

Fund Finance Friday



Big Digital Apple – New York Adopts the 2022 UCC Amendments

December 19, 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—including fund finance transactions—New York's enactment of the 2022 Amendments will have a major impact.

In this memorandum, we 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 interest¹⁰), 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.

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. 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.

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 knowledge²⁰) 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 Law²⁶ 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.cadvisors.org/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 E-SIGN 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.