2022 UCC Amendments Address Emerging Technologies, Including Virtual Currencies

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The Uniform Commercial Code (UCC) governs commercial transactions broadly throughout the United States and has been adopted by every state in a nearly identical form. However, in its current form, the UCC does little to accommodate emerging technologies, such as digital assets. With the prominence of digital assets, such as virtual currencies and non-fungible tokens, growing by the day, changes to the UCC are necessary to address the differences these digital assets create. The UCC has been revised at the recommendation of the Uniform Law Commission (ULC) throughout history to stay up to date with current transaction technologies. Most recently, the ULC has proposed the 2022 amendments to the UCC to account for emerging technologies, both as they currently exist and as they will exist in the future. These amendments are now being offered for enactment by the states and are summarized below.

The most widespread change to the UCC in the amendments is the explicit inclusion of digital assets. Article 12 provides the rules for transactions with digital assets, referring to them as “controllable electronic records” (CERs). CERs are defined very broadly to not only include current digital assets distributed using blockchain technology, but also similar future technologies that do not yet exist. The concept of control is introduced in Section 12-105 as applied to intangible property, such as digital assets. Control is similar to possession of a tangible asset in that the person with control has the power to transfer the asset and can prevent others from using the intangible asset.

Article 9 was amended to facilitate the use of digital assets as collateral for loans. Under the amended Article 9, a lender who has control of digital assets has a perfected security interest over the interests of other lenders who lack control. Digital versions of tethered assets, such as an electronic promissory note instead of one in writing, are also provided for in the amendments under similar rules to typical tethered assets. The new amendments also protect innocent parties that accept, in good faith, digital assets that are subject to competing property claims. Finally, since digital assets have no physical location, the amendments allow the parties to choose the law that applies to the transaction. If the parties do not choose a governing law, the law of the District of Columbia will apply.

Money has previously been defined by the UCC only in its tangible form. However, the amendments broaden the definition to allow for electronic money, as some countries have begun adopting virtual currency as an alternate form of money. Article 1's definition of money was amended to allow for governmentally created forms of money, whether tangible or electronic, to be included in the definition of money but pre-existing virtual currencies, such as Bitcoin, are not considered money under the UCC even if they are a CER. Article 9 amendments allow for a security interest in electronic money under the Article 1 definition that can only be perfected through control.

The definition of chattel paper has also been modified by the amendments. While it previously required a record with both a monetary obligation and a security interest in the goods, the definition now refers to a right to payment *evidenced by* a record, instead of the record itself. This allows for chattel papers to become consistent with CERs. The rule governing control of electronic chattel paper was also amended to be consistent with the rule governing the control of CERs.

Terms that applied only to paper transactions have been omitted from the UCC or redefined to encompass electronic transactions. For example, the term "sign" was defined to include electronic signatures, "record" was substituted for "writing," and "conspicuous" was redefined to broadly encompass both paper and electronic agreements. The amendments to the UCC will also allow for a transition period to protect lenders who have a security interest in a digital asset perfected under the previous rules which will allow for the lender's priority to be maintained. This also allows for a grace period where the parties to a pre-existing loan agreement can renegotiate the terms as necessary to comply with the amended provisions to protect their interests.

The 2022 UCC amendments allow for the UCC to apply to the expanding number transactions involving digital assets in a way that is not possible under the current UCC. These amendments will allow for a security interest in a digital asset to be perfected without the complications that exist under current law. While the amendments seem intense at first, the changes to the law are necessary and are broad enough to not only keep up with the current market, but also any future technologies no yet developed. The ULC will bring the 2022 amendments to the states soon to facilitate the state enactment process.

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This article was co-authored by Spencer Kluth, a third-year law student at The Ohio State University Moritz College of Law, who clerked with Vorys during the summer of 2022.