

Frankle, Lorch and Roberts in Law360: Can A DAO Be Sued? SDNY Case May Hold The Answer

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Haynes Boone Partner [Matthew Frankle](#) and Associates [Austin Lorch](#) and Payton Roberts authored an article for *Law360* exploring if a decentralized autonomous organization, or DAO, can be sued in federal court.

Read an excerpt below:

Can a decentralized autonomous organization, or DAO, be sued in federal court? MakerDAO does not think so.

True Return Systems LLC v. MakerDAO, pending in the U.S. District Court for the Southern District of New York, presents an interesting legal question: In what capacity can a DAO be sued?¹ DAOs should take note.

In December, True Return Systems submitted a response, so both parties' positions are before the court for decision. TRS argues that MakerDAO is an unincorporated business entity, while MakerDAO believes it does not have the capacity to be sued under Federal Rule of Civil Procedure 17(b).

The court's decision will serve as new precedent moving forward.

What is MakerDAO?

MakerDAO is a DAO that operates its protocol on the Ethereum blockchain to succeed "where Bitcoin fails precisely because Dai [MakerDAO's stablecoin soft-pegged to USD] is designed to minimize price volatility."² To put it very simply, holders effectively take a loan in Dai by locking cryptocurrency into the MakerDAO platform.

Participants enter the ecosystem by purchasing Dai or MKR, MakerDAO's token. The protocol runs on smart contracts that give MKR holders governing rights and voting power. For example, the ecosystem once only accepted Ethereum, but after a vote of the MKR holders, the system now accepts various Ethereum-based assets.

DAOs operate autonomously based on a predefined set of rules and without human intervention, which may attract organizations looking to automate director or shareholder approval. DAOs' success and failure today, both in and out of court, may provide a guide for this innovative technology in the future.

What law is the case challenging?

To be sued in federal court, a defendant — in the present suit, MakerDAO — must have the capacity to be sued.³ Rule 17(b) was first adopted in 1937 — long before digital assets and the modern technological era. MakerDAO now exposes it in an attempt to stay out of court.

In particular, Rule 17(b) says a defendant has the capacity to be sued based on the defendant's classification:

- For individuals, the law of the individual's home state applies;
- For corporations, the law of the state where the corporation was organized applies; and
- For unincorporated associations, the law of the state where the court is located applies.

If a DAO is not an individual, a corporation or an unincorporated association, then the issue becomes whether a DAO has the capacity to be sued in federal court.

To read the full article in *Law360*, click [here](#).

¹ True Return Systems LLC v. MakerDAO , No. 1:22-cv-08478, (S.D.N.Y.).

² The Maker Protocol: MakerDAO's Multi-Collateral Dai (MCD) System at 4, <https://makerdao.com/en/whitepaper/#abstract>.

³ Fed R. Civ. P. 17(b).