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CORPORATE LAW—AN INTRODUCTION TO DIGITAL ASSETS AND A
SUMMARY OF THE 2022 AMENDMENTS TO THE UNIFORM
COMMERCIAL CODE

I. INTRODUCTION

The rise of digital assets, assets that lack tangibility and exist solely online, created an urgent need for new laws covering transactions involving these assets.¹ These digital assets are being assigned economic value, despite lacking intrinsic value or interest.² Essentially, a community of individuals came together and assigned value to various online currencies, pieces of art, or other security-like creations.³ Seeing the need for specific laws addressing this growing trend, the Uniform Law Commission amended its hallmark act, the Uniform Commercial Code.⁴ By introducing the Uniform Commercial Code in 1951, the Uniform Law Commission aimed to standardize interstate commerce.⁵ The 2022 Amendments to the Uniform Commercial Code add Article 12, an article strictly designed to address the growing concerns emerging in electronic commerce with digital assets while adapting Article 1 and Article 9 to securitize digital assets.⁶ The 2022 Amendments were needed as emerging technology outpaced Article 9's control.⁷ These amendments facilitate the transfer and securitization of digital assets and should be adopted by the states to ensure clarity in the law.⁸

1. See Riccardo de Caria, *Definitions of Smart Contracts*, in THE CAMBRIDGE HANDBOOK OF SMART CONTRACTS, BLOCKCHAIN TECHNOLOGY AND DIGITAL PLATFORMS 19, 20 (Larry A. DiMatteo et al. eds., 2020).

2. Memorandum from Steven Harris, Reporter, on Controllable Electronic Records to the Committee on the Uniform Commercial Code and Emerging Technologies (Apr. 18, 2021) [hereinafter Memorandum].

3. See *id.*

4. UNIFORM LAW COMM'N, A SUMMARY OF THE 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE (2022), [<https://perma.cc/4J7Y-6TXA>] [hereinafter SUMMARY].

5. See *Uniform Commercial Code*, UNIFORM LAW COMM'N, <https://www.uniform-laws.org/acts/ucc> (last visited Mar. 19, 2024).

6. See generally U.C.C. § 1-101 to -309 (AM. L. INST. & UNIF. L. COMM'N 2022); U.C.C. § 9-101 to -809 (AM. L. INST. & UNIF. L. COMM'N 2022); and U.C.C. § 12-101 to -107 (AM. L. INST. & UNIF. L. COMM'N 2022).

7. UNIFORM LAW COMM'N, OVERVIEW OF 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE—EMERGING TECHNOLOGIES (2022) [hereinafter OVERVIEW].

8. UNIFORM LAW COMM'N, WHY YOUR STATE SHOULD ADOPT THE 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE (2022), <https://www.uniformlaws.org/viewdocument/enactment-kit-76?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments> (click the last document listed on the webpage) [hereinafter ADOPT].

This Note explains the need for Arkansas to codify the new amendments to the Uniform Commercial Code. A significant component of the 2022 Amendments is the newly drafted Article 12, which governs transactions involving digital assets such as cryptocurrency and non-fungible tokens (“NFTs”). Given the ever-changing nature of commerce and the beneficial effects of the amendments, including the uniformity and thoroughness of the laws, Arkansas should adopt the 2022 Amendments to the Uniform Commercial Code.⁹ Adopting the amendments would ensure Arkansas remains up to date in commerce and early adoption could place Arkansas at the forefront of commercial transactions regionally and nationally.¹⁰ With many neighboring states already introducing the legislation, Arkansas should also be proactive in these economic changes by adopting the 2022 Amendments to the Uniform Commercial Code.¹¹

This Note argues that Arkansas should adopt the 2022 Amendments to the Uniform Commercial Code, including the newly drafted Article 12 addressing Certifiable Electronic Records, to maintain pace in the digital age of commerce. Section II of this Note explores the history and background of digital assets, commodities that exist solely online with no tangible or physical characteristics.¹² Section III addresses how the State of Arkansas can adopt these amendments and includes the overall argument of why Arkansas should adopt the amendments.¹³ Section IV concludes this Note by summarizing the background materials and arguments for adopting the new amendments.¹⁴

II. BACKGROUND

Before this Note can explain the need for Arkansas to codify the 2022 Amendments to the Uniform Commercial Code, an introduction to the Uniform Commercial Code and digital assets, such as cryptocurrency and NFTs, is required. This Section will first give an overview of the early history of digital assets, then introduce the Uniform Law Commission and the Uniform Commercial Code and conclude by addressing recent developments in the digital asset industry.

First, this Section will provide a broad overview of a digital asset and a short history of digital assets.¹⁵ Second, it will introduce the Uniform Law

9. *See id.*

10. *See id.*

11. *See infra* note 199; *see infra* note 197 (at the time of this Note, the Arkansas General Assembly introduced a bill for the 2022 U.C.C. Amendments during the 2023 Legislative Session, but this bill was withdrawn by the sponsor several weeks after the bill went to committee).

12. *See infra* Section II.

13. *See infra* Section III.

14. *See infra* Section IV.

15. *See infra* Section II.A.

Commission and the history of the Uniform Commercial Code.¹⁶ Third, it focuses on the *Howey* Test and the classification of most digital assets, minus cryptocurrency, as a security.¹⁷ Fourth, it will discuss how the Uniform Commercial Code currently governs digital assets.¹⁸ Fifth, and finally, it will share recent developments in digital asset transactions that establish a need for new laws in the field.¹⁹

A. What is a Digital Asset? A Brief History

Digital assets represent the latest example of the common trend where the modern commerce system out-paces the existing governing law.²⁰ Digital assets, lacking physical tangibility and exchanged through an internet system titled the blockchain, are an unprecedented asset.²¹ The blockchain is a decentralized ledger that records all transactions for public access but is unmodifiable.²² These exchanges are conducted using “smart contracts,” self-executing contracts coded into the computer operating on the blockchain.²³ These contracts trigger performance after specific pre-condition requirements are met.²⁴ In theory, it is impossible to breach a smart contract since performance is automatically rendered immediately following the satisfaction of the pre-requisite conditions.²⁵

Despite the sudden surge in popularity, digital assets are not a recent idea.²⁶ Transactions involving other digital assets, such as software and electronically stored videos, photographs, or documents, existed before investment-centric digital assets like cryptocurrency.²⁷ Other examples of digital

16. See *infra* Section II.B.

17. See *infra* Section II.C.

18. See *infra* Section II.D.

19. See *infra* Section II.E.

20. Larry A. DiMatteo et al., *Smart Contracts and Contract Law*, in THE CAMBRIDGE HANDBOOK OF SMART CONTRACTS, BLOCKCHAIN TECHNOLOGY AND DIGITAL PLATFORMS 1, 3 (Larry A. DiMatteo et al. eds., 2020).

21. See DE CARIA, *supra* note 1, at 20.

22. *Id.*

23. See *id.* at 24.

24. *Id.*

25. *Id.* at 27. The Author hopes this analogy will provide a better understanding of the self-executing nature of smart contracts. A and B sign a valid contract where B agrees to purchase A’s widgets for \$10,000. Even though A has the widgets and B has the purchase money available, the possibility of breach remains because both parties must still act to complete the transfer. For example, B might refuse to pay for the widgets or A could sell her widgets to C for more money. Smart contracts do not allow for such “second thoughts,” transfer is instantaneous once the parameters are met. See *id.*

26. *All About Digital Assets & How to Create Digital Assets Marketplace with NASDAQ’s Marketplace Services Platform*, NASDAQ, <https://www.nasdaq.com/solutions/nasdaq-marketplace-technology/about-digital-assets> (last visited Mar. 19, 2024).

27. *Id.*

assets include customizable player options or in-game purchases in online games like *Counter-Strike: Global Offensive* and *Fortnite Battle Royale*.²⁸ For example, *Counter-Strike: Global Offensive* has a massive in-game market where players buy and sell “skins,” which are different designs for the in-game weapons used by players.²⁹

Video games also included early forms of virtual currency popular before the rise of cryptocurrency. The games, especially on mobile devices, allow users to purchase in-game currency that can be spent for premium in-game content.³⁰ For example, a popular mobile phone game called *Clash of Clans* allows players to buy “gems” for real money.³¹ These gems can then be spent on in-game bonuses such as increased resource production or construction speed.³² While the value of these in-game currencies is limited to within the game itself, it still serves as a relevant example of digital assets become a virtual currency with value within the specified system.³³ Despite cryptocurrencies and art-based projects garnering all the attention, the earliest forms of digital assets are still prevalent today.³⁴ Likely, everyone reading this Note owns at least one digital asset, even if the reader has never purchased cryptocurrency or a NFT.³⁵

The 2022 Amendments to the Uniform Commercial Code represent an attempt at a national standardization of digital assets.³⁶ This legislation can be applicable to every single digital asset, regardless of form, creator, or location.³⁷ The newly drafted Article 12 focuses on establishing asset control, not defining the type of asset covered.³⁸ Essentially, the Uniform Law

28. See, e.g., *Fortnite DLC & Add-Ons*, EPIC GAMES, <https://store.epicgames.com/en-US/all-dlc/fortnite> (last visited Mar. 19, 2024).

29. Anwell Patdu, *15 Most Expensive CS2 Skins of All Time*, WHATIFGAMING (Jan. 31, 2024, 12:39 PM), <https://whatifgaming.com/most-expensive-csgo-skins/> (while most game skins are worth less than five dollars, some can garner over a hundred thousand dollars, including an alleged offer for around \$1.4 million).

30. Nathan McAlone, *The Top-Grossing iPhone App Makes a Whopping \$1.5 million a Day*, BUSINESS INSIDER (June 12, 2015), <https://www.businessinsider.com/clash-of-clans-earns-15-million-a-day-as-top-grossing-app-2015-6>.

31. *Gems*, FANDOM, <https://clashofclans.fandom.com/wiki/Gems> (last visited Mar. 19, 2024).

32. *Id.*

33. See, e.g., *id.*

34. Jake Frankenfield, *Digital Assets*, INVESTOPEDIA, <https://www.investopedia.com/terms/d/digital-asset-framework.asp> (last updated Sept. 9, 2023).

35. In the sense that a digital asset is something of value that is intangible. While the Author uses electronic video games as the primary example due to personal interest, other examples are readily prevalent. Other examples of digital assets include computer software, digital media stored via online storage, a giftcard specific to an online retailer, or a premium online membership or subscription.

36. SUMMARY, *supra* note 4.

37. See *infra* Section III.A.

38. See *infra* Section III.A.

Commission chose to create a perfection process that can be universally followed to give consumers confidence in using these assets.³⁹ This method continues the Uniform Commercial Code's tradition of surviving the test of time and provides invaluable stability in the American commerce system as the market navigates the digital asset era. As long as the owner can create the certifiable electronic record, the rare in-game item, a Bitcoin wallet, and the CyberPunk NFT can all be perfected under the new amendments.⁴⁰

B. Who is the Uniform Law Commission, and What is the Uniform Commercial Code?

Since its founding in 1892, the Uniform Law Commission has been a specialized body of individuals striving to promote uniformity among the laws of the United States.⁴¹ Composed of over 300 commissioners, all of whom are bar-admitted attorneys, the Uniform Law Commission researches, drafts, and promotes the enactment of uniform and model legal codes by the states.⁴² The Uniform Law Commission is conscious of the issues facing in-state attorneys because each commissioner represents their respective state.⁴³ The Uniform Law Commission's primary purpose is to study and review the states' laws to propose uniformity.⁴⁴ By identifying areas of the law that require a high degree of uniformity, the Uniform Law Commission keeps the American legal system modernized, adapting to the changing realities of the times.⁴⁵

Arguably the most notable document produced by the Uniform Law Commission is the Uniform Commercial Code.⁴⁶ While portions of the Uniform Commercial Code date to 1896, the first comprehensive edition was

39. Perfection is defined as the steps required to make a security interest effective to third parties or in the case of default of the grantor of the security interest. *See Perfection of security interest*, BLACK'S LAW DICTIONARY (5th ed. 1979).

40. Meaning that digital assets and more can be perfected like any other form of collateral for use in secured transactions. *See* U.C.C. §§ 9-301 to -316 (AM. L. INST. & UNIF. L. COMM'N 2022) (providing the general rules of collateral perfection and priority).

41. *About Us*, UNIF. L. COMM'N, <https://www.uniformlaws.org/aboutulc/overview> (last visited Mar. 19, 2024).

42. *Id.* According to the Uniform Law Commission's website, the difference between a model act and a uniform act is based on the need for national standardization for the particular law. When uniformity is only a secondary need, a model act is used to allow diversity in the enactment by the states. *Compare What is a Model Act?*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/overview/modelacts> (last visited Mar. 19, 2024), with *What is a Uniform Act?*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/overview/uniformacts> (last visited Mar. 19, 2024).

43. *About Us*, *supra* note 41.

44. *Id.*

45. *Id.*

46. *See Uniform Commercial Code*, *supra* note 5.

offered to the states in 1951.⁴⁷ Over the next twenty-two years, every state adopted the Uniform Commercial Code, achieving the Uniform Law Commission's goal of unifying commerce law in the United States.⁴⁸ The Permanent Editorial Board, also known as the PEB, oversees the Uniform Commercial Code, which constantly monitors developments in commercial law and recommends amendments or revisions to the Uniform Commercial Code as needed.⁴⁹ The Uniform Commercial Code has become a staple in the American legal system, with specific articles fostering economic efficiency nationwide.⁵⁰ The Uniform Commercial Code also covers subjects frequently tested by bar examinations nationwide, including sales, secured transactions, and contract law.⁵¹

C. Classification of Digital Assets under *Howey*

Digital assets initially proved difficult to classify.⁵² Generally, digital assets such as NFTs or other collectibles would be considered securities under the *Howey* test.⁵³ In 1946, the Supreme Court of the United States decided what constitutes an investment contract, more commonly known as a security.⁵⁴ In *Howey*, a citrus producer sold shares of the company's grove as investment contracts.⁵⁵ The Securities and Exchange Commission filed suit to prevent the producer from issuing these investment contracts, alleging that the investment contracts operated as an unregistered security violating the Securities Act of 1933.⁵⁶ Under the *Howey* test, a security is "a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party"⁵⁷ The Court held that the Securities Act of 1933 applied and the citrus company's transactions fell within the aforementioned definition of a security.⁵⁸

Under *Howey*, digital assets advertised to consumers as investment opportunities are classified as securities, with the key exception of

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *See e.g.*, U.C.C. § 9-102 (AM. L. INST. & UNIF. L.COMM'N 2022) (providing definitions for different types of collateral).

53. *See generally* SEC. v. W.J. Howey Co., 328 U.S. 293 (1946).

54. *See id.* at 298–99.

55. *Id.* at 295–96.

56. *Id.* at 294.

57. *Id.* at 298–99.

58. *Id.* at 299–01.

cryptocurrency.⁵⁹ The fact that a digital asset has no intrinsic value does not impact this categorization as a security.⁶⁰ With the rise of digital assets, commerce has entered an era where something intangible whose price is wholly dependent on the market is exchanged like stocks on Wall Street.⁶¹ However, the classification of cryptocurrency, specifically Bitcoin, could change rapidly as some nations push to adopt cryptocurrency as an official national currency.⁶²

D. Digital Assets and the U.C.C. Before the 2022 Amendments

Before the 2022 Amendments, the Uniform Commercial Code offered a sufficient, albeit unsustainable, way of governing digital assets.⁶³ Initially, digital assets were governed under the Uniform Commercial Code Article 9 as general intangibles.⁶⁴ General intangibles under Article 9 cover all personal property not otherwise enumerated in Article 9, acting as a catch-all to expand the applicability of Article 9.⁶⁵ While the categorization as a general intangible still allowed for digital assets to be perfected by the filing method, the amendments allow for an additional form of perfection, perfection by control.⁶⁶ Under the amendment's means of establishing control over an electronic record, lenders can confidently securitize digital asset portfolios owned

59. Nathan Reiff, *Howey Test Definition: What It Means and Implications for Cryptocurrency*, INVESTOPEDIA, <https://www.investopedia.com/terms/h/howey-test.asp> (last updated July 31, 2023).

60. *Howey*, 328 U.S. at 301. (“The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the effort of others. If that test be satisfied, it is immaterial whether the enterprise is speculative or non-speculative or *whether there is a sale of property with or without intrinsic value.*” (emphasis added)).

61. See *infra* Section III; see Memorandum, *supra* note 2.

62. It should be noted that countries at the forefront of this idea are ones that often struggle with consistency in their own national currency. See Oscar Lopez & Ephrat Livni, *In Global First, El Salvador Adopts Bitcoin as Currency*, N.Y. TIMES (Oct. 7, 2021), <https://www.nytimes.com/2021/09/07/world/americas/el-salvador-bitcoin.html>.

63. See SUMMARY, *supra* note 4.

64. U.C.C. § 9-102(42) (AM. L. INST. & UNIF. L. COMM’N 2022) (“‘General intangible’ means any personal property including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. [This] term includes . . . payment intangibles, and software.”)

65. See *id.* While Article 9 of the Uniform Commercial Code lumped digital assets, as the term is used in this Note, into the general intangible category, the U.C.C. did define the term “software” under Article 9, recognizing there are intangible assets with value that are can be used for secured lending. See U.C.C. § 9-102(76) (AM. L. INST. & UNIF. L. COMM’N 2022).

66. See SUMMARY, *supra* note 4.

by borrowers.⁶⁷ This will ultimately prove vital to future commerce as parties attempt to use their digital asset portfolios as collateral for future loans.⁶⁸

The Uniform Law Commission decided that the sudden change in the popularity of digital assets required the Uniform Commercial Code to have a dedicated section focused on the emerging trend.⁶⁹ According to a memorandum by the Uniform Law Commission, the amendments, officially composed of the newly drafted Article 12 and amended Article 1 and Article 9, are designed “to adapt the UCC to emerging technologies as they might affect electronic commerce.”⁷⁰ The memorandum cites the increased usage of electronic records in obtaining and securing rights of payments or performances and both real and personal property explicitly due to the wave of people assigning value to electronic assets with seemingly no intrinsic or extrinsic value.⁷¹

The Uniform Law Commission hopes that Article 12 will reduce the risks that “will inevitably result in disputes among claimants to electronic records”⁷² By creating a series of rights that a purchaser in good faith would acquire in an electronic record, Article 12 will facilitate electronic commerce by removing the potential for third-party interference in electronic transactions.⁷³

Digital assets represent one of the most significant changes to the international commerce market.⁷⁴ While the term digital asset previously referred to software and other media-based materials, usage of the term has shifted to focus on the investment-type option.⁷⁵ Examples of these standouts include cryptocurrencies such as Bitcoin, Ethereum, Dogecoin, or NFTs that cover the ownership of specific images or other non-physical items.⁷⁶ However, virtually anything can be created online and have a value assigned to the resulting product under the common definitions of “digital” and “asset.”⁷⁷

67. *See id.*

68. OVERVIEW, *supra* note 7.

69. *See id.*

70. Memorandum, *supra* note 2.

71. *Id.*

72. *Id.*

73. *Id.*

74. *See* DE CARIA, *supra* note 1.

75. *See All About Digital Assets & How to Create Digital Assets Marketplace with NASDAQ's Marketplace Services Platform*, *supra* note 28.

76. *See* Maria Garcia Santillana Linares, *Crypto Punk Mania: The Top 10 NFT Collections of 2022*, FORBES (Jan. 11, 2023, 12:30 AM), <https://www.forbes.com/sites/mariagraciasantillanalinares/2023/01/11/crypto-punk-mania-the-top-10-nft-collections-of-2022>; *see also* Kat Tretina, *Top 10 Cryptocurrencies Of 2023*, NASDAQ, (May 2, 2023, 02:07 PM), <https://www.nasdaq.com/articles/top-10-cryptocurrencies-of-2023>.

77. *Digital*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/digital> (last visited Mar. 19, 2024); *Asset*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/asset> (last visited Mar. 19, 2024).

There is no per se limitation on how many digital assets can be created.⁷⁸ The only limiting factor is an individual's ability to create a digital asset such as online artwork or cryptocurrency.⁷⁹ There is also no limitation on the creative nature of the digital asset, meaning a creator could produce as many online projects as desired before listing the projects on the blockchain.⁸⁰ For example, one of the more notorious NFT projects featured images featuring cartoon monkeys with different appearances.⁸¹ Another famous NFT project featured pixelated art characters, again with various appearances and accessories.⁸² Consequently, there are endless possibilities for the emergence of new cryptocurrencies.⁸³ As long as creators are willing to create new projects, new digital assets will emerge.⁸⁴

E. Digital Assets in the News Recently

Some of the most promoted digital assets are created by social media influencers, individuals with a large following on social media platforms such as YouTube, Instagram, or X (formerly known as Twitter).⁸⁵ For example, with over fifty million combined followers on YouTube and Instagram, Logan Paul founded his own NFT project featuring polaroid photos he took while traveling the globe.⁸⁶ Paul made these NFTs available for purchase using cryptocurrency and promoted the project extensively on his social media, apparently to significant success.⁸⁷ All ninety-nine of his NFTs have ultimately sold, with the most expensive one being sold for 165 Ethereum, just

78. Numerous websites with walkthroughs are available to learn about creating digital assets like NFTs. See Jacob Wade, *How to Create an NFT*, INVESTOPEDIA, <https://www.investopedia.com/how-to-create-an-nft-6362495> (last updated Dec. 9, 2023).

79. *Id.*

80. See *id.* (providing background information on how to list and sell digital assets using blockchain technology).

81. See *Welcome to the Clubhouse*, BORED APE YACHT CLUB, <https://boredapeyachtclub.com/about> (last visited Mar. 19, 2024).

82. See *CryptoPunks*, LARVA LABS, <https://www.larvalabs.com/cryptopunks> (last visited Mar. 19, 2024).

83. See Wade, *supra* note 78.

84. The Author is a fan of puns and found the cryptocurrency project titled "JRR Token" humorous and creative. A court shut down the project after a trademark lawsuit by the Tolkien Estate. See *Tolkien Estate Blocks JRR Token Crypto-Currency*, BBC NEWS (Nov. 4, 2021), <https://www.bbc.com/news/technology-59373968>.

85. See, e.g., Logan Paul (@loganpaulvlogs), YOUTUBE, <https://www.youtube.com/c/loganpaulvlogs> (last visited Mar. 19, 2024); see also Logan Paul (@LoganPaul), X (Apr. 12, 2022, 5:39 PM), <https://twitter.com/loganpaul/status/1514010383769653256?lang=en>.

86. ORIGINALS, <https://originals.com/> (last visited Mar. 19, 2024).

87. Logan Paul (@LoganPaul), X (Apr. 12, 2022, 5:39 PM), <https://twitter.com/loganpaul/status/1514010383769653256?lang=en>.

under \$300,000 according to the exchange rate at the time of the transaction.⁸⁸ Even the comedy sketch show Saturday Night Live released a skit based on digital assets, with actors Pete Davidson and Chris Redd and musician Jack Harlow discussing NFTs with a fake Secretary of Treasury, Janet Yellen.⁸⁹ While the digital asset craze could merely be a phase, it is unlikely to end soon; therefore, the need for regulation is evident.⁹⁰

In October 2021, El Salvador became the first country to adopt Bitcoin as an official currency.⁹¹ El Salvador's laws require all businesses to accept Bitcoin as payment for all goods or services, regardless of preference by the vendor.⁹² Other nations will likely follow this trend, especially those hoping to expand international business, as the El Salvadoran president has expressed.⁹³ While cryptocurrency enthusiasts have praised the move, El Salvadorans are left confused and distrustful due to the volatile nature of the virtual currency.⁹⁴ One vendor, speaking on the ever-fluctuating nature of Bitcoin, said in disapproval of the move, "You can lose what you invest and not gain anything."⁹⁵

The volatility of digital assets is certainly nothing new.⁹⁶ Just seven months after El Salvador adopted Bitcoin as an official currency, the digital asset market saw one of the most significant crashes to date.⁹⁷ In May 2022, many of the most prominent commodities of the cryptocurrency community, such as Bitcoin, Luna, and Ethereum, entered freefall, erasing an estimated \$100 billion in "mere minutes."⁹⁸ Since the cryptocurrency is often unbacked

88. ORIGINALS, <https://originals.com/> (last visited Mar. 19, 2024); *Ethereum Transaction Hash (Txhash) Details*, ETHERSCAN, <https://etherscan.io/tx/0xe2bc0ec6b245c5662686a29b70131cca5bc668bd12ebec6a823c4c6441aef4b1> (last visited Mar. 27, 2024). (according to the transaction receipt, the Ethereum to USD exchange rate at the time was 1,803.65 USD/ETH).

89. Saturday Night Live, *NFTs—SNL*, YOUTUBE (Mar. 28, 2021), <https://www.youtube.com/watch?v=mrNOYudaMAc>.

90. See SUMMARY, *supra* note 4.

91. Lopez & Livni, *supra* note 62.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* As of the writing of this Note, only one other country has adopted Bitcoin as legal tender, see *Central African Republic Adopts Bitcoin as an Official Currency*, REUTERS (Apr. 28, 2022, 2:10 AM), <https://www.reuters.com/world/africa/central-african-republic-adopts-bitcoin-an-official-currency-2022-04-27/>.

96. See, e.g., Billy Bambrough, *\$100 Billion Crypto Crash Sends the Price of Bitcoin, Ethereum, XRP, Luna, Solana, Cardano And Avalanche Into Free Fall*, FORBES (May 5, 2022, 12:31 PM), <https://www.forbes.com/sites/billybambrough/2022/05/05/100-billion-crypto-crash-sends-bitcoin-ethereum-xrp-luna-solana-cardano-and-avalanche-into-free-fall/>.

97. *Id.*

98. *Id.*

and price-dependent on the market, turnover in value is expected.⁹⁹ This fact is one of the biggest draws to the cryptocurrency market, as the seemingly ever-changing nature of the asset enables traders to maximize their transactions. While the Uniform Law Commission began drafting the 2022 Amendments before the crash, the crash serves as a reminder of the inherent risks of digital assets and the need for more regulation in the field.¹⁰⁰

The collapse of the cryptocurrency exchange, FTX, and the downfall of FTX's chief officer, Sam Bankman-Fried, in November 2022, placed the entire industry on notice of the risks behind digital asset investing.¹⁰¹ At the time, FTX was valued at approximately \$32 billion.¹⁰² A cryptocurrency exchange is essentially a broker, aiding in the buying and selling of cryptocurrency.¹⁰³ The collapse of FTX began when a leaked report revealed that a hedge fund run by Bankman-Fried held a substantial number of FTT tokens, the exchange token used on FTX's exchange services.¹⁰⁴ In response to this report, Binance, another major cryptocurrency company, announced the company would sell its FTT token holdings which caused the price of FTT to nosedive and created a mass withdrawal from FTX as investors feared a loss of their portfolios.¹⁰⁵ The withdrawals eventually totaled an estimated \$6 billion, leaving FTX without the liquid money to fulfill the demand.¹⁰⁶ Ironically, the same company that led to FTX's downfall almost bailed out FTX, but Binance backed out of the deal after finding "[w]ay too many issues," specifically relating to

99. Cryptocurrency is sometimes backed by an anchoring asset with real value called a "stablecoin." TerraUSD was anchored to the United States Dollar in a 1-to-1 ratio and is an example of a stablecoin. Something ultimately caused panic among investors, leading to the withdrawal of the tethered USD in TerraUSD. This mass withdrawal of a prominent stablecoin is commonly attributed as a major factor in the May 2022 cryptocurrency crash. See Q.ai, *What Really Happened To LUNA Crypto?*, FORBES (Sept. 20, 2022), <https://www.forbes.com/sites/qai/2022/09/20/what-really-happened-to-luna-crypto/>.

100. To ensure each act is thoroughly vetted before adoption, the Uniform Law Commission maintains a standard two-year minimum consideration period for each new piece of legislation. See *FAQs*, UNIF. L. COMM'N, <https://www.uniformlaws.org/aboutulc/faq> (last visited Mar. 19, 2024).

101. Kalley Huang, *Why Did FTX Collapse? Here's What to Know*, N.Y. TIMES (Nov. 18, 2022), <https://www.nytimes.com/2022/11/10/technology/ftx-binance-crypto-explained.html>.

102. David Yaffe-Bellany, *How Sam Bankman-Fried's Crypto Empire Collapsed*, N.Y. TIMES, (Nov. 14, 2022) <https://www.nytimes.com/2022/11/14/technology/ftx-sam-bankman-fried-crypto-bankruptcy>.

103. Nathan Reiff, *Cryptocurrency Exchanges: What They Are and How To Choose*, INVESTOPEDIA, <https://www.investopedia.com/tech/190-cryptocurrency-exchanges-so-how-choose/#toc-why-should-someone-consider-using-a-cryptocurrency-exchange> (last updated Aug. 18, 2023).

104. Huang, *supra* note 101.

105. See *id.*

106. *Id.*

FTX's finances.¹⁰⁷ The implosion of FTX was shocking as the company appeared to be otherwise thriving in the crypto-boom era.¹⁰⁸

The digital asset market has seen massive growth over five years from 2016 to 2021, from roughly \$14 billion to almost \$3 trillion.¹⁰⁹ The integration of digital assets will continue as more consumers gain familiarity with intangible valuables, especially if more nations adopt prominent cryptocurrencies as an official national currency or if real estate continues to be sold via tokens.¹¹⁰ The exponential expansion of the digital asset market warrants a set of rules to regulate digital asset exchanges.

III. ARGUMENT

This Section is divided into four parts. First, this Section provides an in-depth overview of Article 12.¹¹¹ Second, it will outline the benefits of Article 12 in commercial transactions.¹¹² Third, it debunks a common early critique of the 2022 Amendments regarding the U.C.C.'s amended definition of "money."¹¹³ Fourth, and finally, it will address the Uniform Commercial Code state adoption process for the 2022 Amendments.¹¹⁴

A. An Overview of Article 12

According to Article 12, a controllable electronic record is "a record stored in an electronic medium that is subjected to control . . ." ¹¹⁵ The Uniform Commercial Code defines a record as "information that is . . . retrievable in perceivable form."¹¹⁶ Comments to Article 12 acknowledge that not all digital assets will ultimately become controllable electronic records; however,

107. Yaffe-Bellany, *supra* note 102.

108. FTX signed a 19-year, \$135 million naming rights contract with the NBA's Miami Heat less than 18 months before the company's folding. A federal judge terminated the deal in January 2023 as part of FTX's bankruptcy proceedings. See *Judge Terminates FTX Naming Rights Deal for Miami Heat Arena*, CBS NEWS (Jan. 11, 2023, 9:32 PM), <https://www.cbsnews.com/news/ftx-miami-heat-arena-naming-rights-deal-terminated/>.

109. Omobolanle Adekoya & Elizabeth Ekpo, *Digital Assets—An Emerging Trend in Capital Markets*, PWC, <https://www.pwc.com/ng/en/publications/digital-assets-an-emerging-trend-in-capital-markets.html> (last visited Mar. 19, 2024).

110. See Lopes & Livni, *supra* note 63; see Bernadette Berdychowski, *NFT House Sells for \$654k in Historic Auction—Tampa Condo Up Next*, TAMPA BAY TIMES (Feb. 11, 2022), <https://www.tampabay.com/news/real-estate/2022/02/11/nft-house-sells-for-654k-in-historic-auction-tampa-condo-up-next/>.

111. See *infra* Section III.A.

112. See *infra* Section III.B.

113. See *infra* Section III.C.

114. See *infra* Section III.D.

115. U.C.C. § 12-102(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

116. U.C.C. § 1-201(b)(31) (AM. L. INST. & UNIF. L. COMM'N 2022).

Article 12 creates a framework that promotes the usage of controllable electronic records in general commerce by establishing control of the record.¹¹⁷ Article 12 of the amendments primarily focuses on establishing underlying rules for the acquisition and rights of the purchaser in controllable electronic records.¹¹⁸ A controllable electronic record shows an individual's ownership over the digital asset.¹¹⁹ Examples of digital assets include virtual, non-fiat currencies, non-fungible tokens, and other assets that grant specified payment rights.¹²⁰ The amendments intentionally leave vague definitions of a digital asset to future-proof the amendment to ensure long-standing applicability.¹²¹ At the heart of the amendments is the newly defined controllable electronic record under Article 12.¹²² With Article 12 offering a codified definition of control for digital assets, the Uniform Law Commission can bring stability to the new form of electronic commerce.¹²³

At the core of Article 12 is how to establish ownership over an electronic record, with the primary purpose of Article 12 enabling someone to identify themselves as the owner of the electronic record.¹²⁴ Article 12 establishes ownership or control of the controllable electronic record in two ways.¹²⁵ The first mechanism to establishing ownership is if the electronic record gives the owner the “power to avail itself of substantially all the benefit from the electronic record.”¹²⁶ An owner can either maintain the exclusive authority to prevent another party from substantially benefiting from the electronic record or cause another person to obtain control of another controllable electronic record because of the electronic record.¹²⁷ An individual retains exclusive authority under the amendment even if the digital asset contains a limited control provision, has a protocol that could cause a transfer or change, or the power is shared with another individual.¹²⁸

The second tenant of establishing ownership is if the controllable record enables the owner to readily identify itself in any way, including by name, identifying number, cryptographic key, or account number, while holding the powers of the earlier paragraph.¹²⁹ Control power is not exclusive under

117. U.C.C. § 12-105 cmt. 1 (AM. L. INST. & UNIF. L. COMM'N 2022).

118. Memorandum, *supra* note 2.

119. *See* U.C.C. § 12-105 (AM. L. INST. & UNIF. L. COMM'N 2022).

120. *See* OVERVIEW, *supra* note 7.

121. Memorandum, *supra* note 2.

122. U.C.C. § 12-102(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

123. The process for establishing control of a digital asset is described in the following pages. *See infra* Section III.B.

124. Memorandum, *supra* note 2.

125. U.C.C. § 12-105(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

126. U.C.C. § 12-105(a)(1)(A) (AM. L. INST. & UNIF. L. COMM'N 2022).

127. U.C.C. § 12-105(a)(1)(B)(i)–(ii) (AM. L. INST. & UNIF. L. COMM'N 2022).

128. *See* U.C.C. § 12-105(b)(1)–(2) (AM. L. INST. & UNIF. L. COMM'N 2022).

129. U.C.C. § 12-105(a)(2) (AM. L. INST. & UNIF. L. COMM'N 2022).

Article 12 if the individual requires a second individual's permission when acting or the other individual can freely exercise authority over the record without the first person's consent.¹³⁰ If the electronic record cannot be controlled, it is not within the scope of the Uniform Commercial Code.¹³¹ This does not mean these assets are outside the law, but rather that the Uniform Law Commission expects other rules to govern the asset.¹³²

Article 12 facilitates transfers by offering structure to the transfer while allowing other laws to govern the actual transfer.¹³³ A subsequent purchaser obtains control of the account within the controllable electronic record if the account provides proof of ownership over the record.¹³⁴ Article 12 covers the asset being transferred, not the transfer itself.¹³⁵ The law governing the sale and all subsequent implications is left to the state or federal government to decide.¹³⁶ This is a key reason behind the brilliance of the amendments, as Article 12 does not overstep in its reach.¹³⁷ Instead of attempting to reign in the transaction, Article 12 merely serves as a certification that establishes common terminology among the parties.¹³⁸ Article 12 is akin to designing a playing surface and allowing teams to set the rules of the actual game.

Article 12 covers limited exchanges as well as full exchanges.¹³⁹ An exchange is limited when the transferor only partially controls the asset.¹⁴⁰ In the event of a limited exchange, a qualifying purchaser will only acquire as much interest in the asset as the seller had.¹⁴¹ This consideration will prove helpful in practice as there is no limitation on the possible owners associated with certain digital assets.¹⁴² Article 12 also includes a "take-free" provision to protect qualifying purchasers of illegally acquired records.¹⁴³ To be considered a qualifying purchaser, a purchaser must obtain the controllable electronic record for value without notice of other property claims while acting in good faith.¹⁴⁴ If this process is followed, the purchaser will take ownership free of any other claims to the property.¹⁴⁵ This is especially important

130. U.C.C. § 12-105(c)(1)–(2) (AM. L. INST. & UNIF. L. COMM'N 2022).

131. U.C.C. § 12-101(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

132. *See* OVERVIEW, *supra* note 7.

133. U.C.C. § 12-105 (AM. L. INST. & UNIF. L. COMM'N 2022).

134. *See* U.C.C. § 12-105(a)(2) (AM. L. INST. & UNIF. L. COMM'N 2022).

135. U.C.C. § 12-102(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

136. U.C.C. § 12-107(a) (AM. L. INST. & UNIF. L. COMM'N 2022).

137. *See* SUMMARY, *supra* note 4.

138. *See* *Uniform Commercial Code*, *supra* note 5.

139. *See* U.C.C. § 12-104(d) (AM. L. INST. & UNIF. L. COMM'N 2022).

140. *See id.*

141. *See id.*

142. *See* OVERVIEW, *supra* note 7.

143. *See* U.C.C. § 12-104(e) (AM. L. INST. & UNIF. L. COMM'N 2022).

144. U.C.C. § 12-104(f) (AM. L. INST. & UNIF. L. COMM'N 2022).

145. *See* U.C.C. § 12-104 cmt. 7 (AM. L. INST. & UNIF. L. COMM'N 2022).

considering the possibility of electronic theft through hacking or other means that come with digital assets.¹⁴⁶ Sometimes, a digital asset is valuable due to the right to other assets that come with ownership of the original asset.¹⁴⁷ Under Article 12, a qualifying purchaser buying a controllable electronic record receives all other assets that come with, or are tethered to, the record.¹⁴⁸ These additional assets could include rights to payment, performance, or even real property, as seen recently in Florida.¹⁴⁹

A February 2022 exchange, dubbed the first ever of its kind, saw a group create a limited liability company (“LLC”) and assign the rights to real property to the LLC.¹⁵⁰ This LLC was then minted, the process of creating a digital asset, into an NFT that sold through an online auction for around 205 Ethereum or over \$650,000.¹⁵¹ Because the buyer obtained the NFT that included the LLC, she now has the rights to all assets owned by the LLC, including the house.¹⁵² The real estate agent who negotiated the sale said her company plans to continue this process at least ten more times throughout the coming months, meaning there is a possibility that these transactions will become a common operating procedure.¹⁵³ While the benefits of conducting real property transactions in this manner are speculative at the present moment, what is known is that there will be future transactions like this one. These are the transactions that require the adoption of the 2022 Amendments, specifically Article 12.

The Uniform Law Commission offers standardization of a relatively new form of asset.¹⁵⁴ As an amendment, Article 12 reflects the Uniform Law Commission’s recognition that digital assets now require a specialized set of regulations due to the unique nature of the technology involved.¹⁵⁵ Article 12 is not designed to overtake previously established law, but it is intended to add

146. Kevin George, *The Largest Cryptocurrency Hacks so Far*, INVESTOPEDIA (Dec. 2, 2023), <https://www.investopedia.com/news/largest-cryptocurrency-hacks-so-far-year/>.

147. See OVERVIEW, *supra* note 7.

148. *Id.*

149. Berdychowski, *supra* note 110.

150. *Id.*

151. *Id.*; The term “minted” refers to the process of publishing a digital asset to the blockchain for that digital asset to be available for sale or trading. See Samuel Becker, *What Does Minting an NFT Mean?*, SOFI (Sept. 9, 2022), <https://www.sofi.com/learn/content/what-is-nft-minting/>. The minting process starts at the creation of the digital asset before enrolling in a blockchain exchange service to upload the digital asset to the exchange. *Id.* The minting process ensures that the digital asset is considered unique. *Id.*

152. *Id.*

153. *Id.*

154. ADOPT, *supra* note 8.

155. MEMORANDUM, *supra* note 2.

to the existing Uniform Commercial Code.¹⁵⁶ Article 12 might dictate how an individual prepares a digital asset for transfer but, alternatively, it intentionally leaves room for other laws to cover how the contract will be drafted or how the transaction will be taxed.

B. The Amendments Address a Growing Need for Commercial Transactions

Society is shifting rapidly, very much similar to the Industrial Revolution. Online transactions involving no tangible, fungible objects, including traditional currency, are now commonplace on the blockchain.¹⁵⁷ As with any new system, regulations must be in place to ensure fair procedures for the consumer. As a result, the Uniform Law Commission began drafting legislation for this new age of digital assets.¹⁵⁸ The team of commissioners, all highly trained and respected attorneys, took the time to properly frame and vet these laws to respond to the new trend and remain applicable for long after the amendment is adopted.¹⁵⁹ The quality of the drafter is a key separating feature when considering the benefit of adopting a uniform law instead of attempting to create something new. These attorneys, who oversee drafting the amendments, are a particular group of practitioners in the legal community.¹⁶⁰ The need for such a specialized background is apparent when considering the attention required to prepare the in-depth code for commercial law.

As already discussed in other areas of this Note, the most critical aspect of these amendments, including Article 12, is that the Uniform Law Commission recognized the endless possibilities and issues that can arise with digital assets.¹⁶¹ Instead of attempting to codify the asset, the commissioners drafting the amendments focused on a process to securitize the asset.¹⁶² By following this certifiable electronic record model, the commissioners circumvented any issues with determining a “good” or “bad” digital asset or attempting to guess what the following form of the digital asset would be. Considering the globe is seeing a rise in virtual reality, the so-called MetaVerse, Article 12’s

156. In situations that create conflict between the new Article 12 and Article 9 of the Code, Article 12 explicitly states that Article 9 governs. U.C.C. § 12-103(a) (AM. L. INST. & UNIF. L. COMM’N 2022).

157. *See supra* Section II.

158. *See FAQs, supra* note 100.

159. *About Us, supra* note 41.

160. *Id.*

161. *See supra* Section II.

162. U.C.C. § 12-105(a)(1)-(2) (AM. L. INST. & UNIF. L. COMM’N 2022) (establishing the general procedure for determining control of a controllable electronic record).

emphasis on establishing control over the substance of the specific asset, means the amendments could be used for every virtual asset in the coming years.¹⁶³

The core of control over electronic records, as defined by Article 12, is the ability to identify the owner of property, the power to benefit from the property, and the power to exclude others from the same property.¹⁶⁴ This could be as simple as an individual maintaining a crypto-wallet.¹⁶⁵ A crypto wallet is created through most cryptocurrency transactions, where the seller, generally a company, gives the buyer a secret code or “key” that represents possession of the cryptocurrency.¹⁶⁶ By presenting their wallet, essentially a ledger of private keys representing possession of the cryptocurrency, the owner could create a certifiable electronic record under Article 12 because the wallet contains the code to the asset, and the owner is presumably able to sell the wallet at their discretion.¹⁶⁷

These amendments represent the future of a new, rapidly expanding type of personal property. As stated previously in this Note, digital assets represent a new field in the law that was previously unthinkable before the 21st century.¹⁶⁸ The Uniform Law Commission believes that these amendments will “bring the Uniform Commercial Code into the digital age” following the shift in the global economy.¹⁶⁹ This is evidenced by the Commission removing the assumption of paper documents in transactions.¹⁷⁰ Now the Uniform Commercial Code accounts for strictly electronic transactions on the blockchain.¹⁷¹ Article 12’s applicability covers buying, selling, and securitizing digital assets.¹⁷²

Arkansas should adopt the amendments to ensure that the state remains in the modern era commercially, as the alternative is to remain separated from the benefits of a uniform law if a majority of the states adopt the 2022 Amendments. All indications point to digital assets remaining prevalent in the market as the media predicts that digital assets will streamline transactions with a

163. See Grand View Research Inc., *Virtual Reality Market Size Worth \$87.0 Billion by 2030: Grand View Research, Inc.*, PR NEWswire (July 07, 2022, 09:40 AM), <https://www.prnewswire.com/news-releases/virtual-reality-market-size-worth-87-0-billion-by-2030-grand-view-research-inc-301582156.html>.

164. U.C.C. § 12-105(a)–(g) (AM. L. INST. & UNIF. L. COMM’N 2022).

165. Coryanne Hicks, *What are Crypto Wallets?*, FORBES ADVISOR (Jan. 25, 2024, 09:42 AM), <https://www.forbes.com/advisor/investing/cryptocurrency/crypto-wallets/>.

166. See *id.*; see U.C.C. § 12-105(a)(2) (AM. L. INST. & UNIF. L. COMM’N 2022).

167. Hicks, *supra* note 165; see U.C.C. § 12-105(a)(1) (AM. L. INST. & UNIF. L. COMM’N 2022).

168. See *supra* Section I.

169. ADOPT, *supra* note 8.

170. *Id.*

171. See *id.*

172. See SUMMARY, *supra* note 4.

more efficient production of securities.¹⁷³ Failing to adopt the amendments could introduce obstacles to the future of commerce. States that do not adopt the amendments will lack the uniformity and, therefore, the clarity provided by the Uniform Commercial Code. While the amendments will not prevent states from attaching individualized additions to a state's law, the amendments will ensure that the underlying principle is universally defined across the country.

Article 12 does not regulate digital assets, it governs the transfers of digital assets.¹⁷⁴ Recognizing the endless possibilities of things that could be created and sold exclusively through the blockchain via these transfers, the Uniform Law Commission cleverly adapts the certifiable electronic record approach to avoid attempting to enumerate an exhaustive list of potential online assets covered by Article 12.¹⁷⁵ The amendments do not regulate other uses of digital assets, protect the taxation of digital assets, or address the currency adoption process of cryptocurrency.¹⁷⁶ The Uniform Law Commission recognizes that individual states may desire to retain control over these more specific areas of commercial law and structured the amendments to allow the states to remain in control of future digital assets regulation development.¹⁷⁷ By providing the initial framework and clarity on the asset, the amendments leave room for each state to act as it sees fit while simultaneously aiming at uniformity in the field of electronic transfers. The Uniform Commercial Code merely sets the default rules for transactions between states that will ease the transition into the electronic record era.

As discussed in Section I, the Uniform Commercial Code has been a stalwart in the American legal system since the Code's creation in the 1940s and 1950s.¹⁷⁸ As the "backbone of American Commerce," the Uniform Law Commission maintains a permanent editorial board for the Uniform Commercial Code to remain relevant and applicable to rapidly changing markets.¹⁷⁹ The Uniform Law Commission decided the best means of establishing uniformity lies in the perfection and certification of control doctrine, not necessarily on the new type of asset, creating a perfection process that allows consumers to develop uniform products usable in various forms.¹⁸⁰ Uniformity brings standardization and promotes confidence amongst consumers.¹⁸¹ Those

173. Philipp Sandner, *Digital Assets: The Future of Capital Markets*, FORBES (Aug. 24, 2021, 10:18 AM), <https://www.forbes.com/sites/philippsandner/2021/08/24/digital-assets-the-future-of-capital-markets/?sh=26c94a2b6a57>.

174. U.C.C. § 12-101 to -107. (AM. L. INST. & UNIF. L. COMM'N 2022).

175. Memorandum, *supra* note 2.

176. ADOPT, *supra* note 8.

177. *Id.*

178. *Uniform Commercial Code*, *supra* note 5.

179. *Id.*

180. ADOPT, *supra* note 8.

181. *Uniform Commercial Code*, *supra* note 5.

seeking to enter the marketplace can trust that the standardization from the Uniform Commercial Code means that their commercial dealings will be enforced the same, regardless of the jurisdiction in the United States.¹⁸² Trust in the marketplace will form relationships between consumers and producers, allowing the economy to thrive.¹⁸³

C. Money Talks

One of the early controversies surrounding the 2022 Amendments is a perceived pathway for the creation of a central bank digital currency.¹⁸⁴ This is due to the amended definition of “money,” which now excludes all “electronic record[s]” that “existed and operated” as a medium of exchange before being “authorized or adopted” by a governmental organization.¹⁸⁵ This change effectively removed bitcoin from consideration as money under the U.C.C.¹⁸⁶ In her veto letter, Governor Kristi Noem of South Dakota expressed concern that the 2022 Amendments would allow the federal government to introduce a central bank digital currency that would become “the only viable digital currency” and that South Dakota citizens would be at a business disadvantage if cryptocurrencies were excluded as money.¹⁸⁷ However, Governor Noem’s criticism lacks merit as the previous definition of money under the U.C.C. also allows for a federal central bank digital currency.¹⁸⁸ The amended language of the 2022 Amendments merely clarifies what types of cryptocurrency would be excluded from the definition of money.¹⁸⁹ In fact, as previously discussed in this Note, rejection of the 2022 Amendments actually harms the general public through the denial of perfection methods for cryptocurrencies and other digital assets as created by Article 12, which facilitates the transferability of cryptocurrencies.¹⁹⁰

182. *Id.*

183. *Id.*

184. Margo Tank et al., *Action on 2022 Amendments to the Uniform Commercial Code – South Dakota Governor Vetoes Act*, DLA PIPER (May 19, 2023), <https://www.dlapiper.com/en-pe/insights/publications/2023/05/action-on-2022-amendments-to-the-uniform-commercial-code>.

185. U.C.C. § 1-201(b)(24) (AM. L. INST. & UNIF. L. COMM’N 2022).

186. TARA E. CASTILLO ET AL., BLOOMBERG LAW, UNIFORM COMMERCIAL CODE AMENDMENTS (2022): REVISIONS TO ARTICLE 9 (2023), https://www.alston.com/-/media/files/insights/publications/2023/05/uniform-commercial-code-amendments-2022--revisions.pdf?rev=b0601e6858cc4b0c9b2dc99bb3480021&sc_lang=en.

187. Letter from Kristi Noem, Governor of South Dakota, to Hugh M. Bartels, South Dakota Speaker of the House (Mar. 9, 2023), https://governor.sd.gov/doc/HB-1193_Veto-Letter.pdf.

188. Tank et al., *supra* note 184.

189. *Id.*

190. *See id.*

D. Adoption of the Amendments is the Best Choice for Arkansas

Any attempt by Arkansas to adopt its code from scratch on the subject would inevitably lead to a negative outcome. An Arkansas-specific draft would be inappropriate given the lack of knowledge of, and expertise with, the topic material. Instead, respect should be awarded to the Uniform Law Commission as commissioners are specially chosen for these drafting responsibilities, and their primary purpose is to study and review this very type of law.¹⁹¹ Any time that would be spent by the legislature creating digital asset laws could instead be spent on drafting supplemental legislation for the benefit of the state instead of an attempt to recreate the wheel.

Additionally, any discrepancy between the Arkansas law and Article 12 as adopted would harm Arkansas in the market as a pariah in the digital asset commerce system.¹⁹² Every transaction must address any difference, adding unnecessary delays to interstate commerce. As discussed in Section III, a key drawing point for digital assets, like cryptocurrency, is the pace and facilitation of commerce.¹⁹³ The delay caused by adapting and changing the transaction under different state laws would leave Arkansas in limbo: consumers with digitally focused portfolios would seek other opportunities out of state, diverting the flow of beneficial resources away from the state based on law-drafting alone.

The state legislature is familiar with codifying the Uniform Commercial Code as Arkansas has adopted other articles in the Uniform Commercial Code, including Article 1 and Article 9.¹⁹⁴ Adoption typically involves the text of the article being written into a bill through the state legislature. Arkansas routinely mirrors the Uniform Law Commission in amending its law as it amends the Uniform Commercial Code, ensuring that Arkansas stays at the forefront of commerce law.¹⁹⁵ This familiarity with the process generates even more reasons for Arkansas to adopt the amendments. Therefore, Arkansas adopting Article 12 would not only be a logical decision in terms of staying up to date with emerging commercial law, but doing so would align with the

191. See *About Us*, *supra* note 41.

192. See *ADOPT*, *supra* note 8 (“Adopting the latest amendments will preserve uniformity that benefits businesses and consumers in every state.”).

193. See DE CARIA, *supra* note 1, at 24; see also *What is Bitcoin Mining*, INVESTOPEDIA (Oct. 11, 2023), <https://www.investopedia.com/terms/b/bitcoin-mining.asp#:~:text=The%20Bitcoin%20network%20can%20currently,Bitcoin%20blockchain%20have%20attempted%20to> (“The Bitcoin network can currently process between three and six transactions per second, with transactions logged in the blockchain about every 10 minutes.”).

194. See ARK. CODE ANN. §§ 4-1-101 to -310; see also ARK. CODE ANN. §§ 4-9-101 to -809.

195. See Act to Amend Article 9 of the Uniform Commercial Code, Act 138 of 2013.

State's precedent of adopting the most recent edition of the Uniform Commercial Code as the code is amended.¹⁹⁶

As a uniform law, the Uniform Commercial Code has no binding authority unless adopted by the legislature or incorporated into the common law precedent. While the Arkansas courts could bring the Uniform Commercial Code amendments into the common law, it is undeniable that the legislature codifying the amendments is the superior alternative. At the time of this Note's drafting, Arkansas has yet to adopt the 2022 Amendments.¹⁹⁷ At the time of this draft, twenty-nine other states have codified or introduced legislation to codify the 2022 Amendments.¹⁹⁸ Among these twenty-eight states include Arkansas's neighbors Missouri, Oklahoma, Texas, and Tennessee.¹⁹⁹ This Note is a resource for understanding the significance of the 2022 Amendments to the Uniform Commercial Code to the modern economy.

IV. CONCLUSION

The Uniform Commercial Code has governed American commerce for the past seven decades.²⁰⁰ The Code remains relevant due to the Uniform Law Commission's continued revisions and amendments to the Code that keep the Code applicable in the modern commerce system.²⁰¹ Among the other changes, these 2022 Amendments set the rules to establish control over one's digital assets to create a certifiable electronic record that can be used in transactions or as a security interest.²⁰² These amendments will provide a uniform approach to the law as consumers learn how these new assets will fit into the marketplace.

By creating the process through which all digital assets can be perfected, the Uniform Law Commission ensured that these amendments would remain applicable for the future since there is no need to predict what a digital asset is and what online object can be considered one.²⁰³ Article 12 sets the procedure for consumers to follow to use their digital assets in the commercial sphere.²⁰⁴

196. *See, eg., id.*

197. *See UCC, 2022 Amendments to*, UNIF. L. COMM'N <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac> (last visited Mar. 19, 2024).

198. *Id.*

199. For a current list of U.C.C. legislation tracking, *see UCC, 2022 Amendments to*, UNIF. L. COMM'N <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac> (last visited Mar. 19, 2024).

200. *Uniform Commercial Code*, *supra* note 5.

201. *Id.*

202. U.C.C. § 12-101 to -107

203. *See Memorandum*, *supra* note 2.

204. *See id.*

Like every other state in the United States, Arkansas has codified multiple articles from the Uniform Commercial Code into state law.²⁰⁵ Arkansas not only codified the initial legislation, but the state also adopted the subsequent amendments for each article as amended by the Uniform Law Commission.²⁰⁶ Therefore, Arkansas's adoption of the 2022 Amendments to the Uniform Commercial Code would be the logical decision backed by historical legislative precedent. Accordingly, Arkansas should adopt the 2022 Amendments to the Uniform Commercial Code.

*David Gardner**

205. *See supra* note 194 and accompanying text.

206. *See* Act to Amend Article 9 of the Uniform Commercial Code, Act 138 of 2013.

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