

# Sotheby's Auction Information

## Key Takeaways

- [Official Sotheby's Conditions of Sale Document](#) - This document has everything about the sale in it. Absolute best resource.
- Sotheby's has this whole auction thing down to a science. It's streamlined, well documented, and has supporting services in place already.
- We need to do KYC/AML, entity formation, etc beforehand. Not much from the actual "auction" side
- Our purchase price should be up to 75% of the total capital we raise (massive fees structures will make up the other 25%)
- Sotheby's will store the document for 30 days after the auction. They offer a logistics service for packaging / transportation, we should use it. The constitution will be fully insured, all we'd have to do is give them a street address to ship it to

## Before the Auction

- We can schedule an in person inspection if we want. It's recommended but not required. We would need to coordinate with Rodney and schedule a viewing time
- Registration and AML/KYC work needs to be done. Additional details further down the document
- We need to ask for provenance (historical record of ownership) and additional artifacts that may come with the constitution just to be safe

## During the Auction:

- The auction is at 6:30PM EST in New York City
- This is not an in person auction. Bidding will have to happen online.
  - I think a group may still go to NYC regardless. This needs to be coordinated
  - Additionally, we should schedule a video call for everyone in the DAO
- The main fees on top of the purchase price are the premiums and the sales tax.
  - Sales Tax is a flat 8.875% in NYC
  - Premium is formatted like an income tax brackets. The first \$400,000 has a 25% premium, \$400,000-\$4,000,000 has a 20% premium, and anything above \$4,000,000 has a 13.9% premium
  - Shipping, handling and potentially other small miscellaneous fees may also be included.

<b>Purchase Price</b>	\$20,000,000	\$30,000,000	\$40,000,000
<a href="#"><u>Sliding Premium</u></a>	\$3,044,000	\$4,434,000	\$5,824,000
<a href="#"><u>8.875% sales tax</u></a>	\$2,046,000	\$3,056,000	\$4,066,000
<b>Handling Fees</b>	TBD	TBD	TBD
<b>Shipping Charges</b>	TBD	TBD	TBD
<b>Total</b>	<b>\$25,089,155</b>	<b>\$37,490,018</b>	<b>\$49,890,880</b>

**We should only spend 75% of the total money we raise**

## After the Auction

- **Payment:** A payment invoice will be mailed to us immediately after purchase. Additional details on current payment ideas further down the document
- **Document Storage:** “Unless otherwise agreed by Sotheby’s, all property must be removed from our or our vendor’s premises (as indicated on the invoice) by the purchaser at his expense not later than 30 calendar days following the close of the auction.” - ***We have 30 days to get the document out of Sotheby’s***
- **Collection and Delivery:** “All collections and deliveries for purchased property will be handled by [Post Sale Services](#) in coordination with purchasers after the auction. Sotheby’s offers a comprehensive shipping service to meet all of your requirements. If you received a shipping quotation or have any questions about the services we offer please contact us.” “Fully knowledgeable on all international regulations, Sotheby’s will compile a full range of services for you, including collection, packing and arranging for shipping and transit insurance worldwide.” - ***Once we have the constitution, Sotheby’s will start talking to us about transit. They have all inclusive delivery services (insurance included) that I think we should leverage.***

## *Sotheby's / FTX / Financial / Formation Questions:*

*Context: Our friend Sabrina Hahn who is an art dealer / NFT angel investor got in touch with the head of private sales at Sotheby's who is overseeing this auction. We are directly connected to them and can ask questions / they are happy to work with us.*

1. *Do we need to purchase in Fiat or can it be cryptocurrency?*
  - a. Just dirty fiat
2. *Can we purchase as a DAO with a single address?*
  - a. "they cannot accept DAOs as bidders for KYC/AML reasons, but if you set up a company and bid through that, Sotheby's can diligence and do KYC on the owners of the company so that should work" → must do LLC
3. *Do we need to purchase in Fiat or can it be cryptocurrency?*
  - a. Answer: "Sotheby's will ask seller to see if they will accept crypto (it's up the seller which currencies are accepted, and when asked previously the seller said no but they'll ask again); currently the answer is fiat" → still no indication of acceptance of crypto
4. *When will the LLC registration process be complete?*
  - a. Monday; we'll get the docs then
5. *When does Sotheby's check the account balance, if at all?*
  - a. We received a document called the Financial Reference Request form. This was **before** Sabrina. It turns out that Sotheby's can choose to KYC someone or not. After we started talking to Sotheby's through Sabrina, they said that we really just need three things:
6. *What does Sotheby's need from us?*
  - a. ASKS
    - (i) a certificate of incorporation for the company;
    - (ii) a register of shareholders to enable us to identify the UBOs; and
    - (iii) IDs for all UBOs and for those operating the account. We would then carry out World Checks on the company and each individual identified.
  - b. OUR SOLUTION:
    - (i) giving LLC documents: no problem
    - (ii) unit holders will be entirely Alice and Julian, as the Managers/members of the LLC
    - (iii) Alice/Julian are the only beneficiaries
7. *Does Sotheby's want to see the balance of a US bank account or a crypto wallet? Either?*
  - a. We have not seen a requirement to check the balance. Sotheby's has what **appears** to be the **choice** to require us to fill out this form:  
<https://drive.google.com/file/d/1KWISIL0WaYz6yhZD8NpQm1jZJoBYEeAH/view?usp=sharing> We still need to clarify if that is the case
8. *When can we open the account on FTX?*

- a. As soon as LLC is registered on Monday
- 9. Can we use a buyer's agent?
  - a. Yes, but that does not diminish needs for KYC/AML
- 10. Can Sotheby's take custody post-sale?
  - a. *Yes but only for 30 days*
- 11. What is the payment timeline following the close of sale?
  - a. *Also 30 days*
- 12. Although we don't expect to have any challenges, we need to understand the full consequences and penalties of failure to deliver funds
  - a. *Sotheby's keeps the document until we pay. They'll pursue legal actions (which we would be required to pay for) and would impose from the date of sale a late charge of the annual percentage rate of Prime + 6% of the total purchase price.*
- 13. What's the difference between the LLC format vs. Non Profit?
- 14. What taxable events are there? Raising funds and purchase
  - a. *Purchase is subject to an 8.875% sales tax*
- 15. Is the Financial Reference Request a required document we must submit prior to the auction? What other documents do we need? We're getting mixed signals.
- 16. What is the requirement around proof of funding?
- 17. What would it take to push the sale back by a week? (do we want to ask this??)
- 18. [From the conditions of sale fine print](#)
  - a. Is this a premium lot? Do we need to do pre-registration? Which of the symbols in the symbol key applies to this purchase (Reserves, Guaranteed property, Sotheby's ownership interest, irrevocable bids, interested parties, restricted materials, monumental, premium lot, US import Tariff)?
  - b. "Taxes (8.875%), buyers premium and overhead premium (14.9%), handling charges ??, expenses of both sales ??, our commissions on both sales at our regular rates ??" Any other potential fees we're missing? For the ones with "??", what's an estimated cost?
  - c. "In person bidding is currently not available for this auction. For the most up-to-date information regarding in person bidding, please call Sotheby's or visit Sothebys.com." - from point 6. What is the format for sale?
  - d. What is the flow of money throughout this process? Are there down payments needed?
  - e. Who can we talk to about Sotheby's transit services for the document?
  - f. What other artifacts come with this document? Records of sale were mentioned at one point?
  - g. We are required to inspect the document beforehand. Does Sothebys have an independent inspector who can work with us? Do we need to schedule an appointment?

### ***Option 1: FTX is Superman (Unlikely, but we'll ask)***

- 1. We finish the formation of the LLC (Will is leading)

2. Alice and Julian are the two Managers/members of the LLC. They are the only legal beneficiaries.
3. The LLC files for an EIN, opens an account on FTX.US
4. FTX supplies the USD equivalent to the value of the holdings in the multi-sig wallet
5. FTX will retain approval of all outgoing payments. They will only approve outgoing transactions up to the value of the money provided by the multi-sig wallet
6. If we win the bid, multi-sig transfer to the account at FTX. FTX then releases the USD payment to Sotheby's.
7. If we do not win the bid, FTX just withdraws the money; multi-sig money gets returned

**Pros:** Best governance; Sotheby's will love it

**Cons:** FTX probably won't go for it

**Questions:**

- Can FTX give us USD to sit in the account?
- When will FTX fund the wallet?
- Will Sotheby's view this as legitimate?
- Will FTX just deposit this in good faith? Will it need to be structured as a loan?
- Can we get them to do a 1:1 crypto loan (or could we get ANYONE to do this?)
- Is FTX comfortable with us sourcing money from two multisig wallets? One will be a handful of whales, which will help us conceal how much money we've raised

## Option 2: Air Gap the LLC with Trust (most likely)

1. We finish the formation of the LLC (Will is leading)
2. Alice and Julian are the two Managers/members of the LLC.
3. The LLC gets EIN, opens an account on FTX.US
4. Confirm whether you need CIK# for SEC filing & corresponding exemption
5. Right before Sotheby's needs to check account balance, the DAO closes contributions, multi-sig transfers crypto to FTX. FTX converts to USD.
6. If we win the bid, we send funds from the FTX account. USD payment to Sotheby's.
7. If we do not win the bid, money gets re-converted and sent back to multi-sig

**Pros:** Most likely to get approved. Simple. Easy.

**Cons:** We have to trust the LLC to use the funds as directed.

### Questions:

- Are there ways to make this more trustless?
  - See below, two managing members of LLC (Julian and Alice) sign LOI stating they will use funds/transfer asset
  - Easiest way to would be to form the LLC as an SPV with the sole purpose of acquiring and transferring the asset to another entity
  - Structurally this can be done as a DE Series LLC with Series I being the entity that receives the asset, lines up subsequent purchases structurally
- Can we create a 'contract' between the DAO and the LLC?
  - Easiest way would be to have the two legal beneficiaries sign an LOI prior to auction. That can be shared with Discord/interested parties
  - If DE Series LLC you would state in the operating agreement that the LLC is meant to hold assets, might be tricky with tax/SEC regs given where you want it to end up (don't want it to look like a pass through holding co but DE Series would solve this). The DAO (WY DAO? DE LLC wrapper?) may need to have 1-2 different managing members to avoid appearance of self-dealing
  - Need to check on the SEC filing requirement/upper limit of members in the DAO/eventual holding LLC, Syndicate (Will) likely knows the exemption/upper limits
  - Someone in the Discord raised the prospect of doing this as a trust. Possibly easy to set up (and you may have discussed this) but consider the tax hit of moving an asset out of the trust
  - LexDAO has a form **Code Deference Agreement** that could be helpful in binding the LLC to the output of DAO votes (note this version is for Investment Clubs, but we can edit if we go this direction):  
<https://github.com/mccallj57/realdao/blob/main/%23%20Operating%20and%20Code%20Deference%20Agreement.md>
- How soon before we will the money need to be in the wallet?

### *Option 3: Museum-As-Buyer's Agent (most preferable)*

*This is a situation where we partner with a museum. We could have them be both the Buyer's Agent as well as the benefactor of where The Constitution resides for some period of time. This would be a better narrative, have an alignment of interests, and reduce some friction around the purchase process.*

1. We finish the formation of the LLC (Will is leading)
2. Alice and Julian are the two Managers/members of the LLC.
3. The LLC gets EIN, opens an account on FTX.US
- 4.
- 5.
- 6.
7. <to fill out in greater detail>

Sent email 11/12/2021:

Hi David! Great to meet you.

A little bit about ConstitutionDAO:

The constitutionDAO is a collective of people placing a bid on the Constitution. We intend to find a home for it among the world's finest artifacts to be preserved and enjoyed by all. We plan to preserve the physical document by finding a home for it at a highly reputable institution, such as the Smithsonian, and make it accessible to the people.

We're seeing extraordinary interest from the community to participate in this bid - for example, our Discord has reached 1.9k members after starting 24 hours ago, we've received 7-figure levels of commits, and we are garnering participation interest from the most prominent figures in NFT art. We expect this to continue to pick up steam, as the story is one that resonates with a lot of people!

Below, we have some questions around logistics for placing a bid.

- What are our options for placing a bid? We've heard of the following three options:
  - As an LLC, a [registered Wyoming DAO](#)
  - By working with a buyer's agent to place on our behalf
  - By working with a museum to bid on our behalf
- What is your due diligence process for placing a bid, and can we start that process?
  - If we go down the LLC route, we have two folks here who can be signers on the LLC, but we're wondering what requirements we should have in mind so that we can choose who is a signatory on the LLC
- Are you able to hold the artifact in your custody after the sale? Are there options to leave it with Sotheby's for a short time?
- What is the payment timeline following the close of sale?
- Is the Financial Reference Request the only document we must submit prior to the auction? What other documents do we need?

We're excited to work with you on this and are flexible to make adjustments to pull this off. We do believe this would be historical when successful!

In the meantime, don't hesitate to share any questions or thoughts.

Cheers,  
Graham



## Received Email

\\@RapGamePatrickHenry:

1. Not a lawyer, not legal advice, none of this constitutes an attorney-client relationship, hire a lawyer if you need legal advice, etc. etc.
2. I think a Unincorporated Nonprofit Association (“**UNA**”) would be an advantageous entity. No registration requirement, recognized by U.S. common law, and tax-exempt as long as we have a clear non-profit purpose (which I believe we do if the goal is to purchase it for public display, though we may need to address concerns about sales of the NFT on secondary markets). See Kerr et al., *A Legal Framework for Decentralized Autonomous Organizations*, a16z (Oct. 19, 2021), <https://a16z.com/wp-content/uploads/2021/10/DAO-Legal-Framework-Jennings-Kerr10.19.21-Final.pdf> (last accessed Nov. 13, 2021).

### Notes:

- Their Team:
  - Evan -Works on complicated deal structures
  - Marco- Compliance director. Does KYC/AML, crypto, NFTs
  - Derek- press team in NY
  - Caroline - Council
- Will
  - Only owners of the LLC are
  - For the fundraise, people donate money to this for-profit LLC
  - The LLC makes the purchase
- Marco:
  - KYC is the challenge
  - DAOs are not accepted as bidders; impossible to diligence everyone involved
  - If bidding is done through an Agent
  - YES-- that is easy to diligence the LLC
  - “The company is bidding for itself. After that you can do whatever you want.”
- Museum side
  - Donate money to the museum, then the museum makes the purchase
  - In this case, they’d diligence the museum
- *What currency will t*
  - They do accept crypto directly
  - Must come from Gemini, Paxos, Coinbase
  - They’d need the consignor’s approval
  - They will need to ask other sellers/the bidders
  - They much prefer for us to convert to fiat on our side
- Funding

- Pay within first 30 days
- Verification of funds
  - Will you accept ethereum balance in the multi-sig wallet
  - “We should be able to accept that.” they have concerns of volatility
  - They’re looking for hammer + premium
  - 13-14m will be the minimum required
  - minimum amount of ETH we have to have locked up: 13-14m. That gets us into the auction
- Can we have our fund totals obscured
  - It’ll open and close very quickly
  - There won’t be an opportunity to see the bidding and add more
  - They want to see the value of the wallet
  - Will: we will disclose all of the wallets that will be involved
  - Will: we can convert to USDC, they would prefer that; they would appreciate that
- Marco:
  - Are the shareholders of the
  - Ownership must vest in the company.
- Post purchase logistics
  - We’d like to store it for 30 days following. That seems fine from their perspective.
- Funds
  - We may do USDC or ETH. We will follow up.
- Where is teh LLC
  - Delaware
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