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WINNING THE WILD WEST: CRYPTOCURRENCY, WEB3, AND THE NEW UCC ARTICLE 12

The authors provide an overview of the Uniform Commercial Code's new Article 12, which was created to provide a legal framework for digital assets and cryptocurrency. The authors also address legal and industry developments applicable to digital assets and cryptocurrency.

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Cryptocurrency continues to be in the spotlight and calls for cryptocurrency market regulation have accelerated following the collapse of FTX and other recent high-profile matters.¹ The advent of distributed ledger technology (“DLT”), which is used to store and transact cryptocurrency, has given rise to two significant movements in the world of electronic commerce: (1) the assignment of economic value to electronic records that bear no relationship to extrinsic rights and interests and (2) the use of electronic records to “transfer rights to receive payment, rights to receive performance of other obligations . . . and other rights and interests in personal

and real property.”² These digital assets, which have functioned as a store of value or electronic contract, exist in an unclear legal environment.³ There is debate regarding whether these digital assets are securities, commodities, or another asset altogether; and confusion regarding which laws or regulations apply.⁴

The U.S. Securities and Exchange Commission (“SEC”), Commodity Futures Trading Commission (“CFTC”), Treasury Department, Internal Revenue

¹ Jody Godoy, *Ripple Labs notches landmark win in SEC case over XRP cryptocurrency*, REUTERS (July 13, 2023, 4:26 PM), <https://www.reuters.com/legal/us-judge-says-sec-lawsuit-vs-ripple-labs-can-proceed-trial-some-claims-2023-07-13/>; Cheyenne Ligon, *White House Calls on Congress to ‘Step Up Its Efforts’ on Crypto Regulation*, COINDESK (Jan. 27, 2023 at 10:34 AM), <https://www.coindesk.com/policy/2023/01/27/white-house-calls-on-congress-to-step-up-its-efforts-on-crypto-regulation/>.

² U.C.C. Art. 12, Controllable Electronic Records, (Prefatory Note amended 2022).

³ Steven Aquino, *Crypto, Part III: Securing Interests in Digital Assets – The Proposed UCC Article 12*, AMERICAN BAR ASSOCIATION, (May 23, 2023), <https://www.americanbar.org/groups/litigation/committees/corporate-counsel/articles/2023/spring2023-crypto-part-iii-securing-interests-digital-assets-proposed-ucc-article-12/#:~:text=Under%20Article%2012%2C%20a%20party,to%20the%20extent%20allowable%20under.>

⁴ *Id.*

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