

Florida's New UCC Article 12 – Fla. Stat. 669 [ver 20231110]

Secured Transactions for Digital Assets and Associated UCC Amendments¹

The Uniform Law Commission (“ULC”) proposed new UCC Article 12 (“Art. 12”), new Fla. Stat. § 669, as an expansion of the Uniform Commercial Code (“UCC”), Fla. Stat. §§ 661 - 680, which establishes a baseline framework allowing creditors to secure liens on digital assets owned by debtors. This is a two-part White Paper; an eight (8) page summary and a 21 page Florida UCC Chart mapping all Art. 12 changes to Fla. Stat. §§ 661 - 680.

Art. 12 defines a “controllable electronic record” (CER), § 669.102(1), to be part of or logically attached to, a digital asset.² The foundation of Art. 12 is UCC Article 9, Secured Transactions, § 679.1011, and Art. 12 amendments effect § 679. Art. 12 updates and clarifies debtor-creditor relationships and emerging technology transactions involving cryptocurrencies, smart contracts, blockchains, non-fungible tokens (NFTs), and distributed ledger technologies (DTLs). Florida should adopt § 669, titled “Uniform Commercial Code—Controllable Electronic Records,” to reduce transaction costs while providing protections for market participants and traditional market players. As of November 2023, eight (8) states have adopted Art. 12 (CO, DE, IN, HI, ND, NM, NV, WA).³ If enacted, Florida would be the largest state to adopt this new law. Florida’s Office of Financial Regulation (OFR) has generally endorsed Art. 12.⁴

Florida law currently does not have provisions specifically addressing digital assets. A *traditional, common approach*, based on Art. 8, § 678, applies general intangible principles to the transaction, namely: (i) digital assets are transferred to a securities intermediary, (ii) the intermediary treats the assets as “financial assets” and credits them to debtor’s account, creating a security entitlement with respect to the financial asset, (iii) the secured party then obtains complete “control,” § 678.5011(2)(b), of the security entitlement, which perfects the secured party’s security interest in the securities account. Alternatively, the lender may perfect his or her interest with Art. 9, § 679, by filing a financing statement in the debtor’s state registry per § 679.3011. The traditional approach does not address technologic issues associated with easily transferrable digital assets. A *technologic approach* obtains technical control of assets with the debtor giving private key or password control to the lender or its designee. The resulting secured party’s interest is not perfected under the current UCC. This creates legal doubt in the transaction.

Art. 12, § 669, and the associated amendments to §§ 670 - 680, provide: (a) assurance to securities intermediaries and secured party creditors that they acquire their interests free of the

¹ This White Paper was prepared by a Joint Task Force between the Business Law Section’s Blockchain and Digital Assets Committee and the Section’s UCC/Bankruptcy Committee. Recently, the Task Force engaged the Real Property Probate and Trust Law Section (RPPTL) and the Florida Bankers Assn. for comments and input.

² The Act and F.S. 669 does not define an “electronic record” nor does it refer to “digital assets.” The Act amends Art. 1, § 671.201, and adds a definition for “electronic” as “means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.” § 671.201(18).

³ See ULC’s website at <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac>.

⁴ “Assessment of Commerce and Regulatory Issues Presented by Blockchain Technology and Virtual Currency,” OFR, Dec. 2022.

property claims of others (the take-free rule), and (b) the security interests created thereby confer upon the intermediary a super-priority secured party status.

UCC Article 12 and Related Amendments - Summary. New § 669.102(1)(a) defines a “controllable electronic record” (CER) and provides rules for transfers of CERs to buyers and secured parties. A transferee will take the CER free of any claim to the CER if the transferee is a “qualifying purchaser” (“QP”), §§ 669.102(1)(b) and 669.104(1) and (2). Additionally, a secured party that obtains control of a CER will have non-temporal priority, over another secured party that does not have control and has perfected its security interest only by filing a financing statement, § 669.104(8).

Examples and Exclusions. The following are generally *included*: (a) Electronic accounts (generally including accounts receivable) and electronic payment intangibles (including electronic promises to pay akin to notes and electronic loan agreements); (b) Cryptocurrencies; (c) NFTs that qualify as CERs and other tethered assets; and (d) Electronic (fiat) money other than central bank digital currencies, § 671.201(10) and (25). Controllable payment intangibles and controllable accounts may have an opt-out Art. 12 feature. The definition of CER *excludes* certain types of assets, even if they would otherwise meet the definition: (i) Money (fiat); (ii) Investment property; (iii) Electronic accounts and payment intangibles, if not evidenced by a CER or that lack certain other characteristics; (iv) Chattel paper in electronic form; (v) “Transferable records” under the Uniform Electronic Transactions Act (UETA), § 668.001, and the Electronic Signature in Global Commerce Act (E-SIGN), 15 U.S.C. § 7021(a)(1)(B), and (vi) Documents of Title, § 677.101.

The definition of CER specifically excludes “investment property,” § 669.102(1)(a), and the Art. 12 amendments do not change the definitions of investment property or financial asset, § 678.1011.⁵ However, parties may agree to treat digital assets as investment property and transact them to a financial intermediary under Art. 12.

Controllable Electronic Records (CERs). New § 669 applies to outright transfers of CERs and security interests in CERs, controllable accounts, and controllable payment intangibles. These controllable accounts⁶ and controllable payment intangibles⁷ must have the “controllable” attribute to be a CER. See §§ 678.1021, 1061; §§ 679.1021, 1041(1)(d), 1051, 1053, and 1054. A CER must be a “record,” § 671.201(34), and be retrievable in a perceivable form (e.g., an identifiable digital asset, debtor, lender data or account), § 669.105(1)(b). The record must be “electronic,” § 671.201(17). The electronic record must be “controllable,” § 669.105. A NFT can be a CER, if it meets the definition of a CER, and since NFTs are often tethered to other assets, the transfer of the NFT also transfers an interest in the other asset.

⁵ Art. 12 Comments for Article 8 state: “If the parties agree to treat a digital asset as a financial asset under Article 8 and the digital asset is in fact held in a securities account for an entitlement holder, the rules applicable to controllable electronic records under Article 12 would not apply to the entitlement holder’s security entitlement related to the financial asset. If the financial asset itself is a controllable electronic record, however, then the rules in Article 12 could apply to the securities intermediary’s rights with respect to the controllable electronic record if the intermediary holds the asset directly.” UCC section 8-102(9), Comment 18. Comments following the definition of “uncertified security,” section 8-102(9), provide examples in which CERs may play a role in Article 8 transactions.

⁶ In addition to being “controllable”, these controllable accounts and controllable payment intangibles must also have a provision that the “debtor undertakes to pay the person that has control.” §§ 679.1021(cc) and (dd). This feature is discussed later.

⁷ *Id.*

However, other law may apply to the substantial use of the NFT, § 669.104(3). See § 669.105(1)(a)(1) requiring that the person having control of a CER must have substantially all the benefit of the CER.

Controllable Accounts and Controllable Payment Intangibles:^{8,9} Certain CERs are subsets of payment intangibles and accounts, § 679.1021. A controllable payment intangible, or a controllable account, is an “account,” § 679.1021(1)(b), or a “payment intangible,” § 679.1021(1)(mmm), that is: (a) evidenced by a CER, §§ 679.1021(1)(dd) and (cc); and (b) requires that the debtor is obligated “to pay the person that has control” of the CER that evidences the controllable account or controllable payment intangible, §§ 679.1021(1)(dd) and (cc). If the payment intangible or account does not have this pay person in control feature (the so-called “opt-out” provision in Art. 12 and amended Art. 9, F.S. § 679), the payment/account intangible is not a controllable payment intangible or a controllable account. A security interest in a CER, a controllable account, or a controllable payment intangible can be perfected by either a filing, § 679.3121(1), or the secured party obtaining “control” of the CER, § 679.3141(1). However, a security interest in a CER, controllable account, or controllable payment intangible perfected by “control” has priority over a security interest in the CER, controllable account, or controllable payment intangible perfected only by filing (or by another method other than control), § 679.3251. This is the non-temporal, super priority security interest in the § 669.^{10, 11}

Control Defined. “Control” means that a person has each of the following powers:¹² (a) the power to avail itself of “substantially” all of the “benefits” of the electronic record, (b) the “exclusive” power (as further defined below), to prevent others from enjoying the benefits of the electronic record, and (c) the power readily to identify itself as having these powers by name,

⁸ Controllable accounts and controllable payment accounts are discussed in more detail in the later section, Perfection of Security Interests: CERs, Controllable Accounts, and Controllable Payment Intangibles.

⁹ **Florida’s new Judgment Lien Improvement Act** amended Fla. Stat. 55.061 to provide that a judgment lien attaches to the judgment debtor’s “payment intangibles and accounts.” § 55.202(2)(a). Judgment liens on personal property are recorded with Florida’s Division of Corporations. §§ 55.201 and 202. The Act “makes it clear that a judgment lien certificate does not prime the existing rights of prior perfected secured parties under art. 9.” M. Wolfson, “Florida’s New Judgment Lien Improvement Act,” Fla Bar J., 24, 27 (Nov. 2023) (citing §55.202(2)(a)(1.)). One solution to conform Art. 12 with the amended Judgment Liens Act is to exclude controllable payment intangibles and controllable accounts because CERs for such intangibles and accounts require the debtor to pay the person who has control. §§ 679.1021(1)(dd) and (cc). Such an amendment to the Act, excluding controllable payment intangibles and controllable accounts, evidenced by a CER, §§ 679.1021(1)(dd) and (cc), is similar to the Act’s exclusion of “money, negotiable instruments, and mortgages.” § 55.202(2). A security interest in a CER, a controllable payment intangible, or a controllable account can be perfected by the filing of a financing statement under the Art. 12 amendments, § 679.3121(1), or by control of the CER or an acknowledgement of control, § 679.3141(1).

¹⁰ Several examples describing perfecting a security interest on digital assets with CERs are provided in “Explaining the 2022 UCC Amendments through Illustrations,” The Transactional Lawyer, S. Sepinuck, vol. 12, Oct. 2022.

¹¹ An example of a post-transitional period, non-temporal event is: SP-1 lends to Debtor, (i) obtains a security interest in Debtor’s accounts, payment intangibles, and general intangibles, and (ii) perfects the security interest by the filing of a financing statement. SP-2 later lends to Debtor, obtains a security interest in a CER in which is functionally an electronic promissory note payable to the person in control of the CER, and files a financing statement to perfect its security interest. SP-1’s security interest has priority under the first to file or perfect priority rule of Article 9. If SP-2 obtains control of the CER, SP-2’s security interest in the electronic promissory note is senior to SP-1’s security interest in the electronic promissory note. In this example, the CER’s security interest is non-temporal.

¹² The use of the word “power” is distinguished from “right.” See UCC § 12-105, Comment 2.

office, account number, or otherwise, § 669.105(1)(a)(1). This identification may be on or in the CER, or digital asset or be “logically associated” via a program on the platform or the wallet permitting access to the CER or asset, § 669.105(1). “The goal is to embrace [CER] records and systems that are connected to a particular electronic record in such a manner that the information contained in or the functions performed by those ‘attached’ or ‘associated’ records are appropriately and reasonably attributable to and, identifiable as connected with, the electronic record itself.”¹³

Exclusive Defined. “Exclusive” may allow more than one person to have the relevant power, for example, when the asset is subject to multi-signature (multi-sig) controls, § 669.105(1) and (2). A power is still exclusive even if power is “shared” with others, except in stated circumstances. New § 669.105(3) establishes when the power is not “shared” and therefore is *not exclusive*. There is a statutory presumption of exclusivity, § 669.105(4), because of the difficulty of “proving the negative.” A person may have control through another person who acknowledges such control, § 669.105(5) and § 679.1053 (controllable accounts and controllable payment intangibles by reference to § 669.105(5)).

Take Free Rule and Qualified Purchasers (QP). Art. 12 applies to outright transfers of and security interests in CERs, controllable accounts, and controllable payment intangibles. Art. 12 provides many of the characteristics of negotiability for these types of assets.¹⁴ A QP, defined at § 669.102(1)(b), is similar to a bona fide purchaser, and acquires all rights in the CER that the transferor had or had power to transfer, § 669.104(3), and takes the asset free of any property claims, § 669.104(4) – (7). A QP is a person who: (a) acquires a CER in a transaction that constitutes a “purchase,” § 671.201(32); (b) has control of the CER; (c) gives value; (d) acts in good faith; and (e) does not have notice of a claim of a property right in the CER, § 669.102(1)(b) (QP defined). See also § 671.201(20) (good faith); and § 671.201(25) (notice).

Obtaining Control. A person obtains control of a controllable account or a controllable payment intangible by obtaining control of the CER that evidences the controllable account or controllable payment intangible. Correspondingly, a person will be a QP with respect to a controllable account or controllable payment intangible only if it is a QP with respect to the CER that represents the controllable account or controllable payment intangible.¹⁵

Choice of Law – Governing Law - Perfection. The choice-of-law rules for Art. 12, § 669.107, are relatively straightforward and are set forth in the statute. The same choice-of-law rule as for security interests in other property generally applies to the perfection and priority of a security interest in a CER.

Revisions to Secured Transactions, § 679

Attachment, § 679.2031. There are very few changes that affect attachment of a security interest in a CER, a controllable account, or a controllable payment intangible. The assets, subject to Art. 9 and affected by the Art. 12 amendments, fall within the following types of

¹³ UCC 12-105, comment 2.

¹⁴ See generally, UCC Article 12, Prefatory Note. Article 12 rules make CERs negotiable, in the sense that a QP acting in good faith for value could take a CER free of third-party claims of a property interest in the CER. To receive these benefits, a person must have control of the CER.

¹⁵ UCC § 12-104(a) and Comment 2. “Applicability of Section to Controllable Account and Controllable Payment Intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.”

collateral: (a) a CER is a “general intangible,” 679.1021(1)(ss); (b) a controllable account is an “account,” § 679.1021(1)(cc); and (c) a controllable payment intangible is a “payment intangible,” 679.1021(1)(mmm). Thus, a collateral description for a CER, a controllable account, or a controllable payment intangible will not need to be changed in documents.¹⁶

Perfection of Security Interests: CERs, Controllable Accounts, and Controllable Payment Intangibles. A security interest in a CER, a controllable payment intangible, or a controllable account can be perfected by the filing of a financing statement, § 679.3121(1), or by control of the CER or an acknowledgement of control, § 679.3141(1). The controllable payment intangible or controllable account as a CER must provide that the debtor is obligated “to pay the person that has control,” §§ 679.1021(1)(dd) and (cc). A sale of a controllable payment intangible, as with any payment intangible, is automatically perfected, § 679.3091(3). A sale of a CER (as a “general intangible”) is *not* automatically perfected. Amended § 679 incorporates the Art. 12 definition of “control” for CERs, controllable accounts, and controllable payment intangibles. See definitions §§ 679.1021(1)(cc) and (dd) referring to control in Art. 12, § 669.105. As discussed below, a security interest in “money” (amended and defined at § 679.1021(fff) as not being “subject[] to control”), other than electronic money (defined at § 679.1021(hh)), cannot be perfected by the filing of a financing statement, § 679.3121(2)(c). Security interests in CERs, controllable accounts, and controllable payment intangibles can be perfected by filing, § 679.3121(1), but super priority is established by control.

Priority of a Security Interests in CERs, Controllable Accounts, and Controllable Payment Intangibles. A security interest perfected by “control” of a CER, and any controllable account or controllable payment intangible evidenced by the CER, will have priority over a security interest not perfected by control, § 679.3251. This is the non-temporal, super-priority perfection function of the Art. 12 amendments.¹⁷ Unlike the QP provisions of § 669.102(1)(b), the amended Art. 9, § 679.331, priority does not require that the secured party not have notice of someone else’s property claim to the collateral.

Choice of Law for CERs. The choice-of-law rule, as applied to CERs, controllable accounts, and controllable payment intangibles for matters covered by Art. 12, also applies to the perfection and priority of a security interest in a CER, § 679.3063(1), except for the perfection of a security interest in a CER by the filing of a financing statement, which is governed by the existing rule applying the “location” of the debtor, § 679.3063(2). Even for a security interest in a CER perfected by the filing of a financing statement, the priority of the security interest is governed by the CER’s jurisdiction, rather than location of the debtor, § 679.3063(1).

¹⁶ It would be good practice for a buyer or secured party obtaining an interest in a controllable account or controllable payment intangible to also describe and obtain an interest in the CER that evidences the controllable account or controllable payment intangible. § 669.104(5) and (6), Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible. Once the secured party obtains control of the CER, there is no need to change collateral descriptions in security agreements or financing statements because Art. 12 amendments are designed to preserve the availability of existing transaction patterns. See “Proposed 2022 Amendments to the Uniform Commercial Code: Digital Assets,” E. Smith, et al., ABA, Business Law Today, March 25, 2022, at <https://businesslawtoday.org/2022/03/proposed-2022-amendments-uniform-commercial-code-digital-assets/>.

¹⁷ See examples in “Explaining the 2022 UCC Amendments through Illustrations,” Transactional Lawyer, S. Sepinuck, vol. 12, Oct. 2022.

Revisions to § 679 - Money

General Meaning of “money.” The definition of “money” is amended, Art. 1, § 671.201(26), and money must be authorized by a government but does not include digital currencies issued by central banks.¹⁸ For the purposes of secured transactions under Art. 9, § 679, the definition of “money” is further limited as described in next section of this paper. The current UCC definition of money already accommodates money in intangible form. Under the new definition of money: (a) the item must be a “medium of exchange”; (b) the “medium of exchange” must have been adopted or authorized by a government; and (c) the term does not include an electronic record that “existed” before it was adopted or authorized by a government as a medium of exchange, § 671.201(26). As a result, *existing* types of digital assets (including bitcoin, which was adopted by El Salvador and the Central African Republic as legal tender) are not “money” for UCC purposes because they existed before any government adopted the cryptocurrency as legal tender or money. Regardless, bitcoin and other cryptocurrencies can still be a CER.¹⁹

“Money” under § 679. The new definition of money in Art. 12, § 679.1021(fff), places limits on the Art. 1, § 671.201(26), definition of money for purposes of § Art. 9, § 679. Money “has the meaning in § 671.201, but does not include a deposit account or money in an electronic form that cannot be subjected to control under § 679.1052,” § 679.1021(fff). Hence, (a) in connection with money in a deposit account for purposes of § 679, such money will be a “deposit account;” and (b) an electronic record that would be “money” under § 671.201(26) will not be “money” under Art. 9, § 679.1021(fff), if it is not “controllable,” per § 679.1052. “Electronic money,” defined in § 679.1021(hh), that is controllable under § 679.1052, is subject to the same control features as applied to CERs in § 669.105. As described below, money in electronic form that is not controllable will not be subject to the perfection procedures for tangible money (defined at § 679.1021(1)(cccc)) and “electronic money,” § 679.1021(hh). Instead, money in electronic form that is not controllable will be a “general intangible,” § 679.1031(ss), as amended.

Perfection of Security Interest in Money. A security interest in tangible money is perfected only by possession of the money, which continues the current rule, § 679.3121(2)(c). A security interest in “electronic money” can be perfected *only* by control, §§ 679.3121(2)(d) and 679.3141.²⁰ There is no special choice-of-law rule for the perfection and priority of a security interest in electronic money, so the default rule of the debtor’s “location” applies (unless preempted by federal law), § 679.3011(1).

Priority of Security Interest in Money. The “take free” rules for transferees of “money” who are not in collusion with debtor are revised to apply to “electronic money” in a manner similar to their application to tangible money, § 679.332(1)(tangible money) and § 679.332

¹⁸ The Central Bank Digital Currency Act (the “CBDC Act”), enacted July 2023, added a definition of central bank digital currency, § 671.201(10) and excluded, as money subject to the UCC, all central bank digital currencies issued by central banks are excluded from the definition of money under the UCC, § 671.201(25). TASK FORCE NOTE – these subsections to be incremented by 1 unit due to added CBDC definition at § 671.201(10).

¹⁹ An existing cryptocurrency can be a CER if it is configured as a CER under § 669. Cryptocurrency, without the Art. 12 control features, is “money” under § 671.201(26).

²⁰ Control is defined in a manner similar to the definition for control of a CER, including a presumption of exclusivity, the meaning of sharing, and holding control through another person.

(3)(electronic money). The effect of this is that a security interest in electronic money that is perfected by control has priority over a security interest that is not perfected by control because (i) the electronic money is subject to control, § 679.1052, and (ii) electronic record must readily identify the person or persons in control, § 669.105(1)(b), or be logically associated with a system having such identifying data.

Revisions to § 679 – Chattel Paper

Chattel Paper Defined. The term “chattel paper” itself has been modified, § 679.1021(1), to refer to the relevant “right to payment” and not to the record that evidences the right to payment. As result, the relevant record “evidences” the right to payment rather than being itself “chattel paper.” The terms “tangible chattel paper” and “electronic chattel paper” have been eliminated and have been replaced by references in other sections of the UCC to a “tangible copy of the record evidencing the chattel paper” and an “electronic copy of the record evidencing the chattel paper.” For tangible copy, see § 671.201(15) (delivery); § 671.3062 (governing law perfection and priority); § 679.3152 (possession and control); and § 679.3171 (take free); for electronic copy see § 679.1051 (control (similar to § 669.105)); § 679.2081 (duties of secured party); § 679.3051 (perfection and priority); § 679.3062 (law); § 679.3152 (possession); § 679.3171 (take free), *inter alia*.

Further Modifications. The definition of “chattel paper” has also been modified for hybrid transactions which are transaction that include both the sale or lease of goods and other aspects, such as the sale of services or the license of intellectual property, § 679.1021(1)(2.). In a hybrid transaction, the term “chattel paper” will apply to a lease of goods only if the “predominant” purpose of the lease transaction relates to the possession and use of the goods.

Perfection of Security Interest in Chattel Paper by Control. An additional method for perfection of a security interest in chattel paper in electronic form has been added, § 679.3101(2)(h)(filing of a financing statement is not necessary).²¹ The new method has a definition, sharing rules, a presumption of exclusivity, and provision for control through another person comparable to the meaning of control for a CER in § 669.105. If the relevant right to payment that constitutes chattel paper is evidenced by both a tangible copy and an electronic copy, the secured party can perfect by possession and control by having possession of each authoritative tangible copy and control of each authoritative electronic copy, § 679.3152. That section provides “A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the 2482 account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.” *Id.*

Perfection of Security Interest by Third Party Control. Provisions have been added to confirm that a secured party can perfect a security interest in chattel paper by control through a third party in control if the third party “acknowledges that it has control of behalf of” the secured party, § 679.1051(7), similar to Art. 12, § 669.105(5). In providing examples of CERs perfecting

²¹ The Art. 12 UCC amendments preserve the existing method of perfecting a security interest in the electronic record evidencing chattel paper. UCC § 9-105(b), § 679.1051(2). Comment 4 to amended UCC § 9-105(b), § 679.1051(2), states “Subsection (b) would not be applicable when the relevant record is maintained on a blockchain or another distributed ledger” because of the “single authoritative copy” requirement in § 679.1051(2)(a).

security interests, commentators often refer to acknowledgement by the system or platform holding the CER.²²

Revisions to Definitions in § 671

“Conspicuous” Updated. The current definition of conspicuous has statutory examples of what satisfies the requirements of the definition (e.g., “ALL CAPS”). The revised UCC definition has dropped the statutory examples and instead has a “totality of the circumstances” factors test, § 671.201(11).²³ The word “signed”²⁴ has been revised to include electronic signatures, § 671.201(42).

Transition Rules

General. The general rule is that the UCC amendments will have a certain effective date, such as July 1, 2025. As a result, the choice-of-law rules (discussed above) may be important to determine which state’s transition rules apply.

Established Priorities. The key exception to the transition rule on the effective date is that any pre-effective date priority will stay in place for two (2) years following the statute’s effective date, § 669.502(1)(a) (the Art. 12 “adjustment date”). See §§ 669.702 through 669.706 for further details. After the adjustment date, the new priority rules will apply, even to transactions completed before the effective date. Thus, as shown in the examples below, a secured party with pre-effective date “control” can jump ahead of a secured party that before the effective date had perfected only by the filing of a financing statement (a super priority perfection). The goal is to have the adjustment date be the same in a critical mass of states.

Example 1: *Before* the effective date, SP 1 perfects a security interest in the debtor’s accounts and general intangibles by filing a financing statement, which indicates the collateral is “accounts” and “general intangibles”. The accounts and general intangibles are evidenced by what would be a CER if the UCC amendments were in effect. *Before* the effective date and *after* SP 1 files its financing statement, SP 2 perfects in the same collateral in the same manner. SP 2 *also* takes actions that would give it control of the CER that evidences the controllable accounts and controllable payment intangibles if the new law were in effect. The “control” acts do not (yet) perfect the security interest because the new law is not yet in effect.

Example 1 (modified): On the *effective* date, SP 2 has “control” of the collateral and is perfected by control (as well as by the filing of a financing statement). Although under the amendments SP 2’s perfection by control would have priority over SP 1’s security interest (perfected only by the filing of a financing statement), because *before* the effective date SP 1 perfected only by filing a financing statement (the only available method at that time), SP 2 is still junior to SP 1 because their relative priority was established before the effective date.

²² Several examples describing perfecting a security interest in digital assets with CERs is provided in “Explaining the 2022 UCC Amendments through Illustrations,” S. Sepinuck, 12 Transactional Lawyer 1, 2 (Oct. 2022).

²³ Statutory examples are mentioned in the comments for UCC § 1-201(b)(10).

²⁴ The word “authenticate” has been replaced by “signed.” See, e.g., UCC § 9-203(b)(3)(A); § 679.2031(2)(c). Also, “record” replaces “writing” in some instances in reference to electronic records. See, e.g., UCC § 1-201(b)(36), § 671.201(39) (definition of “send”). Some instances of “writing” remain. See, e.g., UCC § 9-102(a)(47), § 679.1021(1)(uu) (definition of “instrument”). A writing signed electronically will ordinarily be sufficiently signed (in a non-UCC sense) under UETA or E-SIGN to be effective as a contract, but will not be a “signed writing” where required by the amended UCC. See UCC § 1-201, Comment 37 (“The definition of ‘signed’ adopted in the 2022 Amendment is broad – it encompasses the authentication or adoption of all records, not just writings.”).

Example 1 (further modified): On the *adjustment* date, SP 2 will then obtain priority under the new rules because SP 2 has “control” under the new rules.

Example 2: *Before* the effective date, SP 1 perfects a security interest in a CER by filing a financing statement. *After* the effective date, SP 2 perfects a security interest in the same CER by obtaining control of the CER. SP 2 immediately has priority under the amendments because the priorities between the two secured parties were not established before the effective date.

Fla. Bar UCC Article 12 Joint Task Force
BLS’ Blockchain and Digital Assets Committee and
BLS’ UCC/Bankruptcy Committee
Robert Kain, Chair (rkain@conceptlaw.com)
White Paper Ver_20231230a

Acknowledgments: The Joint Task Force’s chairs, Robert Kain, Michael Dunn and Jaime Leggett, would like to recognize significant contributors to this white paper: Josh Lida, BLS fellow Adam Gilbert, and BLS scholars Zachary Hunt, Devin Gobin, Chris Cabrera, and Jen Shiner, Diane Wells (revisions to the Art 12 Florida Bill Draft May 2023), and notable invaluable contributions by Drew Hinkes, for his work as an Advisor for the Uniform Law Commission, Prof. Zachary Catanzaro, for his academic guidance, and the Honorable Judge Mindy Mora, US Bankr. Ct, SDFL.