the hook in 2015 with ICO offers and people wanting to do token issuance.

And so, I really cut my teeth in that way. I knew about ICO's before I knew about Bitcoin, which is probably backwards for most people. And so we were evaluating deals. And then when this endow effort and this blockchain task force effort came along, I kind of just dove head first into this space now.

[00:08:03] **Matt:** ENNDOW actually stands for economically needed diversification of Wyoming.

[00:08:09] **Eric:** Ah, you think they would have tried to work that acronym a little differently now? Gotta get the Wyoming in there.

So, um, oftentimes I asked for a personal event that shaped your views, your, your worldview, your values, may very well be the blockchain space. You may have already shared it, but if you can put a finer point on it, that'd be great. Yeah.

[00:08:35] **Matt:** So it's funny. I've been thinking about that since you asked a few days ago and it's tough to narrow it down to one or two. The one that I just can't shake, and it's not so much an event, but I just can't shake it. Is really my upbringing. Probably at what you would expect for a Wyoming kid, but maybe not so normal, you know, for someone from the east coast, but I'm a fifth generation Wyoming. I mean, I was born and raised and grew up on a ranch. I look back oftentimes at my upbringing and how that has shaped my world. And, you know, it's not so much the political view, but the way that lifestyle and that upbringing sort of taught me lessons. I think people oftentimes don't appreciate that those in ag are very risk tolerant people.

Many of them are very sophisticated in terms of how they allocate capital and how they allocate resources and expand operations. And so just being a part of a family operation that changed over time and evolved and watching my parents take risks. And my parents were very entrepreneurial. They were involved in many other ventures and, and still are to this day.

But also just kind of the grit and the teamwork, and just sort of getting your hands dirty and just getting the job done and doing whatever it takes. I think that mentality has stuck with me regardless of which path mypersonal life has taken me. I think that's probably the best thing I've got.

There's obviously been some wild things that have happened in my practice over the last 17 years that have certainly shaped some of my views. But in terms of the person I am, I think I got to go with that.

[00:10:20] **Eric:** Awesome. Well, that's a good story. Most people don't have the ranch, so that's a good story to tell.

And so I gotta ask, today, Do you still have a remnants of like either farm animals or crops or have you gonemore of the suburban city folk type?

[00:10:42] **Matt:** So when most people, that know me find out that I grew up on a ranch, they're shocked because most people think I'm from Miami or something like that, just because I think. I still have cowboy boots and uh, I joke with people all the time. I've actually worn a belt buckles.

[00:11:26] **Matt:** I'm the first lawyer

[00:11:32] **Eric:** All right. So, what a time to be the first lawyer too, we're going to change gears a little bit. There's a couple of things I wanted to cover. And a lot of people would think that Eric's going to go right for the Wyoming DAO but I'm actually not because I'm going for the special purpose depository institution first.

Because there are now four approved, special, depository, special purpose depository institutions and there's a lot of talk in the industry about banking and fiat on ramps and access to the fed window. there's even some controversy brewing big bank saying, these upstarts coming along, they're not compliant with all the regs, but before we get into all that, let's just ask a really basic question.

Matt, what is a special purpose depository institution?

[00:12:28] **Matt:** Yeah. Great question. So the, the special purpose depository, the SPDI or as some people refer to it, the speedy bank is a creation of the state of Wyoming. I think it goes back, three or four years now. And, and in referring to that blockchain task force, now the select committee that I serve.

we all know that the crypto industry in general has gone through some pain points with respect to banking relationships, and a lot of that stemming from the FDIC specifically, and banks being concerned that if they're going to bank interact, land with, with crypto related companies, that that might put their relationships in jeopardy.

And so that has been, uh, again, a major problem, for the industry as it's tried to grow. So one of the things that came before us in the blockchain task force was how can we address this? What are obviously Wyoming can't change the course of the federal reserve, or you FDIC or any of these other major federal institutions, is there a way for Wyoming to help alleviate that pain in any way, shape or form?

And what came about from this conversation was what if we have a bad. That doesn't require FDC insurance. What would that look like? And our banking commission, our banking division and our banking commissioner here in Wyoming got very involved in the process. And basically what was proposed, the answer that came out was.

Look, there is a way to create a state chartered bank that would necessarily require FDIC insurance. And the way that you would do that is obviously place more stringent requirements on that bank to maintain a hundred percent reserves to not rehypothecate right, digital assets to take extra efforts, to ensure safety and soundness of that financial institution, but at the same time being enabled to wait into the digital asset space.

And so that's what Wyoming did. We created this special purpose depository. It is essentially a state chartered bank that has a different set of regulatory requirements. And with that a little bit more flexibility with respect to how the bank operates from a capital reserve standard. but it also places some limitations on the bank about the types of activities that they can do.

[00:15:00] So as an example, one of the trade-offs for the Wyoming SPDI is it can't engage in a what's called on balance sheet lending. So in other words, you can't put the deposits at risk. so getting back to the simple answer, the simple answer is it's a state chartered bank in Wyoming. The first of its kind that doesn't require FDIC insurance is regulated by the state of Wyoming banking division and, is specifically enabled to get into some of these other industries, like the digital asset industry.

[00:15:28] **Eric:** Great. Excellent. Let's say that somebody comes into your office, he's like, oh, that I'm not getting legal advice. We're just going to insert some sort of random disclaimer that everything that Matt says isn't necessarily a position of his firm or even of himself it's a synonymous entity, floating out there in the nether, but, somebody comes into your office and says, You know, I want to provide, Fiat access.

I want to be able to convert digital assets to Fiat to digital assets. I'm thinking about buying a community bank, but I'm also thinking SPDI without giving away all your secret sauce, what would you say to them?

[00:16:05] **Matt:** Yeah, that's a common question and it's an incredibly complex question as you, as you might already have anticipated.

So the first problem is if people are wanting to solve whatever their business problem is with an SPDI, tthe first conversation I have with them is obviously you're getting into a heavily regulated area, right? So we have to figure out what the approach to that heavily regulated activity is.

If really banking is what you want. And a lot of people, understand, I didn't come from a banking background. I came from a securities background. So not every problem is going to be solved with a banking license, right. There are a lot of problems that can be solved with a banking license in this industry.

But usually the first question we tackle in terms of answering that is what are you going to do with the license? And what problem does it solve if it really is you want to take deposits, you want to custody, you want to create some sort of a payment rail or something like that, then yeah.

That the banking license or a charter trust company license or something like that might fit really well. If you're wanting to use this platform for something else, that's closer to a broker dealer or an exchange or something like that. Again, not to say that the banking license might not be incredible useful for how you're going to integrate that.

Plus. But maybe we should ask that question first, and I'm not the guy that's out there doing exchanges necessarily, but that that's a, that's a kind of a different, a different orientation to the question. The second thing that we'll often look at though, is existing banks like a community bank or something like that.

Rely on a couple different things. I mean, typically they're relying on customer relationships, community. Right. Well, the SBDI can't engage in that style of community lending. Secondly, it's probably an FDI insured bank, so that right off the bat poses a problem because you may have to backfill or switch the orientation of that bank.

So that might be a problem. And then thirdly, again, what is the predominant way that this institution is going to make money Right now? What I'm seeing is a lot of people are looking for a way to safely custody, digital assets, right? Lending isn't there yet. We all know, obviously defi is throwing a whole bunch of lending opportunities at the digital asset world.

And I think that's coming right. We're seeing thing companies like Blockfi and others that are developing these pretty professional looking lending programs. But that's not necessarily where the industry is at right now. At least not in my perspective. So what we're seeing more of is custody payment access.

And then what I call kind of that on-ramp off-ramp right. For crypto to Fiat and for that, and SPDI can be very useful. But that's kind of the conversation that we typically have is what do you want to do with this and why?

[00:19:06] **Eric:** And one of the things that has come up, I think recently with regards to SPDI is, certainly the banking Institute and others.

I mean in these spaces, obviously when you have banks that have invested into regulation and they've developed that sort of their moat, that's their protection, you know, some of that may be legitimate, truly protecting customers. Others may be, this is an advantage that we spent a ton of money to build and maintain.

We don't want new entities that are more limited in scope taking it away from us. I know I'm posing some element of opinion in that, but there has been, but Avanti and Kraken, which are two of the four that have recently been granted approval. They both emphasize the importance of the clearing access, to the FED window.

And I guess the question is, and there's resistance, what our SPDI is without being a clearing bank with access to the fed window and how does it limit them and what does it enable more than what they can do today?

[00:20:23] **Matt:** Yeah, no, I think that's a great question.

And I'll preface this by saying, obviously I've come to know a lot about the SPDI and the Wyoming regulatory side of that. I'm not the fed expert by any means, but I think again, what I've observed and what I've seen is having a special purpose bank charter, like the SPDO get access to the fed payment system would be monumental.

Right. I mean, it would be. It would be a shifting tide here in terms of the digital asset industry and, and the access to those main street payment rails. So I'm not so naive to think that, right, this is going to happen easily. And obviously we're seeing a political battle bear out. I think we're seeing a regulatory battle bear out that still to some extent is a different question in my mind then than what the SPDI answers from a Wyoming perspective.

And that is again from a professional custody standpoint, from a company in the digital asset space that is attempting to in the most regulated fashion, they can build out something that looks like a financial institution. Again, I'm still not aware of anything better. Right. And, that kind of gets into what some of the other aspects of an SPDI and what it can do.

I mean, in most states, Wyoming, in particular, if you have a bank charter, you're automatically qualified to be a money service business and MSB or money transmitter license, or something like that. And a lot of states provide reciprocity with that. So that in itself is one strategy that we see a lot of companies evaluate.

And that is if I come in and get a Wyoming SPDI license, Could that gain me reciprocity with a whole bunch of states without having to go state by state to get an MSB or a money transmitter license or something like that. And the answer is yes. Now I can't speak for every state. There are nuances, there's even a few states that don't have those traditional licenses that exists at all.

Then there's the states like New York that, are kind of out there doing their own thing. So I can't speak to every single state, but that's a really common application that we see. I think this is just thematic in the space at large right now. And again, bear in mind. I come at this more from a securities aspect than I do from a federal banking aspect, but that is so many digital asset companies that all of us represent and work with. I mean every lawyer I talked to in the digital asset space has this exact same conversation with clients on almost a daily basis.

And then. We're trying to figure out how, and if we're regulated, right. And most of the good actors in the space are trying to say, okay, we get that. We're probably going to be regulated at some point in time. Somehow let's try to do the best we can to figure this out upfront. And that brings, for usually their investor base, some sense of security that we're at least trying to hide in plain sight.

That we're trying to play by the rules. And so I find personally that at least with the familiarity that Wyoming has and has built in the industry with the digital asset economy and particularly our banking division, our secretary of state's office are our predominant regulators here in Wyoming are so in the weeds on this stuff and are so used to it.

But that it's a breath of fresh air for a lot of companies that are just trying to figure out, okay, we're going to be regulated somehow let's start somewhere. We can at least have that conversation in Wyoming and it's getting us something tangible. If that's an SPDI license or something else, it gives us something that we can then go to the next day to the next date or our customer base or whatever the case may be.

And so I find that to be as appealing for some people as is the specific regulatory framework that you're trying to solve right. For custody or whatever the case may be.

[00:24:17] **Eric:** Right. It's interesting. so in your conversations, have you had anybody, cause I know you've represented a number of firms under SPDI licenses, have you ever had a client that first went, the community bank route sort of was like, oh my God, this is so not the right fit for me.

And then came back to SPDI or do you find most of your conversations are people who are just. You know what we're thinking about this holistically, we're starting off thinking SPDI maybe by a community bank is, so what's that conversation, have you had anybody who's actually sort of gone the community bank route first [00:25:00] and then sort of pull back into

[00:25:02] **Matt:** there's a couple of, in my mind, key conversations here, one is that most people don't realize this, but Wyoming, in addition to having the SPDI has also passed a digital asset regulatory framework for existing banks.

Now again, a lot of existing licensed or chartered banks and why we'd have an opted into that. Because of the FDIC requirements and concerns there, but that framework does exist. So absolutely we're seeing people come in and say, okay, maybe I'll look around at an existing community bank. And is there a way to opt into the digital asset custody or regulatory regime and still do what we want to do?

In my mind, that's still a little bit tenuous though, right? Because of how that bank might be organized, what their lending base looks like, what their ability to integrate digital asset, and digital asset servicing might look like. And then obviously the thing we keep talking about the FDIC.

So is that a conversation? Absolutely. Are people evaluating it? Absolutely. But I still think the SPDI and the opportunity to start fresh and the opportunity to get out from under that FDIC right now seems to be driving more of the conversation.

[00:26:14] **Eric:** Right. Cause if you buy a community bank and it's at the FDIC insured and you want to start to opt into the digital.

You know, custody and everything else, then number one, you have to change your license. Obviously there's a process for that. And in addition, then you're not able to get those deposits. You have to take that out of the FDIC right. Within the community bank. So you still have that. Yeah. So interesting.

Excellent. So, and then what are some of the characteristics, some of the benefits of the SPDI that you think maybe even give it an edge over like the traditional regulation for banks, community banks?

[00:26:51] **Matt:** I think right now a lot of it is the creativity our state banking board has been very receptive to some of the incredibly creative business [00:27:00] models that SPDI are bringing right now, as you mentioned, we've licensed so far and approved for SBDI is with many more coming.

There's a lot of activity right now in Wyoming, in the SBDI space specifically. What's been interesting to me though, is even of the first four, obviously Kraken being the first and Avanti being the second, there's tremendous, differences between the business models of all of them and all of them are going about.

The process differently. They're going after separate market niches. And so it's been super interesting to me to see the creativity. So, that's just an observation I've had, but with respect to kind of more specifically what some of these applicants have been looking at again, custody seems to be a really big theme in the space.

I hear that so much. And so often that people are trying to figure out one, how do I be that on-ramp, where people can deposit fees with us? How can we be a custodian for whatever they might do with that Fiat in terms of converting it or acquiring digital assets? How do we be a third-party custody provider?

And then thirdly, you know, just to answer it sort of broadly, what other ancillary services can I offer, right. Is that investment management? Is it sort of broker dealer? Is it, payment systems or whatever the case may be. And again, a lot of people have gotten very creative in that respect.

I can't talk about some of the clients I have incoming right now and some of the new SPDI projects that we're taking on. But what I can say is it's stuff I never would've thought about right. It's marrying industries that were way out of my mind with now the digital asset industry.

And of course, when you hear these explanations and you see the plans, it makes perfect sense, but the other thing that I'm finding is there have been some other states that have gotten aggressive with, with SPDI like legislation, obviously Nebraska, our neighbor to the east here passed some SPDI legislation.

I think Nebraska unfortunately suffers from a much stronger bank lobby than Wyoming does because their bill got a watered down in my estimation, pretty tremendously. There's some limitations in that SPDI legislation, I think makes it no where near as appealing as Wyoming's. I know Illinois has gotten pretty far along in that process.

I'm not quite sure where they're at as of today's date, but again, I keep coming back to the fact that now that Wyoming has built out this statutory process and has had companies go through the application process, the other big piece of this, I think a lot of people don't understand is.

There has to be a regulatory framework to regulate these banks and Wyoming notably went out, talked to some of the big four accounting firms hired some of the most prominent regulatory consulting firms in the world to help build out a regulatory framework for examining these banks, right, for auditing these banks.

And that manual now exists in Wyoming. It doesn't exist anywhere else in the world. So not only do we have a process now that is working for onboarding and licensing and setting up and establishing these SPDIs, we also have the only existing framework in the country right now for regulating actively regulating and auditing and examining these banks on a forward going basis.

So when you combine those two it's a pretty unique setup again, like I mentioned earlier for those companies that are looking for a way that we know we need to be regulated somehow. Right. We know. We're on the line, Just because we call it digital assets, we're on the line of whatever regulatory framework we're trying to work within.

This at least gives us the most clarity that we can find bang for our buck wise. And so I think that's really appealing for a lot of folks.

[00:31:03] **Eric:** Awesome. Well, I guess maybe before we move on to DAOs. How would you contrast this with some of the more novel trust structures in other jurisdictions, obviously trusts are not banks.

But how would you contrast that? Like if somebody said I'm thinking of both, would you say that's crazy. How would you sharpen the saw on that one?

[00:31:29] **Matt:** Yeah. Great question. I mean, obviously the big one is that trust can't take deposits, right? So the, one of the key distinctions is that a bank is a depository institution, more public facing, more able to market for those deposits grow deposits in that public way.

Whereas, you know, charter trust companies, again, it's more of a private oriented Kennedy market. Of course they can, most trust companies are oriented towards servicing family, offices, institutions, high net worth people. So there's typically not always, but there's typically a different business model with respect to how a trust companies are going to pull in those customers as digital asset customers, and then monetize versus the banks.

Like I said, which the way I most often describe it to people is it's more public facing because it's a depository institution. So both have incredible value. Both have charter they're licensed from the state of Wyoming. Both have the ability to opt into the digital asset a regulatory regime in Wyoming.

But if you're payment oriented, if you're a customer facing, if you have any hope of getting fed master account, obviously the full blown bank charter is probably more likely the solution, but again, not everybody needs a bank license. That's probably another misnomer in this industry is a lot of companies.

We deal with that, come in and say, I think we need a why. I mean, SPDI to do, you know, whatever it is. We take a look at it and think that that's really not what you need at all. All right. maybe you need to be registered with FinCEN or, you know, you need to make sure that you're, you're operating the securities platform in a regulated way or whatever the case may be, but, uh, yeah.

Not everything is, is certainly fit for an SPDI or a charter trust company.

[00:33:23] **Eric:** Yeah. Well, I mean, I'd imagine that given the burdens of being an MSB, if you want to go into like the trading business across all the different states, that's a pretty expensive and time consuming endeavor, they might say, oh, speeding, great.

This is a way that I can do the training that I need to do without having to, and that I don't think Alan Forkner would think that’s a good model.

[00:33:51] **Matt:** Yeah. Well, you bring up another great point in that is. The number of conversations I have on a weekly basis about the process of [00:34:00] obtaining a SPDI license and what that looks like in Wyoming.

Again, I don't want to stereotype, but I've dealt with a lot of industry sectors and companies who come in and think, great. Let's just grab one of these licenses. It'll fit perfectly for our scaling plan or our exit plan. We can turn that license into a, an exit scheme or something like that.

And, that's something the state of Wyoming has taken really seriously. And selfishly I'm glad the state of Wyoming is taking that really seriously because they understand. All eyes are on Wyoming from the fed perspective, now, even in the U.S. Senate and Congress perspective that we can't be too cavalier in this business while Wyoming definitely is trying to blaze a trail and trying to push the envelope where we can, I'd be one of the first people to admit that, there's only so much Wyoming can do, right.

And the federal government wields a whole lot of power. To do a whole lot of different things. And so I just caution people with that. Hey, this [00:35:00] isn't a closed system here in Wyoming. You still have to figure out a way to play with the federal regulators. And while this SPDI has created an avenue, Wyoming still gonna protect its reputation right by making sure.

We do the best we can to license deserving players and not let people easily game the game, the system.

[00:35:22] **Eric:** So if somebody came into you and said, Matt, I want to apply for SPDI. Obviously we're going to assume they have some infrastructure. How long is it going to take? What's your range?

And you're going to pay, of course, once you have all your documentation together, right?

[00:35:39] **Matt:** First I would scare you with the amount of things that you need to have prepared, right? And the business plan and the application materials and all the bank policies and everything that you need, then I would scare you with the team that you need to have in place.

Right? Because you don't get a bank charter. If you don't have a deeply experienced team, then I would just scare you with how much money you're going to need to [00:36:00] raise. Because, even though our statute says $5 million is the minimum. You need a heck of a lot more than that. And then yeah, assuming you get all of those questions answered and you're comfortable with.

I tell people you better expect a nine month to 12 month process, depending on how busy our banking division is, and they're incredibly busy. it's a highly involved very, very deep process. So it takes some time.

[00:36:33] **Eric:** Awesome. Okay. Well, and with that, we're going to shift gears and start talking DAOs, let's start talking about the, the new statute, the Wyoming, DAO statute.

So tell us a little bit about it, what it accomplishes, what it doesn't accomplish. Start with that.

[00:36:53] **Matt:** Well, this is one of those pieces of legislation that I'm happy to, I guess, depending on how you look [00:37:00] at it, share in the blame or sharing the credit one way or another. I was one of the primary drafters on this bill and I just spoke on this a couple of times last week, so it's fresh in my mind, but I like to share with people what was the problem that Wyoming was trying to solve with this legislation and the problem that we were hearing over and over and over again, here in the Wyoming legislature was, communities of developers, on different types of projects that knew they wanted to have some sort of, of group of organization of entity, but didn't know how to go about that.

And traditionally of course, for those people that weren't. Formalized themselves as a corporation or an LLC or something with a specific corporate hierarchy and structure in mind. You know, there there's been all kinds of approaches. Some people have used LLCs, Delaware, LLCs, Vermont, LLC.

Some people have used foreign [00:38:00] foundations. Some people have just defaulted to unincorporated association. So there've been a lot of approaches by these community organizations. But what we kept hearing in Wyoming was there's this concern of general partner liability. And so for the non-lawyers listening, every state in the union has some framework for defining what a essentially a common law general partnership is.

And a general partnership looks something like when you have two or more people that are in business for some common right enterprise or reasons. And the problem is if you're treated like a general partnership, all of the partners in that enterprise have unlimited liability, right? Thus the whole entire point of the exercise of going to get a corporation LLC, or something to limit your liability as an individual.

So this is something that we've just heard time and time again. Hey, we're a group of developers we're working on this project. It's open source, it's blockchain, it's crypto. We have no idea what the liability [00:39:00] implications are. We have no idea how that right. And our contracts. We have no idea what this means.

And like I said, well, wow. I think obviously, and I've spoken to many of these lawyers, myself, from overseas that were part of the initial push to use Swiss foundations or things like that. And I think a lot of those lawyers would even tell you that. That was our solution then, that wouldn't necessarily be the solution now.

Right? That was what we knew 5, 6, 7 years ago. That was the best we could do. But what we know now, we wouldn't necessarily recommend that. And I keep hearing that in the industry as well. And so the long and short of it was Wyoming thought and the legislative committee thought there's gotta be a way.

One bear in mind, Wyoming there's selfish, motivation to all of this legislation as well. Again, going back to that endow, aspect that I mentioned before Wyoming is hoping to diversify our economy. We're hoping to attract new types of businesses, particularly in the digital asset space, [00:40:00] but what can we do to give these companies again, something to rest on something, to use something to encourage them and incentivize them to continue building and continue to develop.

But do it in a more accessible way. And, you know, again, I've heard many lawyers say, why do you need this doubt LLC structure? We could still use a Delaware LLC structure. That's probably true. Right? But for a lot of developers in this space that don't want to go hire, you know, a $1,200 an hour lawyer to help them structure that LLC.

And to structure that entity,by having a statutory framework in place that makes it a little bit more accessible for people to understand what those rules are and how those rules are gonna work. And so we, spent some time in Wyoming looking at what are, what are the policy choices that we want to make here.

We want to enable this framework, but we want. I think sort of emphasize transparency. We want to emphasize, right. The public nature [00:41:00] of these doubt community organizations. And so that's what we did. We said, let's, let's take the LLC for those of you that don't know why. I mean, as the state that invented the LLC to begin with back in the seventies.

So Wyoming is pretty protective of the LLC act and the LLC statute. So we didn't necessarily want to mess with the underlying LLC act. It's. But as, as most practitioners know, there's some different flavors of LLCs, you know, there's member managed, there's management, some states have close LLCs. And, uh, so we developed the, the Dow LLC as a subtype it's, it's got its own supplemental chapter two, the statute, as a subtype of LLC, it's designed where it can only be a member managed LLC.

So it cannot be manager managed, which is an important legal distinction. And, uh, and then we, we sort of did our best to take a stab at what some of those default rules are. And again I use this metaphor a lot of times in, in the corporate law context because people, [00:42:00] I think latch onto it more easily, but it's just like having a will versus not having a will.

Right. If you die and you don't have a. The statute, wherever you live or wherever you die is gonna, is going to be the default rules by which your estate is, is dispersed. It's the same thing with an entity, right? If,` you don't have an agreement, an operating agreement, corporate bylaws, whatever the organizational structure is, if you don't have an agreement that specifies the rules of that entity, you're going to be stuck with default rules.

And so, again, Wyoming Wyoming's effort here was to create a set of default rules for these Dao entities as a subtype of LLC. And so that's really what we did building from the building from the standpoint that that's a member managed, LLC, if you register and organize, you know, and meet the criteria that Wyoming has put out as an example, you have to have a public identifier for your smart contract or protocol or whatever it is you're using.

Uh, you still have to maintain a registered [00:43:00] agent. You still have to follow all of the, the organizational registration rules that every other entity. But once you do that, then we create some default rules about right. Remember member voting, uh, management, um, distributions, capital contributions of digital assets, all of these things that are otherwise default rules.

And that's where people like me get excited because I, well, I hear it. And I see it on a daily basis from the developer community. People saying, this is great, right? Again, could I go to Vermont or Nevada or Delaware or wherever and use one of their LLCs? Absolutely. You probably can. And there's nothing stopping you from doing that.

But again, it goes back to those default rules. And what Wyoming has attempted to do is build a set of default rules for these. That not only makes it makes, makes, makes it known to these players that, Hey, this is a way to register. It's a lower barrier to entry. Here's how you do it. But also assuming that people aren't necessarily executing, you know, [00:44:00] perfectly developed operating agreements, the laws changing really quickly, even the nature of, of, of participants in this ecosystem is changing so rapidly.

Let's at least do the best we can to create some default rules to fall back on. And so that's, um, I'm rambling now, but that's essentially what we set out to do. And again, I'll, I'll say what I keep telling everybody, and that is, do I think we got it perfect on the first time? No, I don't think we got it.

Perfect. Um, I'm a little defensive on that point. Cause I think a lot of people in the digital asset industry think that, uh, legislation just happens, you know, and, uh, it can be however we want it to be. But for those that have ever participated in the legislative process, you know, politics is a tough business and getting a bill passed with exactly the language you want.

When you want it and the way, you know, the, the way you want it, uh, is, is very difficult. And so this was our first attempt. Um, we already actually have prepared a whole series of amendments for the bill that actually just passed through our initial [00:45:00] committee reading. There'll be up again, uh, next, uh, I guess two months from now, uh, in the next round of committee hearings.

So there stay tuned cause there's still. Improvements coming, uh, for the Dal legislation. But, um, I think it'll continue to be a work in process for awhile.

[00:45:16] **Eric:** And so would you say that if I'm a bunch of developers and I want to do a dowel and I, I just, I go online, I formed the Dao nine times out of 10 I'm golden.

I have everything I need with these default rules. Is that like, I'm, I'll just write down the quote, as you say, but would you say that's the, that's the case?

[00:45:35] **Matt:** Uh, I'm going to give the standard lawyer answer and that is, it totally depends. Right? Because, uh, when I said nine times out of 10, nine times out of 10, well, what I would say is you're going to be a lot better off than you were without it, right?

Because you will at least have some mechanism in there mechanisms for again, understanding what your member rights are, um, what your information rights are, what your rights are with respect to [00:46:00] distributions, what your, uh, what your rights are, if there's a problem, right. And that's another aspect we've talked a lot about in Wyoming, for those of you that don't know, Wyoming has recently formed and stood up its own Chancery court, similar to that of Delaware, except ours is going to be way faster.

And, uh, and it's designed to be really, really fast. And so that's something we've been talking about here is, is if you have a jurisdiction that not only creates default rules, uh, but recognizes this entity tight sets and create some thresholds for what you have to have in place for the entity type to even be recognized, right?

Which again, emphasizes some transparency and some policy decisions to help participants ensure that they have, you know, equal footing. And then you add on top of that accord of specialized jurisdiction of Wyoming. Much quicker and much faster than, than another states. If there is a problem, we think that's a winning [00:47:00] combination or at least the best that you're probably going to find in the U S for people that are trying to use this entity structure to be super innovative and to develop.

And again, like I've already said this before, but we all know this space is moving way faster than the law and policy is. And so, again, our thoughts.

We're going to have to continue to improve and tweak on this, but at least it's giving those developers the best shot that got.

[00:47:25] **Eric:** All right. Well, I, I was, I was trying to Matt Matt's way to plate on the podcast, but I was trying to give Matt an opportunity to recoil in horror at my statement versus a depends.

So, um, we've already talked about this. I was just, I was setting them up, but I should have known better you cc's too polite. Um, so, so. Rather than going down that road. So the answer is, it depends, but it depends massively. It's not nine and 10 and that'd be the first one I tell you, you know, if you're just going online and you're slamming this through and you think, oh, I got a dowel LLC out of Wyoming and I'm golden you're, you're probably sadly mistaken.

There are some things I [00:48:00] can protect you. But the fact of the matter is, is that, you know, you need to go to counsel, particularly in the crypto space. Don't just assume that there's a default magic pill, red pill, blue pill, uh, you know, and, uh, you're, you're golden. So with that, I know, and I

[00:48:15] **Matt:** want to build on that, Eric, because that's, that's so true in every aspect of the digital asset space right now, right?

I'm sure you've experienced this too. Clients come in and this is one of the most common things that. I even hate saying this because I'm in Wyoming. I love Wyoming. I love what we've done. But the number of times I've taken calls from people to say, Hey, we can just form our entity in Wyoming and do our token offering Wyoming.

And we're good, right? Like, no, we're not. Wyoming does not dictate the sec at all. So we're, we're still, uh, you know, fighting all of these battles and, and the same question keeps coming up in a Dow. Uh, um, this is probably the most common question I get is great. So we can form a Dow it's member managed and we can issue our token.

And we're good, right? It's like, no, not necessarily. Is there, [00:49:00] is there a chance maybe, right. And that's going to be a deep analysis. That's going to be highly technical. It's going to depend on a whole bunch of factors, but at least it gives us some place to start and have a conversation. And, uh, so yeah, you're absolutely right.

[00:49:15] **Eric:** We had actually talked about the four buckets of organizations that come to you that are looking to form douse. So. I'll turn that one over to you. This,

[00:49:25] **Matt:** and this is, this is my gross stereotype. This is not technical in nature at all, but yeah. So what I'll be sharing with you is of the people that, that we have spoken to and, and help form Dows there, there seems to be some common themes of, of people.

And maybe in this context, since we were just talking about, I'll take it kind of in reverse order. And the first bucket is just that bucket. It's, it's a group, it's a community, it's a, it's a, you know, a, uh, a number of developers that have this idea for a token. They want to launch the token. Maybe they would do it within this Dow [00:50:00] structure, but they somehow think that by formalizing, this Dow is now LLC.

It answers all of their regulatory concerns and all of the securities analysis. And of course it doesn't right. That's uh, like, like we just talked about, that's a deeply technical analysis. Um, and, and so that that's kind of one bucket, the other bucket that's similar to that. We probably Eric and we wanted to get really technical that we need to be quadrants here.

Right. But, uh, so the next bucket or quadrant are, are people that I would put in that bucket, but maybe they're even less organized. Right. And maybe there's less economic incentive on it, but there's a really strong community aspect to it. And they just know that they want to get this project launched.

They know that they have a good group of people that want to do this. They're really not interested in regulations. They're really not interested in being regulated. They just, they want to have some formality to the structure. And so that, that probably is one of the toughest buckets of people [00:51:00] to reach because you're right.

They just want to file the LLC. They're probably in reality going to file an LLC or, or, or foundation or something somewhere anyways. And, and then they're just going to go do their thing. And who knows what that means. Right. Um, who knows. What protection that actually gives them, who knows, uh, you know, where we're ultimately all of those members rights fall within that entity.

So that's kind of the herding cats bucket. You know, the, the, the first bucket I talked about, they at least have some organization and they, they, they want to be regulated, but they, they want to do it in the easiest way. Um, so the, the other, the other side of the coin, I guess the other couple of buckets are people have, is, is I think it's a very common theme right now that we see.

And a lot of this has come with the fin hub guidance and other things of people that, that ultimately want to get to the point of a truly decentralized project, right. Token, whatever the case may be. [00:52:00] But right now it's a very small group of people and they want to get it started. And so what we're seeing is this theme of, okay, let's at least organize it as a Wyoming Dow recognizing that right now, it might be, you might even be a subsidiary entity, or it might be a small group of people that want to control this.

But the goal is to right, get this thing. And then gravitated over time towards, towards this decentralized model. Um, and so, so that obviously there's all kinds of, of securities implications, you know, in that analysis too. But those seem, those people seem to be more sophisticated at this point in time, they seem to have a more clear objective as to the organizational structure that they want to have and the organizational structure that they need to start with in order to get where they're going.

And so that that's been a really, um, I, I think unique one and then the, the other bucket that is kind of related to [00:53:00] that one is. There is a specific regulatory problem that they have that they're trying to solve. Right. It's it's okay. We know this is a security or conversely, I work with a couple of different projects that they, and admittedly they've got pretty darn good arguments that they're not a security, right.

Because of a utility aspect or consumptive aspect, or, you know, maybe it's truly just a governance token with no economic rights or something like that. But they have a particular regulatory. Issue that they're trying to solve. And they're willing to try to use the doubt to, to write, to give themselves the best shot they can at addressing that regulatory problem.

So those are kind of the four buckets. And I don't, I don't mean to, even though my remarks probably reveal some of my biases. I don't, I don't mean to pass judgment on any of these. Um, I think it's, it's different approaches to, uh, different, different types of problems, but that's kind of what I've seen at least here in Wyoming,

[00:53:56] **Eric:** that was the Kaufman Dow quadrant [00:54:00] analysis.

Um, so have you seen, um, the Dow's combined or combined with either in a subsidiary context or even a parent context with other structures and any thoughts on, on that.

[00:54:17] **Matt:** Uh, yes. Is the answer. Um, we, we have seen a number of Dow's at least come in as subsidiary entities. Um, again, most of those have been dowsed that are launched.

I should have numbered my quadrants to see, you would know, but in that quadrant of we have a particular project we're going to move towards a decentralized in goal. But right now we're recognizing it's controlled by, you know, a small group of people. So we're going to try to do this with the best corporate protection we can for the longest period of time.

Um, so yes, in terms of flipping that and Dows being parent entities, I haven't seen that. And candidly, I would probably advise against it at this stage just because. That seems to be [00:55:00] inviting some messiness. The other question we get a lot is is it possible to integrate the Dow concept with a series LLC concept?

And again, I'll expose my bias as, as a lawyer. I hate series LLCs to begin with just largely because I'm distrustful of, of the structure and I'm distrustful of ultimately the peer stability of, of those entities, which is as you know, in the, in the limited liability world, a very big question. So we have not participated as a firm in integrating the two series and the Dow concept.

I have no doubt that people are working on it and that will, we'll see that at some point in time very soon. Um, but yeah, not so far.

[00:55:46] **Eric:** How about trusts in LLCs, dental

[00:55:49] **Matt:** seas, uh, trusts in dialyses so that, that that's a new one. I have not seen anybody try to do that. However, I have. Had the conversation with people of [00:56:00] could conceivably a doubt, LLC become a regulated entity.

And, uh, the answer is no with respect to an SBDI, because that requires you to be a corporation and observe some pretty traditional corporate formalities. But, um, who, who am I to say that the doubt LLC couldn't ultimately become a regulated entity? I think again, we have some sort of some competing ideas there, right, right off the bat.

And that is a regulated entity, obviously denotes a number of identified players with deep right. Reputational and background, uh, you know, experience versus this, this Dao type entity where we're going to disperse that control flatten the organization, allow people to participate through some different metric.

So I think that. It's a competing idea, but I'm sure people will tackle

[00:56:53] **Eric:** it. Yeah. It's governance and accountability. I would think in a regulated organization, there have to [00:57:00] be, you know, regulators want to see that, that people are generally they can delegate, but ultimately there has to be a person who has that responsibility.

Right. And so, you know, you have a CCO, you can, you might have a CSO, you know, and, and those, you know, or chief auditor, even somebody who's internal, like, right. So, um, yeah.

[00:57:23] **Matt:** And you know, I, I, I get this comment a lot from people. I think a lot of prospective clients and people that I talk with in the industry are disappointed because they find out, Hey, you're the guy that helped draft the dowel bill.

And you form some of the first Dallas in Wyoming. This is the doubt we want to do. And, uh, you know, for a lot of people I talked to it's like that doesn't sound like a very good idea. Right. I don't, I don't think that's something that should be a doubt or I don't think this is the right entity. And so I, I don't in any way, shape or form profess to believe that everything should be a Dao, right.

Or everything should be decentralized or that this is a good regulatory solution for most [00:58:00] people. Um, but for some it is right. And for some, there's a really compelling case. And to, to your case in 0.1 of the doubts that we're working on, uh, we have spent an inordinate amount of time and I know people that have been, you know, developers and things in the Dow space.

This is probably intuitive to them, but it's not intuitive to us lawyers. And that is, you know, like, like the simple concept, one of my law partners. I spent an enormous amount of time talking about voting and voting mechanisms in Dallas. Right. And I just use this as an example to, to sort of, uh, to give the, the lawyers that are listening about some of the things that I think are coming down the pike for corporate law, that the doubt conversation kind of forces.

And these are some of the things that make me the most excited, but, but in the concept of voting, we were talking about this idea of a quorum, right? And you have a traditional corporation, for example, um, many, many, it would be normal, right? For the organizational documents [00:59:00] to define quorum as a majority, right.

Or something like that. So you have a meeting or you want to take action. And in order to establish that action or take that action, you have to establish the quorum, right? And then the quorum can vote and make, make whatever decision and, and direct. But that creates a weird incentive a lot of times for closely held corporations.

And that is that those that refuse to participate. Right. Can sometimes control the outcome, right. By just refusing to participate. You can keep the company from being able to take action. So one of the concepts, one of the Dows we're working with approach is let's flip that completely on its head. How do we create an incentive for people to participate, right?

Where if you refuse to participate, you risk being punished. And so in that context, quorum was based on time, right? So if you're participating in this Dow and a proposal is put forth, you've got 36 hours to vote, you know, and, and the Corum we're going to define based on that 36 hour [01:00:00] window, like I said, this is probably, this is probably second nature to a lot of developers.

They're like, yeah, we've been doing that for years. Well, lawyers haven't been doing that for years. This is a brand new concept. In the realm of, of, you know, corporate legal governance. And so it has been really fun for us to work through some of those kinds of concepts. And I, again, I've, I've even shared this with a lot of my lawyer peers, and that is even if ultimately the Dao LLC ends up not being the best legal structure for most projects, it is having this tremendous effect of bringing forth some of these discussions to question, why is it that we do right?

Some of these old, traditional corporate things that all corporate lawyers do and all organizations do that at the end of the day, don't necessarily align incentives and they don't necessarily make sense. And so that's one of the things that, that I get most excited about and that I've had the most fun sort of seeing firsthand on full.

[01:00:53] **Eric:** Yeah. And, and, and in that regard, there's a lot of debate. A lot of it being actually a

Vitalikum, [01:01:00] wrote a medium post in August about different mechanisms, uh, other than proof of work, proof of stake that. You know, factor into a governance mechanism, right. You know, there's, there's proof of reputation.

There's proof of time. There's proof of engagement. And to your point, if somebody does not participate, one of the mechanisms could be that, that they, if they are not as actively engaged, they lose relative voting power compared to people who are engaged. And that does seem to be a way to reward those who are engaged versus those who aren't.

Um, you know, a lot of these, you know, on, on chain or even off chain governance mechanisms now are starting to incorporate that more, you know, moving from just a pure proof of stake model to something that, that has those nuances in it. So yeah, more, more to come, more to come. So, um, So any improvements you want to kind of foreshadow, uh, on the, on the Dow, um, LLC [01:02:00] statute.

[01:02:01] **Matt:** Yeah. Um, a couple things. So one and, uh, I, again, I'll take either partial credit or partial blame for some of this language, but when we were, when we were first drafting the legislation, there's, there's an obvious emphasis in the legislation for the doubt to, to be forthcoming and to be transparent about the extent to which the entity relies on smart contracts, algorithms, whatever the case may be to, to manage itself.

And in, in doing that, we, we sort of realized midway through the legislative process that we created the appearance, at least that there's two types of Dows that there's algorithmically managed Aus and never managed Aus, which was never the designer intent there. Legally speaking, they're member managed, LLC.

But we, we wanted to create sort of this, right, this scale, that P that, that sort of forced people to at least try to disclose to what extent they're algorithmically managed. And, uh, so anyways, there, there is [01:03:00] effort underway to clarify that and make sure that people know the distinction, the other really big changes, I think come about with, uh, the definitions of, of things like, you know, the, the membership interests and what rights are wrapped up and entailed within that membership interest.

Um, default voting rules, a fact that this, this last week at our legislative hearings, we had a fascinating debate. Our Dow act currently. Sort of assumes that the creation of the Dow and membership and a doubt would require or involve the contribution of digital assets in some form or another, but it brought about this great question of, you know, should, should, should we be expanding that, is that too narrow, right?

Should it be broader than just digital assets right now? Of course, most Dows do transact, um, in some token digital asset something. But, um, so I don't have the answer to all those questions, but maybe that gives you at least a little bit of a preview of, to the types of things that we're talking [01:04:00] about.

And like I said, Every expectation in the world that this entity will continue to evolve over the next several years and that there will be additional iterations, but that's one of the benefits of Wyoming is our legislature tends to be a little bit more quick to, to, uh, you know, act and we're able to move that process along a little more quickly to try to keep pace with some of the, you know, new things happening.

[01:04:24] **Eric:** Excellent. Excellent. So this is great. We, a week we covered both the speedies and the Dao in, in the same episodes. We easily could have done, uh, one on each, but, uh, thanks for, uh, working through it. And, um, it was great to have you on the show and you know, we'll take it from here.

[01:04:42] **Matt:** Yeah. Awesome. Well, thanks Eric.

I really appreciate being on and, uh, yeah, it's been fun.