

UCC Digital Asset Amendments Finalized

July 21, 2022

This month, the sponsors of the Uniform Commercial Code (“UCC”) approved wide-ranging amendments to the UCC (the “2022 UCC Amendments”)¹ to provide workable rules for emerging technologies, such as distributed ledger technology and virtual currency. If adopted by individual state legislatures, these amendments should provide greater certainty regarding the rules governing security interests, competing claims, custodial risks, and other issues associated with digital assets.

The UCC is a uniform law sponsored by the American Law Institute (“ALI”) and the Uniform Laws Commission (the “ULC”) and governs various commercial transactions in personal property, including rules for granting and perfecting security interests in such property. The 2022 UCC Amendments are the culmination of the work of a Joint Committee of the ALI and ULC (the “Joint Committee”) (originally formed as a study committee) constituted to consider whether changes to the UCC were advisable to accommodate emerging technologies. Trade organizations, financial institutions, technology companies, government agencies, academicians, and consumer groups participated in the work of the Joint Committee. In fairly short order, the ALI and ULC agreed to permit the Joint Committee to act as a drafting committee for amendments to the UCC dealing with, among other matters, digital assets.

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¹ UNIF. COM. CODE & EMERGING TECHS. (UNIF. L. COMM’N & AM. L. INST. 2022), available at <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=67fe571b-e8ad-caf8-4530-d8b59bdca805&forceDialog=1>.



The 2022 UCC Amendments touch on nearly every article of the UCC and include an entirely new article – Article 12 – dealing directly with the acquisition and disposition of interests (including security interests) in “controllable electronic records,” which would include Bitcoin, Ether, and a variety of other digital assets. Under Article 12 and associated amendments to Article 9, a party may perfect a security interest in certain controllable electronic records by obtaining “control” of such records. In addition, Article 12 confers an attribute of negotiability on controllable electronic records – a good faith purchaser for value who obtains control (a “qualifying purchaser”) takes its interest free of conflicting property claims.

Control under Article 12 is designed to be a technology-neutral functional equivalent of “possession.” It generally encompasses circumstances when a party has the “private key” or other mechanism to avail itself of substantially all of the benefits of the record, prevent others from availing themselves of such benefits, and transfer the record and associated benefits.

Notably, these additions related to perfection, control, and negotiability do not apply to all “controllable electronic records,” only controllable electronic records that are general intangibles as well as certain accounts and payment intangibles. For other types of assets, parties will need to consider the interplay of Article 12 and other UCC provisions governing that type of asset.

In addition, the 2022 UCC Amendments make changes to the definition of money to ensure carve outs from the scope of that definition for Bitcoin and other virtual currencies that are subsequently designated as legal tender by a government. Moreover, the amendments create a new concept of “electronic money” that benefits from the same negotiability and control perfection mechanism as controllable electronic records.

In addition to amendments related to electronic promissory notes (other than transferable records governed by the Uniform Electronic Transactions Act), records evidencing chattel paper, and electronic

documents of title, the 2022 UCC Amendments add helpful clarifications to certain provisions of Article 8 governing investment property – most notably in the context of the indirect holding system in which a securities intermediary and its customer may agree to treat various types of digital assets as “financial assets” under that Article.

The 2022 UCC Amendments anticipate that each state will select its own effective date, but in order to provide an appropriate transition period before, *inter alia*, the new priority rules would govern pre-existing interests, include a somewhat uniform “adjustment date” designed to be at least one year after the particular state’s effective date.

The foregoing is a high level summary of selected aspects of the 2022 UCC Amendments that may be of particular interest to financial market participants. Please refer any questions to Sandra Rocks, Penelope Christophorou, Brandon Hammer, Kathryn Witchger, and Alec Mitchell from whom you may also request a copy of our memorandum addressing the entirety of the 2022 UCC Amendments, expected to be available in the near future.

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