CADWALADER

CABINET NEWS

Research and commentary on regulatory and other financial services topics

A Year of Change Across Financial Regulation – and What Comes Next

December 18, 2025

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An Exciting New Chapter for Cadwalader and Our Clients

December 18, 2025

Hogan Lovells and Cadwalader today announced their intention to combine, creating Hogan Lovells Cadwalader. We wanted to be sure to reach out to you, the readers of *Cabinet News & Views*, about this exciting news as soon as it was made public.

The combination will unite Hogan Lovells, a global leader in advising clients in highly regulated sectors operating across G20 markets, with Cadwalader, Wall Street's oldest law firm, with longstanding relationships with a range of blue-chip clients, including many of the world's leading financial institutions and providers of private capital.

Many are already calling this the most consequential law firm combination of all time. It brings together centuries of history in one of the world's most formidable legal platforms for our clients and people.

How did we arrive at this decision? In short, it's our commitment to clients.

Hogan Lovells Cadwalader represents our shared ambition to create a global firm with the strongest transatlantic platform anchored in the most important financial centers around the world. Today, we announce that we will achieve that vision for you. Each of you is at the center of this strategic decision, as this combination will enhance our ability to provide our clients with the best-in-class service at scale.

For decades, our financial services attorneys have played key roles in some of the most consequential matters in the history of capital markets. With unmatched finance, corporate, regulatory and disputes capabilities, our combined firms will span every time zone and every major jurisdiction. Our offering will create a $2 billion global finance and corporate platform, further enhancing our proven ability to deliver regulatory and commercial guidance, cutting-edge advice for securitization, structured product and financial markets matters.

Our combined strengths will build on this tradition, such as our market-leading capital relief trade (CRT) practice, and will position our clients for the future, as we lead the development and transformative impact of digital assets, blockchain and AI in the financial markets.

The firm's branding may change, but our dedication to your success remains the same. An evolving global market requires a dedicated full-service global approach. Cadwalader has long been a leader – and now this strategic combination will make our market-leading team even stronger. You can learn more about our plans to deliver exceptional results for you at **www.oursharedambition.com**.

In the meantime, thank you for continuing to entrust us with your most sophisticated, challenging matters, and for your friendship and support.

OCC Conditionally Approves Five Crypto-Focused National Trust Bank Charters

December 18, 2025

By Daniel Meade
Partner | Financial Regulation

By Christina Mille
Associate | Financial Services

On December 12, 2025, the Office of the Comptroller of the Currency ("***OCC***") **granted** the conditional approval of five national trust bank charter applications involving crypto-focused institutions. The approvals include two de novo charters, First National Digital Currency Bank and Ripple National Trust Bank, and the conversion of three state trust companies, BitGo Bank & Trust, Fidelity Digital Assets, and Paxos Trust Company, into uninsured national trust banks subject to OCC supervision.

The OCC's decision letters emphasize that each approval is preliminary and contingent on satisfaction of customary pre-opening requirements. In each case, the OCC based its determination on a "thorough evaluation" of the application record and the representations and commitments made by the applicants, while expressly reserving the right to modify, suspend or rescind the approvals if material changes occur prior to final authorization to commence business.

The chartering approvals are notable because all five institutions are centered on crypto-related business models, including digital asset custody, trust and fiduciary services and, in certain cases, stablecoin or blockchain-based infrastructure. The decision documents confirm that the converted institutions will operate as uninsured national trust banks, will not accept deposits and will limit their activities to fiduciary and related trust functions permissible under a national trust charter, while remaining subject to full OCC supervisory authority.

These actions mark a significant development in the federal banking system's engagement with crypto-focused firms, signaling that such models can be accommodated within the national chartering framework, but only subject to traditional charter conditions, ongoing supervision and established safety and soundness standards.

The five approvals have sparked a good deal of traditional banking industry criticisms The American Bankers Association President and CEO Rob Nichols **argued** that the expansion for entities that may not engage in traditional fiduciary activities "could blur the lines of what it means to be a bank and create opportunities for regulatory arbitrage." The Bank Policy Institute **asserted** that the OCC's action "leaves substantial unanswered question," including "whether the requirements the OCC has outlined for the applicants are appropriately tailored to the activities and risks in which the trust will engage." The Independent Community Bankers of America expressly **opposed** the conditional approvals, arguing that the OCC "lacks statutory authority to expand trust powers … and that the sudden influx of applications demonstrates nonbank fintechs are seeking the benefits of a U.S. bank charter without satisfying the full scope of U.S. bank regulations — threatening consumers and the financial system."

FDIC Proposes Application Framework for Bank-Affiliated Payment Stablecoin Issuers

December 18, 2025

By Daniel Meade
Partner | Financial Regulation

By Mercedes Kelley Tunstall
Partner | Financial Regulation

By Christina Mille
Associate | Financial Services

On December 16, 2025, the FDIC issued a notice of proposed rulemaking to implement the application and approval requirements under the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act") for insured state nonmember banks and state savings associations seeking to issue payment stablecoins through a subsidiary. The proposal would add a new § 303.252 to the FDIC's filing procedures in 12 C.F.R. Part 303, establishing a tailored, statute-driven process for obtaining FDIC approval to form and operate a "permitted payment stablecoin issuer" ("PPSI") subsidiary.

Consistent with the GENIUS Act, the proposed rule emphasizes safety and soundness as the sole basis for approval or denial. Applications would be evaluated against the statutory factors set forth in section 5(c) of the Act, including the subsidiary's financial condition and resources, its ability to meet reserve, redemption, and disclosure requirements, the competence and integrity of management, and compliance with BSA, AML, CFT, and sanctions obligations. The FDIC makes clear that issuance on an open or decentralized network, standing alone, may not serve as a basis for denial, and that conditions imposed on approval may not exceed the requirements of section 4 of the Act. The lack of more specific detail regarding the factors for evaluating applications in the proposed rule is somewhat disappointing. Usually regulations of this kind will elucidate beyond the statutory language, especially when it comes to decision-making by the regulator. However, along with asking for feedback on the actual language for the proposed rule, the FDIC has also posed eleven categories of questions, one of which focuses upon what additional information the FDIC could or should provide regarding the factors for evaluating applications beyond the statutory language, including whether there are factors not in the statute that should be taken into consideration by the FDIC.

Procedurally, the proposal establishes defined timelines and applicant protections. The FDIC would have 30 days to determine whether an application is "substantially complete," after which a 120-day decision clock would apply. Failure to act within that period would result in deemed approval. Denials would require a written explanation identifying material deficiencies and providing recommendations, and applicants would have a statutory right to a hearing and appeal within prescribed timeframes. The rule also contemplates early filing ahead of the Act's effective date, with the possibility of a temporary waiver under the Act's safe harbor provision.

From a practical perspective, the FDIC has sought to minimize incremental burden by relying, where possible, on supervisory information already in its possession and by requiring a narrative letter application rather than a standardized form. The agency estimates that approximately 10 FDIC-supervised institutions per year would apply, with an average compliance cost of roughly $12,000 per application. The FDIC has certified that the proposal would not have a significant economic impact on a substantial number of small institutions.

Taken together, the proposal provides the first detailed roadmap for state-chartered, FDIC-supervised banks to participate in payment stablecoin issuance through subsidiaries under the GENIUS Act. It also signals a relatively constrained supervisory posture, grounded closely in the statute, with limited discretion to expand requirements beyond those expressly enumerated by Congress. The Office of the Comptroller of the Currency ("OCC") and the Federal Reserve Board have not yet issued their respective rules. While the FDIC and OCC have often worked in tandem this year, the OCC's forthcoming rules will cover more entities than the FDIC proposal will.

Comments on the FDIC's proposal are due within 60 days of publication in the Federal Register.

CFTC Staff Issue Broad No-Action Relief Harmonizing Cross-Border “U.S. Person” and “Guarantee” Definitions

December 18, 2025

By Peter Y. Malyshev
Partner | Financial Regulation

By Christina Mille
Associate | Financial Services

On December 9, 2025, the Market Participants Division, the Division of Clearing and Risk, and the Division of Market Oversight (the “***Divisions***”) of the U.S. Commodity Futures Trading Commission (“***CFTC***”) issued Staff Letter No. 25-42 (the “***No-Action Letter***”), providing significant cross-border relief to swap market participants.[1] The No-Action Letter addresses long-standing inconsistencies among the CFTC’s various definitions of “U.S. person” and “guarantee” applicable to different swap regulatory requirements and permits market participants, subject to conditions, to rely on a single set of definitions across the CFTC’s cross-border framework promulgated by the CFTC in 2020.[2] The concept of “U.S. person” is key to the CFTC’s cross-border regime and, accordingly, has been subject to much interpretation, enforcement and litigation[3] since the enactment of the Wall Street Transparency and Accountability Act of 2010 (the “***Dodd Frank Act***”) in 2010.

The relief is intended to reduce operational burden, mitigate counterparty confusion, and promote harmonization with the Securities and Exchange Commission’s (“***SEC***”) parallel cross-border regime.

Background: A Fragmented Cross-Border Framework

Section 2(i) of the Commodity Exchange Act (“***CEA***”)[4] was enacted under the and extends CFTC’s jurisdictional reach to swap-related activities outside the United States that have a “direct and significant connection with activities in, or effect on, commerce of the United States.” Rather than adopting a single, comprehensive cross-border rule at the outset, the CFTC implemented Section 2(i) incrementally through a combination of interpretive guidance and rulemakings (“***CFTC Regulations***”)[5] adopted over a period of more than a decade. As a result, materially similar concepts—most notably “U.S. person” and “guarantee”—came to be defined differently depending on the particular requirement at issue.

A. *2013 Cross-Border Guidance*. In July 2013, the CFTC issued interpretive guidance addressing the cross-border application of a broad set of swap requirements, including clearing, execution, reporting, and data reporting (the “***2013 Cross-Border Guidance***”). [6] The guidance adopted an expansive, principles-based definition of “U.S. person,” including certain U.S.-majority-owned collective investment vehicles and entities bearing unlimited U.S. responsibility, and defined “guarantee” broadly to capture arrangements providing a financial backstop against swap-related losses. The guidance also introduced the concept of a non-U.S. “conduit affiliate,” which could be treated as a U.S. person based on its relationship to a U.S. affiliate and the manner in which it conducted swap activity.

B. *2016 Cross-Border Uncleared Margin Rule*. When the CFTC adopted margin requirements for uncleared swaps (the “***2016 Cross-Border Uncleared Margin Rule***”), [7] it elected to move away from the interpretive approach taken in 2013. The Cross-Border Uncleared Margin Rule adopted narrower, rule-based definitions of “U.S. person” and “guarantee,” eliminated the U.S.-majority-owned fund prong, treated the enumerated categories as exclusive rather than illustrative and omitted the conduit affiliate concept entirely. These definitions apply solely for purposes of determining whether uncleared swap margin requirements apply on a cross-border basis.

C. *2020 Cross-Border Rule*. In September 2020, the CFTC adopted a comprehensive cross-border rule Governing swap dealer and major swap participant registration thresholds and related business conduct requirements (the “***2020 Cross-Border Rule***”).[8] The rule adopted a streamlined definition of “U.S. person” closely aligned with the SEC’s parallel framework and further narrowed the definition of “guarantee.” While the 2020 Cross-Border Rule superseded the 2013 Guidance for registration and related requirements, it expressly did not address the swap clearing requirement, trade execution requirement, real-time reporting, or swap data reporting requirements (the “***Unaddressed Requirements***”), which continued to rely on the 2013 Guidance. The CFTC also permitted temporary reliance on pre-2020 counterparty representations, but only through December 31, 2027.

The cumulative effect was a patchwork regime under which swap dealers often were required to classify the same counterparty in different ways for different regulatory purposes (*e.g.*, a fund), collect multiple representations, and periodically refresh documentation solely due to changes in cross-border definitions.

Industry Request for Relief

In a joint request submitted by the Institute of International Bankers, the International Swaps and Derivatives Association, and the Securities Industry and Financial Markets Association (the "***Associations***"), the Associations argued that this patchwork framework imposed unnecessary compliance costs and competitive disadvantages without a clear regulatory justification. Among other things, the Associations noted that:

- The same statutory provision—CEA Section 2(i)—was being interpreted differently depending on the specific swap requirement;
- Non-U.S. counterparties frequently struggle to understand why multiple representations are required;
- Swap dealers have been forced to re-paper counterparties multiple times as new cross-border rules were adopted; and
- The scheduled expiration of the 2020 Cross-Border Rule's representation safe harbor in 2027 would require yet another round of outreach and documentation.

The Associations therefore requested no-action relief allowing market participants to elect to apply the 2020 Cross-Border Rule's definitions of "U.S. person" and "guarantee" across the CFTC's cross-border regime and to continue relying on legacy representations collected prior to November 2020.

Scope of the No-Action Relief

In Staff Letter No. 25-42, the Divisions expressly acknowledged that the coexistence of multiple cross-border definitions creates undue operational and compliance burdens and lacks a clear policy justification. The Divisions confirmed that, both before and after December 31, 2027, they will not recommend enforcement action solely because a market participant elects to apply a more uniform approach to counterparty classification, as described below.

The Divisions stated that a market participant may elect to classify counterparties using the definitions of "U.S. person" and "guarantee" set forth in § 23.23 of CFTC Regulations,[9] as adopted in the 2020 Cross-Border Rule, for purposes of determining the applicability of requirements that historically have relied on the 2013 Guidance or the Cross-Border Uncleared Margin Rule. This includes the mandatory clearing requirement, the trade execution requirement for swaps subject to mandatory clearing, real-time public reporting, swap data reporting under Parts 45[10] and 46[11] of CFTC Regulations and the application of margin requirements for uncleared swaps. Although the earlier guidance and rules technically remain in effect, the staff position allows firms, as a practical matter, to treat the 2020 Cross-Border Rule's definitions as a single default classification standard across the CFTC's cross-border swap regime.

The Divisions also addressed the operational consequences of repeatedly changing cross-border definitions by confirming that market participants may continue to rely on counterparty representations obtained prior to the effective date of the 2020 Cross-Border Rule when determining the applicability of the Group B and Group C requirements.[12] Representations made pursuant to either the Cross-Border Uncleared Margin Rule or the 2013 Guidance may continue to be relied upon, notwithstanding the Commission's earlier statement that such reliance would sunset at the end of 2027.

The Divisions further stated that they will not recommend enforcement action if a market participant does not treat a non-U.S. counterparty as a U.S. person solely because that counterparty would have been characterized as a conduit affiliate under the 2013 Guidance. This position removes a fact-intensive and subjective analysis that has long been a source of uncertainty in cross-border compliance assessments.

Finally, the Divisions confirmed that the no-action positions set forth in Staff Letter No. 25-42 supersede prior staff no-action letters to the extent those letters relied on the 2013 Guidance or the Cross-Border Uncleared Margin Rule in a manner inconsistent with the new approach.

Application of 2020 Cross-Border Definitions to Unaddressed Requirements

Market participants may elect to classify counterparties using the definitions of "U.S. person" and "guarantee" set forth in the 2020 Cross-Border Rule) for purposes of determining the applicability of requirements that historically have relied on the 2013 Guidance or the Cross-Border Uncleared Margin Rule. These include:

- the mandatory clearing requirement under Section 2(h)(1) of the CEA;
- the trade execution requirement for swaps subject to mandatory clearing;
- real-time public reporting requirements;
- swap data reporting requirements under Parts 45 and 46; and
- margin requirements for uncleared swaps.

As a practical matter, this relief permits firms to treat the 2020 Cross-Border Rule's definitions as a single, default classification standard across the CFTC's cross-border swap framework, notwithstanding the continued formal applicability of earlier guidance and rules.

A. *Continued Reliance on Legacy Counterparty Representations*

For purposes of determining the applicability of the Group B and Group C requirements under the 2020 Cross-Border Rule, the Divisions will not recommend enforcement action if a market participant continues to rely on counterparty representations that were obtained prior to the effective date of the 2020 Cross-Border Rule, including representations made pursuant to:

- the definitions of "U.S. person" and "guarantee" in the Cross-Border Uncleared Margin Rule; or
- the interpretations of "U.S. person" and "guarantee" set forth in the 2013 Guidance. B.

B. *Treatment of Conduit Affiliates*

The Divisions further stated that, for purposes of determining the cross-border application of clearing, execution and reporting requirements, they will not recommend enforcement action if a market participant does not treat a non-U.S. counterparty as a U.S. person solely because that counterparty would have been characterized as a "conduit affiliate" under the 2013 Guidance. This position represents a meaningful departure from the guidance-era framework and removes a fact-intensive and often subjective classification analysis.

C. *Supersession of Prior Staff Relief*

The Divisions confirmed that the No-Action Letter supersedes prior staff no-action letters to the extent those letters cross-referenced the 2013 Guidance or the Cross-Border Uncleared Margin Rule in a manner inconsistent with the positions articulated in Staff Letter No. 25-42, including prior relief addressing listed warrants, Brexit-related issues, and cross-border swap data reporting.

Given that Staff Letter No. 25-42 is only a Divisions' Staff No-Action Letter and not a CFTC Regulation enacted by the Commission, it is likely that the CFTC will address these issues and specifically the Unaddressed Requirements by amending CFTC Regulations in the near future and codifying this relief in an amended cross-border rule.

[1] Available at: **https://www.cftc.gov/PressRoom/PressReleases/9149-25**

[2] Available at: **https://www.cftc.gov/csl/25-42/download**

[3] *See, e.g.*, *Int'l Swaps & Derivatives Ass'n, Inc. v. CFTC*, 887 F.3d 1133 (D.C. Cir. 2018) (challenging the CFTC's 2013 cross-border interpretive guidance as exceeding the Commission's authority and improperly adopted without notice-and-comment); *see also In re Falcon Labs, Ltd.* (May 13, 2024) (addressing the application of FCM registration and cross-border requirements to digital asset swap activity). *Cf.* Commissioner Caroline D. Pham, Concurring Statement on Novel U.S. Location Test and FCM Registration (May 13, 2024) (stating she was "astounded that the Commission would simply pretend these recent cross-border rulemakings did not exist" and that the action created a "novel U.S. location test" for non-U.S. entities that could have broad implications for the global derivatives market), available at: **https://www.cftc.gov/PressRoom/PressReleases/8909-24**; Acting Chairman Caroline D. Pham, 100 Days: Keynote Address at the 39th ISDA Annual General Meeting (May 15, 2025) (noting that the Division of Market Participants would soon issue an interpretive letter addressing cross-border issues to harmonize the various "U.S. person" definitions under the Dodd-Frank Act swap framework), available at: **https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham15**.

[4] See 7 USC § 2(i).

[5] 17 C.F.R. § 1.1 *et seq*.

[6] *Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations*, 78 FR 45292 (July 26, 2013). Available at: **https://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2013-17958.html**

[7] *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants-Cross-Border Application of the Margin Requirements*, 81 FR 34818 (May 31, 2016). Available at: **https://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2016-12612.html**

[8] *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 FR 56924 (Sep. 14, 2020). Available at: **https://www.cftc.gov/LawRegulation/FederalRegister/finalrules/2020-16489.html**

[9] 17 CFR § 23.23. Available at: **https://www.ecfr.gov/current/title-17/chapter-I/part-23/subpart-B/section-23.23**

[10] 17 CFR § Part 45. Available at: **https://www.ecfr.gov/current/title-17/chapter-I/part-45**

[11] 17 CFR § Part 46. Available at: **https://www.ecfr.gov/current/title-17/chapter-I/part-46**

[12] Group B means the requirements set forth in CFTC Regulation 23.202 and CFTC Regulations 23.501 through 23.504. Group C requirements are external business conduct rules as set forth in CFTC Regulation 23.23.(a)(8), with the requirements set forth in CFTC Regulation 23.400 through 23.451 and CFTC Regulations 23.700 through 23.704.

SEC Staff Issues No-Action Relief for DTC Tokenization Pilot

December 18, 2025

By Peter Y. Malyshev
Partner | Financial Regulation

By Christina Mille
Associate | Financial Services

On December 11, 2025, the staff of the SEC's Division of Trading and Markets issued a **no-action letter** (the "***DTCC No-Action Letter***") stating that it would not recommend enforcement action against The Depository Trust Company ("***DTC***") in connection with the launch of a pilot version of its **DTCC Tokenization Services**. The relief permits DTC to operate a preliminary tokenization program that records participants' security entitlements using distributed ledger technology, rather than exclusively through DTC's centralized ledger, subject to limitations.

Under the pilot, eligible DTC participants may elect to tokenize security entitlements—real world assets ("***RWAs***")—in certain highly liquid securities, including U.S. Treasury securities, Russell 1000 equities, and selected index-tracking ETFs. Tokenized entitlements would be represented by tokens held in participant-registered wallets on approved blockchains, while the underlying securities would remain registered in the name of Cede & Co., and reflected on DTC's books through a digital omnibus account. DTC would continue to serve as securities intermediary for purposes of Article 8 of the UCC, and tokenization would not alter the legal framework governing participants' security entitlements. In other words, the tokens issued by DTC will be only representative of the RWAs held at DTC and will be treated as securities for purposes of U.S. securities laws.

The staff's no-action position addresses potential enforcement under Regulation SCI (which governs the systems integrity, resiliency, and operational capacity of market infrastructure, including clearing agencies), Exchange Act Section 19(b) (which requires self-regulatory organizations, including clearing agencies, to file proposed rule changes with the SEC), and certain clearing agency standards, based on the limited scope and design controls of the pilot. Notably, tokenized entitlements will not be given settlement or collateral value for purposes of DTC risk management, participation is voluntary and time-limited, and DTC has committed to extensive reporting, transparency, and operational safeguards. The relief is limited to the specific facts and representations described and is scheduled to expire three years after the launch of the pilot.

The DTCC No-Action Letter is a part of a coordinated multi-agency effort to unlock billions of dollars in collateral liquidity by allowing certain digital assets to be used as collateral for a variety of regulatory purposes (*see e.g.*, **CFTC's digital assets collateral pilot program** officially launched on December 8, 2025) in response to the **Presidents Working Group report** published on July 30, 2025.

Big Digital Apple – New York Adopts the 2022 UCC Amendments

December 18, 2025

The digital assets-focused Article 12 and other 2022 Amendments to the Uniform Commercial Code were signed into law by New York Governor Hochul on December 5, 2025, and will become effective 180 days after signing (on June 3, 2026).

New York becomes the 33rd UCC jurisdiction to enact the 2022 Amendments, and New York's enactment of the amendments completes the trifecta of key corporate and financial jurisdictions (along with Delaware and the District of Columbia) adopting them. Because of the prevalence of New York law as the chosen governing law in many types of financings, the New York's enactment of the 2022 Amendments will have a major impact.

In this memorandum, Cadwalader's **Christopher McDermott**, **Jeffrey Nagle**, **Mercedes Tunstall**, **Matthew Stempler** and **Ryan Leverone** briefly summarize the substance of the 2022 Amendments, examine certain non-uniform provisions that New York included in the NY Amendments, review transition provisions and considerations to prepare for the NY Amendments coming into effect, and finally take a brief look at the potential implications of the amendments on some emerging digital asset financing concepts.

Overview of the 2022 Amendments

The 2022 Amendments were promulgated and recommended for enactment by the Uniform Law Commission and American Law Institute in July 2022. The 2022 Amendments are intended to make modifications to the UCC to accommodate emerging technologies, including blockchain and other distributed ledger technologies.

The 2022 Amendments, including official comments, are lengthy (nearly 300 pages), and affect substantially all Articles of the UCC. The below summary highlights only certain key provisions of the 2022 Amendments in a high-level manner. For specific questions and circumstances, readers should consult with their Cadwalader counsel or contact any of the attorneys listed below.

Article 12 and CERs.

The signal change wrought by the 2022 Amendments is the addition of a new article to the UCC, Article 12, dealing with a new asset type, the controllable electronic record ("CER"). A CER is defined as "a record stored in an electronic medium that can be subjected to control under Section 12-105." The definition further excludes from the ambit of CERs several UCC asset types (controllable accounts, controllable payment intangibles, deposit accounts, electronic copies of records evidencing chattel paper, electronic documents of title, electronic money and investment property) as well as transferable records.[4] Cryptocurrencies and tokens, such as bitcoin, are the drafters' paradigm of CERs (although any particular crypto token's satisfaction of the CER definition would need to be factually verified).

CERs are thus a subset of the universe of digital assets—not all digital assets are CERs. To be a CER, a record must not only be electronic, but it must also not fall within an excluded category, and—most importantly—it must be "controllable" under a new concept of control.

Control.

Article 12 adds a new definition of control in Section 12-105. In general, for a person to have control of a CER, the electronic record, or a record attached or logically associated with the record, or the system in which the electronic record is recorded, must give the person certain powers: (a) the power to avail itself of substantially all the benefit of the electronic record, and (b) the *exclusive* power (i) to prevent others from availing themselves of substantially all the benefit from the electronic record and (ii) to transfer control of the electronic record to another person. In addition, such records or systems must enable the person to identify themselves (including by cryptographic key) as having such powers.[5]

The "exclusivity" of the second and third powers noted in the preceding sentence is given a specific set of meanings under Section 12-105. A power doesn't fail to be exclusive if the system is programmed to limit or change the electronic record's use or nature. Further, a power can be shared and still be exclusive, as long as the control person can exercise the power without the exercise by the other person of the power, and the other person neither can exercise the power without the control person, nor is the transferor to the control person of an interest in the CER (or controllable account or controllable payment intangible evidenced by it).[6] Finally, control by a person can be established through another person who acknowledges that they have control on behalf of the control person.[7]

Rights of Qualifying Purchaser: Take-Free Rights, Shelter Principle.

The 2022 Amendments imbue CERs with a key feature of negotiability: the ability of a purchaser, in certain circumstances, to acquire its rights in a CER free of a claim of a property right in the CER.[8] Further, a subsequent purchaser acquires all the rights in a CER that the transferor had or had the power to transfer—the subsequent purchaser, in other words, can "shelter" behind the rights acquired by the transferor.[9]

The special circumstances in which such take-free rights are available are when the purchaser of the CER is a qualifying purchaser ("QP"). To be a QP of a CER a person must be a "purchaser" (which term, under the UCC, includes a secured party, as well as buyer or other voluntary taker of a property interest[10]), must obtain control of the CER, and must obtain such control for value, in good faith, and without notice of a claim of a property right in the CER.[11] This take-free right chimes with the Article 3 take-free right of a holder in due course of a negotiable instrument, and the drafters intended it to.[12]

Control Perfection of CERs.

Control of a CER is not only a matter of whether a purchaser can benefit from attributes of negotiability. In their extensive revisions to Article 9, the NY Amendments also adopt the 2022 Amendments' provisions for control perfection and priority for CERs. For Article 9 purposes, a secured party has control of a CER as provided in Section 12-105.[13] A security interest in a CER may be perfected by the secured party obtaining control of the CER.[14] A security interest in a CER perfected by control has priority over a security interest in the CER not perfected by control.[15]

Before the effectiveness of the NY Amendments, an asset that would be a CER under the 2022 Amendments would be treated as a general intangible, and the only method to perfect a security interest in that asset as original collateral would be to file a financing statement. The practical effect of the new perfection and priority rules is to give secured parties an additional method of perfection of a security interest in CERs—control. This means that perfecting security interests in CERs by control gives such perfection non-temporal priority over a conflicting security interest that is perfected only by filing. For security interests on CERs, control perfection primes filing perfection.

Tethered Assets, Controllable Accounts, Controllable Payment Intangibles.

If a CER evidences rights to other assets (i.e., assets that are "tethered" to the CER), the general rule is that the take-free rights that are available to a QP of the CER do *not* extend to the tethered asset.[16] Whether a purchaser of the CER could also take the tethered asset free of competing property claims would be determined by law other than Article 12. Most tokens that represent real-world assets ("RWAs") are such tethered assets.

In the 2022 Amendments, there are two important exceptions to this limitation, however, with respect to certain payment obligations. If an "account" or "payment intangible" is evidenced by a CER and it provides that the account debtor undertakes to pay the person who has control of the CER, then that account is a controllable account ("CA"), and that payment intangible is a controllable payment intangible ("CPI"). CAs and CPIs are tethered assets, evidenced by CERs but not CERs in and of themselves. However, unlike all other tethered assets, CAs and CPIs *are* afforded the same take-free rights and shelter principle as the CERs evidencing them, and the same control perfection and non-temporal priority for security interests in them applies, as it does for the CERs evidencing them. This is a powerful exception to the general rule on tethered assets, and is intended to create a digital asset type that is the "functional equivalent of a negotiable instrument."[17]

One important case to highlight in this regard is where an Article 8 security (or security entitlement) is evidenced by a CER. The security remains a tethered asset. Control of the CER and control of the security look to different provisions of the UCC, as does the ability of a purchaser to take free of competing claims in the CER and the security.

Electronic Chattel Paper and Documents of Title, Electronic Money.

The NY Amendments include changes proposed by the 2022 Amendment to UCC provisions regarding electronic versions of chattel paper and documents of title. The key changes are in the sections defining "control" of chattel paper evidenced by electronic records and electronic documents of title.

Section 9-105 regarding control of chattel paper was amended to add a general rule as clause (a), consistent with the uniform versions of the UCC. Pre-amendment, New York's version of Section 9-105 did not include a general rule, but required electronic chattel paper systems to comply exclusively with requirements that, under the uniform UCC text, were only safe harbor provisions for compliance with the broader general rule.[18]

In addition, both Section 9-105 for chattel paper and Section 7-106 for documents of title incorporate the 2022 Amendment changes to include a new safe harbor covering systems that generate multiple authoritative copies of the electronic record. This is important for blockchain-based solutions, because blockchain systems inherently generate authoritative copies of the electronic record on each of the many nodes in the network.

The NY Amendments also incorporated the 2022 Amendments provisions regarding "electronic money." Electronic money is defined in Article 9 as "money in electronic form." However, the definition of "money" is a new one, added to Article 9 as a subset of the Article 1 definition of money. The Article 1 definition of money as a medium of exchange that is currently authorized or adopted by a domestic or foreign government has also been amended under the NY Amendments to exclude electronic media of exchange that existed before they were authorized or adopted by a government. The Article 9 version of "money" further excludes deposit accounts and money in electronic form that cannot be subjected to control under Section 9-105A. The control concept for electronic money in such Section 9-105A is substantially identical to the control of CERs under Section 12-105.

Cryptocurrencies and other digital assets that do not satisfy both the Article 1 and Article 9 definitions are not "money" and therefore are also not "electronic money." An important ramification is that an obligation that is denominated in such a non-money digital asset (such as a stablecoin) would not be a "monetary obligation" for UCC purposes. And because it is not a monetary obligation, such a digital asset denominated obligation is incapable of being an account, chattel paper, payment intangible or the obligation on an instrument, and therefore is also incapable of being a CA, CPI or transferable record.[19]

New York-Specific Provisions

Although New York enacted the 2022 Amendments substantially in the form of the text promulgated by the uniform drafters, there were a handful of New York-specific variations included in New York's enacted version.

Qualifying Purchaser.

The most substantive variation is in New York Article 12's definition of "qualifying purchaser." In the NY Amendments, Section 12-102(a)(2) defines QP with the inclusion of an additional sentence not present in the official version (the additional New York language underscored below):

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record. <u>In the case of a controllable electronic record that would be a "draft" or a "note", as those terms are defined in Section 3-104, if the controllable electronic record were a signed writing, Section 3-304(7) applies to the determination of whether a purchaser obtains control of the controllable electronic record without notice of a claim of a property right in it as if the reference in that subsection to "the instrument" referred to the controllable electronic record. The preceding sentence applies even if the controllable electronic record contains a term by which an obligor or account debtor on the controllable account or controllable payment intangible evidenced by the controllable electronic record waives or agrees not to assert against an assignee of the controllable electronic record any claim or defense that the obligor or account debtor may have against the assignor.</u>

The thrust of this additional language is to extend New York's treatment of a holder in due course for tangible instruments to the analogous status of QP under Article 12. New York UCC §3-304(7) adds a New York-specific gloss to the notice of a claim or defense that might prevent a purchaser from being a holder in due course. Section 3-304(7) requires that, in all cases, the purchaser must have knowledge (meaning actual knowledge[20]) of the claim or defense, or knowledge of such facts that his action in taking the instrument amounts to bad faith. Without this provision, the concept of notice from New York UCC §1-202(a) would apply, which "notice" concept includes, in addition to actual knowledge, receipt of a notification, or reason to know based on facts and circumstances.

Note further that the NY Amendments do not change the non-uniform New York definition of “good faith” as it applies to QP status. New York’s definition of QP would pull in New York’s existing Article 1 definition of good faith, which is limited to the subjective standard of “honesty in fact,” without the additional objective requirement of “the observance of reasonable commercial standards of fair dealing” included in the uniform UCC text.[21]

Taken together, the extension of New York Article 3’s limited concept of notice, and New York’s subjective standard of good faith, to the QP definition makes it easier for a New York purchaser of a CER to be a “qualifying purchaser” under Article 12 than in other states, in the same way that it is easier for a New York holder of an instrument to be a holder in due course under Article 3.

Transferable Record.

A transferable record is an asset type that, in general terms, is like an electronic note or electronic document of title. It is defined in the Uniform Electronic Transactions Act (“UETA”)[22] as an electronic record that would be a “note” or “document” under the UCC if the electronic record were in writing, and that the issuer of which has expressly agreed is a transferable record. The Federal Electronic Signatures in Global and National Commerce Act (“ESIGN”) similarly defines transferable record, although the ESIGN definition is limited to notes secured by real property.[23] The 2022 Amendments make reference to transferable records (as defined in either statute) to explicitly exclude transferable records from the definition of CERs.

New York, however, did not adopt the UETA, and New York’s Electronic Signatures and Records Act (“ESRA”)[24] does not include the concept of a transferable record. The NY Amendments, therefore, include non-uniform provisions to incorporate as “transferable records” both the ESIGN definition of transferable record, and an electronic record “governed by” the law of a state that has enacted the UETA in substantially the form of the official text.[25]

Conflict with Certain New York Statutes.

The New York Amendments specify that certain consumer statutes take precedence over Article 12 if they establish a different rule for consumers. Those specified statutes are the Consumer Protection From Deceptive Acts and Practices article of the New York General Business Law[26] and the Unfair Trade Practices Chapter of the New York City Administrative Code.[27]

In addition, the NY Amendments state that Section 307.2 of ESRA shall not impair the enforceability of a CER, or cause the CER to be governed by UCC Article 3 rather than Article 12 (except to the extent that the electronic record expressly provides otherwise, or was created prior to the Effective Date). Such Section 307.2 makes ESRA inapplicable to negotiable instruments and instruments of title unless the electronic version of the instrument is created, stored and transferred in a manner providing for only a single unique, authoritative copy. This qualification in the NY Amendments is apparently to maintain ESRA’s generally applicable provisions as to the effect and validity of electronic signatures and electronic records, even if (as would be the case in many blockchain records that would constitute CERs) multiple authoritative copies of the electronic record may be produced.

Transition and Preparing for Effectiveness of the 2022 Amendments

Transition Rules.

The NY Amendments include transitional rules substantially aligned with the 2022 Amendments.

Savings Clauses. Valid transactions that were entered into before the Effective Date generally remain valid and may be enforced as if the NY Amendments had not taken effect.[28] Article 12 and Article 9, as amended by the NY Amendments, will generally apply; however, even if the transaction was entered into before the Effective Date. Pre-effectiveness transactions under Article 9 are also given continuing validity except as provided in succeeding sections.[29]

Enforceability and Perfection. Security interests that were enforceable and perfected before the Effective Date are generally protected after the Effective Date. However, if the pre-effectiveness requirements for enforceability or perfection do not satisfy the requirements after giving effect to the NY Amendments, the secured party is given until the date one year after the Effective Date (the “Adjustment Date”) to satisfy the new requirements (or such shorter period as the security interest would have become unenforceable or unperfected under the pre-amendment rules).[30] Pre-Effective Date financing statements continue to be effective to perfect on the Effective Date to the extent they would satisfy the perfection rules as amended by the NY Amendments.[31]

Priority. In general, the UCC, as amended by the NY Amendments, determines priorities of conflicting claims to collateral. If the priorities were established before the Effective Date, then pre-amendment Article 9 determines priority, except that with respect to Article 12 Property (CAs, CERs, CPIs) and electronic money, the priorities are adjusted on the Adjustment Date to comport with the priorities determined by the UCC as amended by the NY Amendments.[32] Further, if the priority rules under Article 9 do not apply and the priorities with respect to Article 12 Property were established before the Effective Date, the priority of claims to such Article 12 Property is determined by law other than Article 12, but the priorities are adjusted on the Adjustment Date to comport with the NY Amendments.

The rules surrounding priorities generally give a secured party a grace period until the Adjustment Date to comply with the new procedures under the NY Amendments. However, the interplay of rules regarding priorities established before the Effective Date and priorities established after the Effective Date creates a potential pitfall. Because the NY Amendments add new methods to perfect—i.e., control of CERs, CAs and CPIs—it could be that the security interest of a secured party first obtaining control of CERs after the Effective Date can *immediately* (rather than at the Adjustment Date) have priority over the security interests of a secured party perfected by pre-Effective Date filing. The reason for this result is that, because control perfection in CERs wasn't a method of perfection before the Effective Date, the secured party's perfecting by control post-Effective Date causes the priorities between the security interests to be established anew after the Effective Date, with the new rules of the NY Amendments determining the outcome.[33]

Preparation for Effectiveness.

The NY Amendments are extensive, and there is no uniform checklist to prepare for the Effective Date appropriate for all parties in all situations. However, we list a few general items below for parties to consider:

- Review transaction documents to assess whether representations, covenants and further assurances provisions should be updated to take account of CERs, Article 12 concepts and other NY Amendment changes.
- Review transaction structures to determine if electronic assets are present, which might be CERs, CAs, CPIs or electronic money. If so, consider further due diligence. Controllability under Article 12 is a factual issue that is largely driven by technological structure, and CERs are not necessarily limited to "tokenized" structures.
- If CERs, CAs, CPIs or electronic money might be present in a transaction structure, examine whether Article 12 control is necessary or advisable, and determine the adequacy of control mechanisms under Article 12 and whether other persons may have or obtain control.
- If electronic chattel paper or electronic documents of title are present in a transaction structure, consider the applicability of the amended definitions of control introduced by the NY Amendments (including with respect to systems producing multiple authoritative copies of the electronic record).
- Parties should track both the Effective Date and Adjustment Date of the NY Amendments, and understand the impact of those dates on their transactions.
- Finally, parties should consider if and how transaction structures might be optimized to take advantage of Article 12's novel features.

Effects on Emerging Financing Structures

The landscape of digital asset finance is changing rapidly, with new integrations of traditional finance with decentralized finance seeming to occur daily. The pace of such change is matched by the proliferating variety of innovations in digital asset transactions. Article 12 and the other changes to the New York UCC made by the NY Amendments should provide clarity and create new opportunities to deploy novel assets and transactions. While it is not possible to anticipate all of the issues that parties might encounter as they begin using the amended New York UCC, a few such issues might be:

- How to engineer tokenized receivables so that they can be characterized as CAs or CPIs, while employing stablecoins or tokenized bank deposits as settlement assets?
- How to engineer transactions involving smart contracts, such as automated market makers, or assets held by AI agents engaging in autonomous transactions, where neither smart contracts nor AI agents in themselves constitute persons under the UCC and therefore cannot be purchasers, secured parties or buyers, or obtain control, under UCC provisions?
- How to manage transactions involving both assets enjoying Article 12 negotiability—CERs, CAs and CPIs—and tethered assets that do not, such that (for example) a crypto wallet adequately provides for different types of UCC control for different asset types?

- How to manage Section 12-105 exclusivity issues in structuring control over digital asset wallets, whether multi-sig wallets used by custodians, or wallets seeking to mimic traditional account control agreements in commercial lending transactions?

Parties will need to work closely with their counsel in analyzing the impacts of the NY Amendments on such issues, and crafting appropriate solutions to take advantage of the new tools the amended New York UCC affords.

1 Assembly Bill 3307-A/Senate Bill S1840A, **https://nyassembly.gov/leg/?bn=A3307&term=2025**, **https://www.nysenate.gov/legislation/bills/2025/S1840/amendment/A**. *See* **https://www.cadw friends-memos/digital-assets-focused-ucc-amendments-pass-new-york-legislature**.

2 Uniform Law Commission, American Law Institute, UNIFORM COMMERCIAL CODE AMENDMENTS (2022) (available **https://www.uniformlaws.org/viewdocument/final-act-164?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments**).

3 In this memo, the official version promulgated by the Uniform Laws Commission and American Law Institute is referred to as the "2022 Amendments." The version enacted by New York is referred to as the "NY Amendments."

4 NY UCC §12-102(a)(1).

5 NY UCC §12-105(a).

6 NY UCC §12-105(b), (c).

7 NY UCC §12-105(e).

8 NY UCC §12-104(e).

9 NY UCC §12-104(d).

10 NY UCC §1-201(b)(29), (30).

11 NY UCC §12-102(a)(2).

12 *See* UCC §12-104, official comment 10.

13 NY UCC §9-107A.

14 NY UCC §9-314(a).

15 NY UCC §9-326A.

16 NY UCC §12-104(f); *see* 2022 Amendments 12-104 official comment 9.

17 *See* 2022 Amendments §12-104 official comment 10. Note that there are important differences between CAs, CPIs and Article 3 negotiable instruments, in particular with respect to the ability of the purchaser to take free of certain defenses and claims in recoupment.

18 NY UCC §9-105(a).

19 2022 Amendments §9-102 official comment 12A.

20 NY UCC §1-202(b).

21 NY UCC §1-201(b)(20).

22 National Conference of Commissioners on Uniform State Laws, UNIFORM ELECTRONIC TRANSACTIONS ACT (1999) **https://www.uniformlaws.org/viewdocument/final-act-21?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments**, Section 16(a).

23 ESIGN Section 201(a)(1), 15 U.S.C. Section 7021(a)(1), as amended.

24 Electronic Signatures and Records Act, State Technology Law, Chapter 57-A, Article 3. **https://www.nysenate.gov/legislation/laws/STT/A3**

25 NY UCC §12-102(a)(3). Presumably the reference to an electronic record being “governed by” the law of a state that has enacted UETA would include a record to which the law of that state would apply, whether or not it includes a specific governing law provision. The NY Amendments did, however, adopt (in non-uniform placement) the provision of the 2022 Amendments that permits instruments to include governing law and forum clauses without being rendered non-negotiable. *See* NY UCC §3-112(h), (i).

26 New York General Business Law, Article 22-A **https://www.nysenate.gov/legislation/laws/GBS/A22-A**

27 NYC Administrative Code, Tit. 20, Ch. 5 **https://nycadmincode.readthedocs.io/t20/c05/**

28 NY UCC §12-A-201.

29 NY UCC §12-A-301(a), (b).

30 NY UCC §12-A-302.

31 NY UCC §12-A-304(b).

32 NY UCC §12-A-305(b), (c).

33 *See* 2022 Amendments §A-305 official comment 2, Example 3.

Happy Holidays From Cadwalader

December 18, 2025

Dear *Cabinet News & Views* readers, as the holiday season approaches, we want to extend our heartfelt gratitude for your continued support and engagement throughout the year.

To celebrate this special time and prepare for an exciting year ahead, we'll be taking a brief pause. *Cabinet News & Views* will return in January, refreshed and ready to bring you more insights and updates.

We wish you a joyous and peaceful holiday season surrounded by warmth, happiness, and cheer and we look forward to reconnecting in 2026!