
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 Service, and a number of states continue to have significant interest in the regulation of cryptocurrency and digital assets. Although multiple bills have been introduced and hearings have been conducted in Congress, nothing has been enacted to date.⁵ In 2022, as a response to this uncertainty, as well as the impending threat of larger-scale disputes, the Uniform Law Commission (“ULC”) issued proposed amendments to the Uniform Commercial Code (“UCC”), the most notable of which was Article 12 titled “Controllable Electronic Records,” a legal framework addressing electronic commerce.⁶

This article will provide an overview of Article 12 and its potential impact on the cryptocurrency and digital assets industry. Additionally, this article will address recent legal and enforcement trends by regulators in the cryptocurrency space, as well as state and federal

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.*

⁵ *Joint Financial Services-Agriculture Subcommittee Hearing Entitled: The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets*, FINANCIAL SERVICES COMMITTEE (May 10, 2023, 9:30 AM), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408754>; Eleanor Mueller, *House GOP plots crypto overhaul*, POLITICO (March 8, 2023, 1:56 PM), <https://www.politico.com/news/2023/03/08/house-gop-crypto-overhaul-00086079>.

⁶ U.C.C. Art. 12 (Prefatory Note).

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legislative efforts to address the legal uncertainty, which continues to cast a cloud over the cryptocurrency and digital assets industry.

OVERVIEW OF UCC ARTICLE 12, CONTROLLABLE ELECTRONIC RECORDS

Article 12 was created to address market concerns about the lack of rules regarding transactions involving digital assets, especially concerns regarding the negotiability for virtual (non-fiat)⁷ currencies, electronic payment rights, secured lending against virtual (non-fiat) currencies, and security interests in electronic (fiat) money, such as central bank digital currencies.⁸ While Article 12 creates a legal framework for existing DLT, it is intentionally general in an attempt to encompass a wider-ranging category of electronic, intangible assets — even those that have yet to be created or imagined.⁹ To do this, Article 12 creates the term “controllable electronic record” (“CER”) to which its framework applies.¹⁰

UCC §1-201 defines a record as “information . . . that is stored in an electronic or other medium and is retrievable in perceivable form.”¹¹ The term “electronic” is defined as “. . . technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”¹² Combined, the term “electronic record” is necessarily expansive, and includes things like e-mails, photos, information stored on social media platforms, and all types of data stored in an electronic medium.¹³ However, most of these electronic records would not be considered a “controllable electronic

record” because they must meet the definition of control under UCC §12-105.

Control of a CER is created when the electronic record meets two elements. First, the electronic record must provide the holder certain powers. The holder must have the power to realize substantially all of the benefits of the electronic record, while also having the exclusive power to prevent others from realizing the same benefit. The holder must also have the exclusive power to transfer control of the electronic record or cause another to obtain control of a different CER due to the transfer of the electronic record.¹⁴ Second, the electronic record must enable the holder to “identify itself in any way, including by name, identifying number, cryptographic key, office, or account number,” as retaining the powers provided to holders.¹⁵ Generally, a CER is only a record, not a right evidenced by records.¹⁶ However, Article 12 provides an exception to this rule, specifically for “controllable accounts” and “controllable payment intangibles.”¹⁷ These terms represent a CER that provides rights to payment.¹⁸

Most notably, Article 12 provides rights for qualifying purchasers of CERs, controllable accounts, and controllable payment intangibles. The term “qualifying purchaser,” and the conditions necessary to become one, are drawn from Article 3. To become a qualifying purchaser under Article 12, one must purchase the CER “for value, in good faith, and without notice of a claim of a property right in the [CER].”¹⁹

A qualifying purchaser obtains the rights in the CER free of claim of conflicting property rights — otherwise known as the “Take-Free Rule.”²⁰ The take-free rule makes CERs highly negotiable and creates a “play at your own risk” type of property right. For example, if a hacker steals a CER and sells it to an individual who meets the qualifying purchaser requirements, the individual retains all rights to the CER even though the hacker would have no right to transfer the stolen CER under external property law.²¹ To avoid falling victim to

⁷ Fiat simply means decree, and fiat money is a currency that is decreed and backed by the government that issues it. *See, e.g., What is Fiat Money?*, MONEY.COM (Feb. 13, 2023), <https://money.com/what-is-fiat-money/>.

⁸ *A Summary of the 2022 Amendments to the Uniform Commercial Code*, Uniform Law Commission (July 21, 2022), https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/2a18c952-5db5-ca16-2274-8c7531990903_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1690415567&Signature=9sHw9r9gnzf%2F73gjMJhZp00J%2FQ%3D.

⁹ U.C.C. Art. 12 (Prefatory Note).

¹⁰ *Id.*

¹¹ U.C.C. § 1-201.

¹² *Id.*

¹³ U.C.C. Art. 12 (Comment).

¹⁴ U.C.C. § 12-105(a)(1).

¹⁵ U.C.C. § 12-105(a)(2).

¹⁶ Article 12 (Note).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.C.C. § 12-102.

²⁰ U.C.C. § 12-104(e).

²¹ U.C.C. § 12-104 (Comment).

hacking without any recourse, it is critical for investors and holders of CER to properly safeguard personal and sensitive information, including system login information.

IS CRYPTOCURRENCY ELECTRONIC MONEY?

In regard to conflicting language within the UCC, Article 9 takes precedent over Article 12.²² One significant distinction is the meaning of “electronic money.” Article 9 defines the term “electronic money” as “money in electronic form.”²³ Article 12, on the other hand, excludes “electronic money” from its definition of a CER.²⁴ The UCC defines “money” as “a medium of exchange that is currently authorized or adopted by a foreign government.”²⁵ The UCC amendments further explain that the term “money” does not cover “an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.”²⁶

These changes are significant because they carve out existing cryptocurrency from the definition of “money,” effectively leaving the applicable law to Article 12. For example, a cryptocurrency like Bitcoin cannot be classified as “electronic money” because it existed and was used as a medium of exchange before any government adopted it.²⁷

El Salvador’s adoption of Bitcoin as legal tender in 2021 provides a perfect example of these amendments in action.²⁸ Prior to the amendments, there could have

been an argument that Bitcoin became “money,” as defined by the UCC, because it became a “medium of exchange . . . adopted by a foreign government.”²⁹ The 2022 changes to the definition of “money” rectify this scenario and ensure that a cryptocurrency like Bitcoin is governed by Article 12.

Though cryptocurrencies like Bitcoin are carved out of the term “money,” a Central Bank Digital Currency (“CBDC”) would still be considered “money” because it would be created expressly for government adoption.³⁰ This is the basis of concern for some politicians who view CBDCs as a threat to personal and economic freedom.³¹ Governor Kristi Noem of South Dakota vetoed a bill that codified the 2022 UCC Amendments stating that “[b]y expressly excluding cryptocurrencies as money, it would become more difficult to use cryptocurrency,” and that by defining “money” as the amendments did, it “opens the door to the risk that the federal government could easily adopt a [CBDC], which then may become the only viable digital currency.”³²

WHO HAS JURISDICTION AND WHICH LAW GOVERNS?

Because CERs governed by Article 12 are solely intangible assets, there is a question of what jurisdiction’s laws apply in the event of a dispute.³³ By default, the local law of a CER’s jurisdiction governs matters involving ownership and transfer rights of a CER).³⁴ However, there are multiple steps to determine the jurisdiction of a CER.

²² U.C.C. § 12-103.

²³ U.C.C. § 9-102.

²⁴ U.C.C. § 12-102; 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.>

²⁵ U.C.C. § 1-102.

²⁶ *Id.*

²⁷ U.C.C. § 1-102 (Comment 12A).

²⁸ Laurent Belsie, *El Salvador’s Experiment with Bitcoin as Legal Tender*, NATIONAL BUREAU OF ECONOMIC RESEARCH DIGEST, Vol. 7 (July 2022), <https://www.nber.org/digest/202207/el-salvadors-experiment-bitcoin-legal-tender>.

²⁹ U.C.C. § 1-102.

³⁰ *Uniform Commercial Code Amendments (2022)*, UNIFORM LAW COMMISSION AND AMERICAN LAW INSTITUTE, at P. 109, Summary of 2022 Art. 9 Revisions (June 1, 2023), https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/d5bcf850-366f-b4b5-e7d6-6749ba2382c6_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1690862443&Signature=b8ke0l40s%2FHottQL3wMdXfChkmM%3D.

³¹ Carla L. Reyes and Andrea Tosato, *Crypto’s Future Is at Stake in a Dispute Over Commercial Law’s Definition of Money*, BARRON’S (April 7, 2023 4:00 AM), <https://www.barrons.com/articles/crypto-commercial-laws-definition-of-money-5fbd8fe4>.

³² *Gov. Noem VETOES Attack on Economic Freedom*, NEWS.SD.GOV (March 10, 2023), https://news.sd.gov/news?id=news_kb_article_view&sysparm_article=KB0039891&sys_kb_id=1d1a38781b21a15031b1ebdbac4bcbbf&spa=1.

³³ UCC § 12-106.

³⁴ *Id.*

The UCC uses a “waterfall” approach for determining jurisdiction — meaning that there is a list of conditions, and the earliest condition that is met is how the jurisdiction is determined.³⁵ The first met of the following determines jurisdiction:

(1) express jurisdiction provided for UCC matters in the CER, or a record attached or logically associated with the CER;

(2) express jurisdiction provided for UCC matters in the rules of the system in which the CER is recorded;

(3) express jurisdiction listed in the CER, or a record attached or logically associated with the CER;

(4) express jurisdiction listed in the rules of the system in which the CER is recorded;

(5) if none of the previous are met, the District of Columbia is the jurisdiction. In the event that the District of Columbia has not adopted Article 12 and none of the prior conditions are met, the District of Columbia is still the jurisdiction as if they have adopted Article 12.³⁶

Importantly, Article 12 is not a regulatory statute. Any laws regulating “banking, securities, commodities, money transmission, and taxation” exist independently of whether an asset is considered a CER under Article 12.³⁷ Further, transactions under Article 12 are subject to differing, though applicable rules of law for consumers including “any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit” and “any consumer-protection statute or regulation.”³⁸

HAVE ANY STATES ADOPTED UCC ARTICLE 12?

As of June 29, 2023, 27 states and the District of Columbia have either introduced or enacted bills that would codify the 2022 UCC Amendments, including Article 12.³⁹ States that have enacted the 2022 UCC

Amendments include Alabama, Colorado, Hawaii, Indiana, Nevada, New Mexico, North Dakota, and Washington.⁴⁰ The Amendments have been introduced in Arizona, Arkansas, California, Delaware, the District of Columbia, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New York, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, and West Virginia.⁴¹ Legislation to enact the amendments failed in three states: Montana (the bill died in process), Arkansas (bill withdrawn by the author), and South Dakota (bill vetoed by the Governor).⁴² Twenty-three states, Puerto Rico, and the US Virgin Islands have yet to introduce a bill codifying the Amendments.⁴³

LEGAL AND ENFORCEMENT TRENDS IN CRYPTOCURRENCY

Under Chairman Gary Gensler, the SEC has made it clear that it would embrace a “regulation by enforcement” strategy to set boundaries for cryptocurrency and digital assets.⁴⁴ This method has been criticized as lacking specificity, and Republican SEC Commissioners have stressed the need for “bright line” rules to provide guidance for emerging technology in digital finance.⁴⁵ The SEC has brought over 100 enforcement actions alleging that certain cryptocurrencies are securities, with most resulting in settlement.⁴⁶ The few that have made it to court have typically resulted in courts agreeing with the SEC’s stance that the cryptocurrencies at issue were securities.⁴⁷

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Richard Satran, *U.S. SEC embraces “regulation by enforcement” as securities industry morphs beyond rulebooks*, REUTERS (Nov. 12, 2021 at 8:44 PM), <https://www.reuters.com/article/bc-finreg-sec-regulation-by-enforcement/u-s-sec-embraces-regulation-by-enforcement-as-securities-industry-morphs-beyond-rulebooks-idUSKBN2HX1OR>.

⁴⁵ *Id.*

⁴⁶ Jody Godoy, *Ripple Labs notches landmark win in SEC case over XRP cryptocurrency*, REUTERS (July 13, 2023 at 4:26 PM), <https://www.reuters.com/legal/us-judge-says-sec-lawsuit-vs-ripple-labs-can-proceed-trial-some-claims-2023-07-13/>.

⁴⁷ *Id.*

³⁵ U.C.C. § 12-107 (Comment).

³⁶ U.C.C. § 12-107.

³⁷ U.C.C. Art. 12. Pref. Note 1.

³⁸ U.C.C. § 12-103(b).

³⁹ *2022 Amendments to UCC Enactment Map*, UNIFORM LAW COMMISSION (July 31, 2023 at 10:00 PM), <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac>.

In 2022, the SEC announced charges against Kim Kardashian for violating the federal securities anti-touting laws.⁴⁸ The law at issue requires any individual to disclose to the public when and how much they are paid to promote a security.⁴⁹ The SEC alleged that Kim Kardashian received \$250,000 to promote EMAX tokens, a cryptocurrency, on her Instagram without notifying the SEC.⁵⁰ Without admitting fault, Kim Kardashian settled the charges with a \$1.26 million payment for penalties, disgorgement, and interest.⁵¹ This charge was one of many brought against other celebrities for the same anti-touting violations, a clear message that the SEC is concerned about celebrities using their platforms to advertise cryptocurrency, even though the question regarding cryptocurrency's status as a security was still unresolved.⁵²

However, a recent holding in S.D.N.Y. has provided more clarity. The SEC's most notable use of "regulation by enforcement" began on December 22, 2020, when the SEC filed action against Ripple Labs Inc., as well as two of its executives, alleging that by selling their cryptocurrency, XRP, Ripple was committing an unregistered sale of securities.⁵³ The issue in *Ripple* revolved around whether cryptocurrency can be considered a security. Ultimately, the court held that the sale of XRP to the general public was not subject to securities laws or regulations, while sales to institutional investors were.⁵⁴

After the decision in *Ripple*, Congressman Ritchie Torres (D-NY) issued an open letter to Chairman Gensler critiquing the SEC's use of regulation by enforcement.⁵⁵ Congressman Torres noted that "[r]egulation by enforcement had a dreadful day in court," and critiqued the SEC's lack of "any clear guidance."⁵⁶ Further, Congressman Torres highlighted that the decision in *Ripple* "has made it crystal clear to the SEC that digital assets are not securities in the abstract and that [the SEC] lacks the legal authority to regulate digital assets untethered from an actual security offering."⁵⁷ Finally, Congressman Torres asked if the SEC, under Chairman Gensler's directive, "will reassess its regulatory assault" on cryptocurrencies and blockchain moving forward.⁵⁸ The implication of this case and the SEC's reaction will be tested soon because in June 2023 the SEC lodged numerous charges against two of the largest cryptocurrency platforms in the world, Binance Holdings Ltd.⁵⁹ and Coinbase, Inc.⁶⁰

CONGRESSIONAL EFFORTS TO RESOLVE REGULATORY UNCERTAINTY

In an effort to address the lack of a legal framework for digital assets and cryptocurrency, the Subcommittee on Digital Assets, Financial Technology and Inclusion was created in 2023, in the 118th Congress.⁶¹ The

⁴⁸ Press Release, *SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security*, U.S. SECURITIES AND EXCHANGE COMMISSION (Oct. 3, 2022), <https://www.sec.gov/news/press-release/2022-183>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Doina Chiacu, Manya Saini and John McCrack, *Kim Kardashian pays \$1.26 million fine for paid crypto ad, SEC says*, REUTERS (Oct. 3, 2022 at 1:03 PM), <https://www.reuters.com/markets/us/sec-charges-kim-kardashian-unlawfully-touting-crypto-security-statement-2022-10-03/>.

⁵³ Press Release, *SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering*, U.S. SECURITIES AND EXCHANGE COMMISSION (Dec. 22, 2020), <https://www.sec.gov/news/press-release/2020-338>.

⁵⁴ Jody Godoy, *Ripple Labs notches landmark win in SEC case over XRP cryptocurrency*, REUTERS (July 13, 2023 at 4:26 PM), <https://www.reuters.com/legal/us-judge-says-sec-lawsuit-vs-ripple-labs-can-proceed-trial-some-claims-2023-07-13/>.

⁵⁵ *Congressman Torres Tells SEC Chairman to End Crypto 'Crusade' After Ripple Ruling*, WESTLAW TODAY NEWSROOM (July 19, 2023), [https://today.westlaw.com/Document/I0d26753025d511eea4f0f2fb72a04c54/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true&OWSessionId=ffdaec2d5ca848fc9219aa77d9784137&skipAnonymous=true&bhcp=1](https://today.westlaw.com/Document/I0d26753025d511eea4f0f2fb72a04c54/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&OWSessionId=ffdaec2d5ca848fc9219aa77d9784137&skipAnonymous=true&bhcp=1).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Press Release, *SEC Files 13 Charges Against Binance Entities and Founder Changpeng Zhao*, U.S. SECURITIES AND EXCHANGE COMMISSION (June 5, 2023), <https://www.sec.gov/news/press-release/2023-101>.

⁶⁰ Press Release, *SEC Charges Coinbase for Operating as an Unregistered Securities Exchange, Broker, and Clearing Agency*, U.S. SECURITIES AND EXCHANGE COMMISSION (June 6, 2023), <https://www.sec.gov/news/press-release/2023-102>.

⁶¹ Press Releases, *McHenry Announces Financial Services Subcommittee Chairs and Jurisdiction for 118th Congress*, U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES COMMITTEE (January 12, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408500>.

subcommittee’s jurisdiction includes “[p]roviding clear rules of the road among federal regulators for the digital asset ecosystem,” “[d]eveloping policies that promote financial technology to underserved communities,” and “[i]dentifying best practices and policies that continue to strengthen diversity and inclusion in the digital asset ecosystem.”⁶² Representative French Hill (R-AR), who serves as the Chairman of the subcommittee, co-sponsored H.R. 4763, the Financial Innovation and Technology for the 21st Century Act, on July 20, 2023.⁶³ The bill is designed to provide a functional regulatory framework in the digital asset space, with shared oversight by the SEC and CFTC.⁶⁴ The co-sponsors argue that the bill helps rectify the “regulation by enforcement” strategy employed by Chairman Gensler, as well as the regulatory uncertainty for actors in the digital asset space.⁶⁵ It has been referred to the House Committee on Financial Services and Committee on Agriculture.⁶⁶ If the bill becomes law, it will be the first major step towards regulatory clarity applied to cryptocurrency and digital assets and could shape the future of the cryptocurrency industry.

LOOKING AHEAD: TECHNOLOGICAL DEVELOPMENTS WILL CONTINUE TO IMPACT THE DIGITAL ASSET INDUSTRY

As more money and technological development enters the digital asset market, cryptocurrency continues to be at the epicenter of innovation. One of the most notable trends is the advent of Web3, the potential successor to modern internet that functions on blockchain, is decentralized, and provides heightened

security online.⁶⁷ Between 2016 and 2022, around \$94 billion was invested into Web3, with the peak coming in the first quarter of 2022.⁶⁸ If Web3 continues to be developed and becomes adopted the same way Web2 was, it will fundamentally change the dynamic of today’s internet by creating a more individualized system where users have a stake in what happens to this new kind of internet service rather than allowing companies to collect data and determine how that data will be used.⁶⁹

However, this potential revolution of the internet is not without critiques. There is concern about the efficiency, and thus, the environmental impact of creating blocks in the chain.⁷⁰ Currently, proof of work cryptocurrencies, like Bitcoin, use a large amount of energy and technology waste — by some research, even as much annual e-waste as countries the size of the Netherlands.⁷¹ While different mining systems, like Ethereum’s new proof of stake, significantly reduce the time and energy needed to verify transactions, the market is constantly looking for ways to make cryptocurrency more sustainable.⁷² One example is Firechain, which is developing a new blockchain technology that promises instant finality and no-fee transactions.⁷³ If Firechain succeeds, it will reshape the

⁶² *Id.*

⁶³ Press Releases, *Committees Introduce Financial Innovation and Technology for the 21st Century Act*, U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES COMMITTEE (July 20, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408921>.

⁶⁴ H.R. 4763, 118th Cong. (2023).

⁶⁵ Press Releases, *Committees Introduce Financial Innovation and Technology for the 21st Century Act*, U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES COMMITTEE (July 20, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408921>.

⁶⁶ *H.R.4763 - Financial Innovation and Technology for the 21st Century Act*, CONGRESS.GOV (July 31, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/4763/committees>.

⁶⁷ Thomas Stackpole, *What is Web3*, HARVARD BUSINESS REVIEW (May 10, 2022), <https://hbr.org/2022/05/what-is-web3>.

⁶⁸ Frank Holmes, *Investing In Web3 Companies: Riding The Wave Of The Next Digital Revolution*, U.S. GLOBAL INVESTORS (June 26, 2023), <https://www.usfunds.com/resource/investing-in-web3-companies-riding-the-wave-of-the-next-digital-revolution/#:~:text=Investment%20in%20Web3%20Companies&text=Early%2Dstage%20investors%20poured%20around,time%20high%20of%20nearly%20%2469%2C000>.

⁶⁹ Thomas Stackpole, *What is Web3*, HARVARD BUSINESS REVIEW (May 10, 2022), <https://hbr.org/2022/05/what-is-web3>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *5 questions about the environmental impact of crypto-mining*, THOMSON REUTERS (March 10, 2022), <https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/5-questions-crypto-mining/#:~:text=Ultimately%2C%20proof%20of%20stake%20solves,a%20proof%20of%20stake%20process>.

⁷³ *Firechain Raises \$3 Million in Pre-Seed Funding to Accelerate Development of Its Innovative Blockchain Platform*, YAHOO! FINANCE (May 23, 2023), https://finance.yahoo.com/news/firechain-raises-3-million-pre-211500430.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAEW0l60X8129YhBIH1Wx57nql

blockchain landscape by creating a faster, more efficient, and scalable network, unlike existing cryptocurrencies.⁷⁴

Another concern has been the instability of cryptocurrency pricing, especially in the wake of FTX's collapse and Bitcoin's decrease in value. A new type of cryptocurrency is emerging as a solution: flatcoins.⁷⁵ A flatcoin is a token concept that would adjust its value over time based on the changes in inflation, and thus, conserve its purchasing power.⁷⁶ Coinbase has described this concept as a cryptocurrency that would be able to "maintain stability in purchasing power while also having resiliency from the economic uncertainty caused by the legacy financial system."⁷⁷ The creation and realization of flatcoins could dramatically alter both the success of and the public's perception of

cryptocurrency, potentially providing more confidence to wary investors.

The legal realm of blockchain and cryptocurrency is rapidly changing. While the private sector is increasingly raising capital and developing new uses for blockchain, numerous government actors are working to put reigns on what SEC Chairman Gensler has described as the "Wild West."⁷⁸ With agencies like the SEC attacking cryptocurrency through a "regulation by enforcement" strategy, state law developments like UCC Article 12, judicial decisions like in *Ripple*, and proposed laws at the federal level, the legal framework for cryptocurrency is complex and rapidly changing from numerous directions. As a result, it is crucially important to seek the advice of experienced legal counsel prior to investing or operating in the world of digital assets and cryptocurrency. ■

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vPIj9MoekJ2.

⁷⁴ *Id.*

⁷⁵ *Flatcoins: Inflation-Adjusted Stablecoins*, BLOCK SCIENCE (April 14, 2023), <https://medium.com/block-science/flatcoins-inflation-adjusted-stablecoins-2f2e220b263e>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Jody Godoy and Chris Prentice, *Crypto firms facing US SEC charges find hope in Ripple ruling, experts say*, REUTERS (July 17, 2023), <https://www.reuters.com/technology/crypto-firms-facing-us-sec-charges-find-hope-ripple-ruling-experts-say-2023-07-17/>.