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## Fintech Regulation in the Catawba Digital Economic Zone

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## Fintech Regulation in the Catawba Digital Economic Zone

Tom W. Bell\*

*The Catawba Digital Economic Zone (“CDEZ”) achieved a number of firsts when it launched in late 2022: the world’s first entirely virtual special jurisdiction devoted to financial services using technologies like blockchains, cryptocurrencies, digital assets, and artificial intelligence (fintech); the first time that a Native American tribe has claimed exclusive jurisdiction over a broad field of commerce; and the first special jurisdiction in the United States to offer its own civil laws and legal system. If all proceeds as planned, the Zone will soon also host the first Native American public bank in the United States. These firsts follow naturally from the CDEZ’s pioneering mission: to bring the rule of law to the fintech frontier. This paper, written by one of a team of coders hired to help build the zone’s legal framework, reviews the project’s recent progress. The CDEZ launched with a comprehensive Civil Ordinance and quickly added to it: an Administrative Procedure Regulation to regulate the issuance of new rules; a Digital Assets Regulation legally defining Blockchain, Non-Fungible Token, and other fintech entities; and a Resolution making the Uniform Law Institute’s newly published Uniform Commercial Code Article 12 for digital assets locally binding. The Zone Authority has begun rulemaking proceedings for regulations addressing distributed autonomous organizations, stablecoins, and banking and commercial services. These efforts show a strong start for the CDEZ, a Native American special jurisdiction that aims to become the first choice for fintech.*

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## INTRODUCTION

When it launched in late 2022, the Catawba Digital Economic Zone (“CDEZ”) achieved a number of notable firsts.<sup>1</sup> Other special jurisdictions predate it in serving the financial technology (a.k.a. fintech) sector.<sup>2</sup> The CDEZ is first to operate entirely online, though. Physically, it exists solely on computer servers located within the territory of the Catawba Indian Nation, which has reservation lands in North and South Carolina.<sup>3</sup> Other special jurisdictions with a fintech focus include offices, parking, and amenities of the sort demanded by flesh-and-blood entrepreneurs.<sup>4</sup> The CDEZ, because it hosts only legal persons, has no need for the real estate required by real people.

The CDEZ also represents a first in terms of an assertion of sovereignty. Other Native American tribes have of course set up

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<sup>1</sup> See Joseph McKinney, *Catawba Digital Economic Zone Now Incorporating Companies*, EIN PRESSWIRE (Nov. 16, 2022, 1:17 PM), [http://world.einnews.com/pr\\_news/601614281/catawba-digital-economic-zone-now-incorporating-companies](http://world.einnews.com/pr_news/601614281/catawba-digital-economic-zone-now-incorporating-companies) [<http://perma.cc/M4R3-ADAX>].

<sup>2</sup> For an exhaustive study of “fintech” culminating in the definition, “[f]intech is a new financial industry that applies technology to improve financial activities,” see Patrick Schueffel, *Taming the Beast: A Scientific Definition of Fintech*, 4 J. INNOVATION MGMT. 32, 45 (2016), [http://journals.ojs3.fe.up.pt/index.php/jim/article/view/2183-0606\\_004.004\\_0004/262](http://journals.ojs3.fe.up.pt/index.php/jim/article/view/2183-0606_004.004_0004/262) [<http://perma.cc/V7Y6-4G97>].

<sup>3</sup> See *About*, CATAWBA DIGIT. ECON. ZONE, <http://catawbadigital.zone/about/> [<http://perma.cc/8L5N-B6TL>] (last visited Mar. 3, 2023).

<sup>4</sup> See Tom W. Bell, *The Catawba Digital Economic Zone: A Native American SEZ*, 3 J. SPECIAL JURISDICTIONS 25, 26–27 (2022) (cataloging zones specializing in fintech).

casinos, firework stands, and tobacco stores on their reservations.<sup>5</sup> But no tribe in living memory has claimed exclusive jurisdiction over so broad a range of commerce as the Catawba have with their CDEZ. Setting aside the states themselves, never before has the United States hosted a special jurisdiction exercising such wide authority to regulate all commercial exchange within its borders.<sup>6</sup>

The CDEZ has even outpaced the states in some respects, confidently proclaiming itself “the first jurisdiction within the United States created for Fintech and Digital Asset growth.”<sup>7</sup> Other jurisdictions in the United States were created long ago to deal with a physical people interacting in a physical world, giving rise to problems as various as assault and battery, zoning violations, and the inadequate labeling of packaged foods. Though a few states have tried to attract fintech and digital commerce with special legislation, they remain distracted by other concerns and slowed down by legacy government processes. Being built from scratch and given a narrow focus has allowed the CDEZ to speed ahead of other jurisdictions in the United States.

Although its banking regulations remain in development, informed third parties report that the Zone will soon host the first Tribal Public Bank in the United States.<sup>8</sup> As such, it will join just two other government-owned banks, the Federal Reserve and the Public Bank of North Dakota.<sup>9</sup> In addition to enhancing Tribe members’ access to capital and economic opportunities, the Nation’s public bank will play a regulatory role, issuing banking charters to qualified financial institutions that want to do business in the CDEZ and overseeing their operation.<sup>10</sup>

These pioneering achievements of the CDEZ reflect its bold and innovative overarching goal: to bring the rule of law to financial businesses operating on the virtual frontier. It thus disavows any

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<sup>5</sup> See, e.g., *Foxwoods Resort Casino*, FOXWOODS RESORT CASINO, <http://www.foxwoods.com/> [<http://perma.cc/LH6E-QBR8>] (last visited Mar. 13, 2023) (casinos); Alyssa Kelly, *Firework Sales a Booming Reservation Business*, CHAR-KOOSTA NEWS (July 12, 2018), [http://www.charkoosta.com/news/firework-sales-a-booming-reservation-business/article\\_59a060a0-8527-11e8-a6bc-6f2c8e6a516d.html](http://www.charkoosta.com/news/firework-sales-a-booming-reservation-business/article_59a060a0-8527-11e8-a6bc-6f2c8e6a516d.html) [<http://perma.cc/ZY8C-7S5F>] (firework stands); *Ohosa Tobacco Shop*, RIVER ROCK CASINO, <http://www.riverrockcasino.com/visiting/ohosa-tobacco-shop/> [<http://perma.cc/4WX9-UMYK>] (last visited Mar. 13, 2023) (tobacco).

<sup>6</sup> See Bell, *supra* note 4, at 44.

<sup>7</sup> *Catawba Digital Economic Zone*, CATAWBA DIGIT. ECON. ZONE, <http://catawbadigital.zone/> [<http://perma.cc/N853-UW5J>] (last visited Dec. 7, 2022).

<sup>8</sup> W. Gregory Guedel & Philip H. Viles Jr., *Digital Economic Zones: A Program for Comprehensive Tribal Economic Sovereignty*, 57 TULSA L. REV. 591, 603 (2022).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 604.

intention to let greed or recklessness run rampant; to the contrary, those who register to do business in the Zone will have to go through know-your-customer and anti-money laundering (“KYC” and “AML,” respectively) checks in compliance with international and federal law and also satisfy the CDEZ’s own comprehensive regulations.<sup>11</sup> But the CDEZ does not want to tie up the industry in red tape, either. It instead promises “[a] commercial code created by builders and inventors, not special interests,” and explains that “CDEZ regulations are created and implemented with a focus on enabling innovation, not forbidding it.”<sup>12</sup> It has tasked itself with keeping up with the rapid pace of technological development, too, requiring its regulators “to meet every two weeks to quickly adapt regulation as market needs dictate.”<sup>13</sup>

How does the CDEZ plan to fulfill its goal of governing fintech rigorously, efficiently, and responsively? Through rules, published and proposed, that adapt existing standards to the Zone’s special needs. In this way, it aims to offer prospective customers “[w]orld-class laws optimized for digital service industries, finance, and digital assets that enhance your business success.”<sup>14</sup> Those CDEZ regulations provide the subject of this paper.

This Paper opens in Part I with a background about how governance in the Zone works. It then examines two kinds of CDEZ regulations: Those already adopted, covered in Part II; and those currently pending in the CDEZ’s notice-and-comment rulemaking procedures, covered in Part III. This Paper concludes that the CDEZ, while still a jurisdiction-in-the-making, has made a solid start toward regulating fintech carefully, comprehensively, and effectively.

## I. GOVERNANCE IN THE CDEZ

The Catawba Nation governs itself through the personal participation of the Tribe’s members in a General Council.<sup>15</sup> This qualifies the Catawba Nation as a *direct* or *pure democracy*, wherein the electorate sets public policies by popular vote, without

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<sup>11</sup> See *Become an eResident*, CATAWBA DIGIT. ECON. ZONE, <http://catawbadigital.zone/become-an-eresident/> [<http://perma.cc/VHX7-E4T2>] (last visited Dec. 7, 2022).

<sup>12</sup> *The Catawba Digital Economic Zone*, *supra* note 7..

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *General Council*, CATAWBA NATION, <http://www.catawba.com/general-council> [<http://perma.cc/FP4M-8BN3>] (last visited Dec. 6, 2022).

using elected representatives as proxies.<sup>16</sup> Through the General Council, the Nation passes ordinances, creates administrative bodies, and otherwise exercises its sovereign power.<sup>17</sup> It has created two such administrative bodies: an Executive Committee, which manages the Tribe's government and territory on a day-to-day basis,<sup>18</sup> and the Catawba Corporations, which manage the Tribe's economic interests.<sup>19</sup> Together, through means described next, these two bodies effectively control the Zone Authority, which in turn controls the CDEZ.

The General Council created the CDEZ on February 19, 2022, by passing the Zone Resolution<sup>20</sup> and Zone Civil Ordinance.<sup>21</sup> These have the combined effect of establishing a Zone Authority—an unincorporated governmental instrumentality of the Catawba Indian Nation that shares the Tribe's privileges and immunities.<sup>22</sup> The Zone Authority passes regulations for and otherwise governs the CDEZ.<sup>23</sup> As the Zone Civil Ordinance specifies, “[r]egulations properly promulgated by the Zone Authority shall have the force of law” in the CDEZ with respect to those who have availed themselves of its jurisdiction.<sup>24</sup>

The Zone Authority consists of five members. The Executive Committee appoints two, the Catawba Corporations appoint two, and a private Nation-majority-owned management company, the Green Earth Zone Services Corporation (“Zone Corporation”), appoints one.<sup>25</sup> Because the Zone Authority acts by a 4/5 vote of its

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<sup>16</sup> Theo Schiller, *Direct Democracy*, BRITANNICA, <http://www.britannica.com/topic/direct-democracy> [<http://perma.cc/D3DX-YQFR>] (last updated Oct. 7, 2022).

<sup>17</sup> *General Council*, *supra* note 15.

<sup>18</sup> See *The Catawba Nation Executive Committee*, CATAWBA NATION, <http://www.catawba.com/executive-committee> [<http://perma.cc/NNT7-LRXQ>] (last visited Dec. 6, 2022).

<sup>19</sup> See CATAWBA CORPS., <http://catawbacorps.com/> [<http://perma.cc/PKY2-49YT>] (last visited Dec. 6, 2022).

<sup>20</sup> See GEN. COUNCIL OF THE CATAWBA INDIAN NATION, RES. NO. 20220219, RESOLUTION OF THE GENERAL COUNCIL OF THE CATAWBA INDIAN NATION ESTABLISHING THE GREEN EARTH ZONE, APPROVING THE GREEN EARTH ZONE CIVIL ORDINANCE, AND DESIGNATING INITIAL PROPERTY FOR THE ZONE, (2022) [hereinafter ZONE RESOLUTION], <http://zoneauthority.io/wp-content/uploads/2022/05/Signed-Resolution-establishing-GEZ-with-Ordinance.pdf> [<http://perma.cc/HC3A-ZH2T>].

<sup>21</sup> See GEN. COUNCIL OF THE CATAWBA INDIAN NATION, GREEN EARTH ZONE CIVIL CODE ORDINANCE (2022) [hereinafter ZONE CIVIL ORDINANCE], <http://zoneauthority.io/wp-content/uploads/2022/06/GEZ-ORDINANCE-clean.pdf> [<http://perma.cc/AT2S-RV9L>].

<sup>22</sup> See ZONE RESOLUTION, *supra* note 20, at ll. 38–41, 65–70; ZONE CIVIL ORDINANCE, *supra* note 21, tit. II, ch. 1, §§ 1–3.

<sup>23</sup> See ZONE CIVIL ORDINANCE, *supra* note 21, tit. II, ch. 1, §§ 2–3.

<sup>24</sup> *Id.* tit. II, ch. 1, § 2.C.

<sup>25</sup> *Id.* tit. II, ch. 1, § 2.B.

members, the Tribe's two administrative bodies effectively control of the CDEZ.<sup>26</sup> The Tribe, through its control of the Zone Corporation, also controls the fifth vote on the Zone Authority.<sup>27</sup>

The Corporate Nation starts out as the sole owner of the Zone Corporation.<sup>28</sup> A majority of the Board of Directors of the Zone Corporation must be appointed by the Corporate Nation or, if Corporate Nation ceases to own a majority of the Zone Corporation's shares, some other entity owned by the Nation must.<sup>29</sup> The Zone Corporation must therefore "at all times be majority owned by the Nation or a wholly owned entity of the Nation."<sup>30</sup> These measures ensure that the Catawba Indian Nation at all times retains control of the Zone Authority, Zone Corporation, and CDEZ.<sup>31</sup>

## II. ENACTED CDEZ RULES

The CDEZ has, in its short history, already seen the issuance of several new rules. This section focuses on the three Zone Authority actions that most directly affect fintech, reviewing them in order of their dates of adoption. The list includes:

- The Administrative Procedure Regulation;<sup>32</sup>
- The Digital Assets Regulation;<sup>33</sup> and the
- Resolution Adopting U.C.C. Article 12 for Digital Assets.<sup>34</sup>

In addition to those three rulemakings, the Zone Authority took two other official actions. Via the first, it appointed Mr. Leon

<sup>26</sup> *Id.* tit. II, ch. 2, § 3(1).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* tit. II, ch. 2, § 3.A.

<sup>29</sup> *Id.* tit. II, ch. 2, § 7.A.

<sup>30</sup> *Id.* tit. II, ch. 2, § 3.A.

<sup>31</sup> See *Catawba Digital Economic Zone Appoints Zone Authority Commission*, CATAWBA DIGIT. ECON. ZONE (May 4, 2022), <http://catawbadigital.zone/catawba-digital-economic-zone-appoints-zone-authority-commission-2/> [<http://perma.cc/4V7J-2D8S>].

<sup>32</sup> Green Earth Zone Administrative Procedure Regulation, Reg. No. 001-22 (May 18, 2022) [hereinafter *Administrative Procedure Regulation*], <http://zoneauthority.io/wp-content/uploads/2022/06/GEZ-APR-clean-1.pdf> [<http://perma.cc/6QY4-YBJV>] (adopted by the Zone Authority Commission).

<sup>33</sup> Digital Assets Regulation, Reg. No. 002-22 (July 6, 2022), <http://zoneauthority.io/wp-content/uploads/2022/07/002-22.-Digital-Assets-Regulation.-.pdf> [<http://perma.cc/C2MX-ZCBJ>].

<sup>34</sup> ZONE AUTH. COMM'N, CATAWBA DIGIT. ECON. ZONE, RES. NO. 001, FOR THE ADOPTION OF THE UCC AMENDMENTS AND ARTICLE 12 ADDRESSING DIGITAL ASSETS (2022) [hereinafter *RESOLUTION ADOPTING U.C.C. ARTICLE 12*], <http://zoneauthority.io/rs001-for-the-adoption-of-the-ucc-amendments-and-article-12-addressing-digital-assets/> [<http://perma.cc/YEX2-ZHS4>].



Shaffer as the Interim Zone Secretary.<sup>35</sup> The second concerned CDEZ compliance with Tribal employment preferences.<sup>36</sup>

Because the appointment and compliance order should have only a tangential impact on fintech regulation in the CDEZ, they receive no further scrutiny here, except for this observation: the latter resolution provides that firms operating in the zone will enjoy reduced administrative charges if they hire Catawba citizens or other Native Americans.<sup>37</sup> In this way, fintech firms might congratulate themselves on saving money while simultaneously rectifying historical injustices.

#### A. Administrative Procedure Regulation

The Zone Authority passed its Administrative Procedure Regulation on May 18, 2022, with the aim of ensuring that the CDEZ rulemaking processes operate transparently and predictably.<sup>38</sup> The regulation governs the process by which the Zone Authority develops and issues rules applicable to the CDEZ. It includes requirements for the Zone Authority to publish notices of proposed rulemakings, to provide opportunities for the public to comment on proposed regulations, and to publish final versions of CDEZ regulations.

The Administrative Procedure Regulation evidently took as its model the Revised Model State Administrative Procedure Act published by the National Conference of Commissioners on Uniform State Laws (a.k.a. Uniform Law Commission).<sup>39</sup> The two sets of rules mirror each other in almost all particulars. The details of the CDEZ's Administrative Procedure Regulation matter less for present purposes than its meta-effect on later regulations. The Zone Authority effectively promises, with enactment of the Administrative Procedure Regulation, to issue future rules, including those relating to fintech, in a predictable and transparent manner.

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<sup>35</sup> ZONE AUTH. COMM'N, CATAWBA DIGIT. ECON. ZONE, RES. NO. 003, FOR THE APPOINTMENT OF THE INTERIM ZONE SECRETARY (2022), <http://zoneauthority.io/rs003-for-the-appointment-of-the-interim-zone-secretary/> [<http://perma.cc/56ER-6HBU>].

<sup>36</sup> See ZONE AUTH. COMM'N, CATAWBA DIGIT. ECON. ZONE, RES. NO. 002, FOR COMPLIANCE OF ENTITIES UNDER THE CATAWBA INDIAN PREFERENTIAL HIRING ORDINANCE (2022), <http://zoneauthority.io/rs002-for-compliance-of-entities-under-the-catawba-indian-preferential-hiring-ordinance/> [<http://perma.cc/RR44-JBSZ>].

<sup>37</sup> See *id.* resolve 3.

<sup>38</sup> See Administrative Procedure Regulation, *supra* note 32.

<sup>39</sup> See REVISED MODEL STATE ADMIN. PROC. ACT (UNIF. L. COMM'N 2010), <http://www.uniformlaws.org/committees/community-home?CommunityKey=f184fb0c-5e31-4c6d-8228-7f2b0112fa42> [<http://perma.cc/8849-RTVX>].



Why did the Zone Authority thereby bind itself? No legislative history accompanied the issuance of the CDEZ Administrative Procedure Regulation, nor did the regulation include any “whereas” clauses. It seems safe to say, however, that the Zone Authority wanted to reassure investors, resident businesses, Tribe members, and third parties that it would not govern the CDEZ arbitrarily or capriciously. With the Administrative Procedure Regulation, the Zone Authority effectively pledges to bring the rule of law to the fintech frontier.

The Administrative Procedure Regulation specifies that it does not apply to proceedings that had already begun on its effective date.<sup>40</sup> It also clarifies that its requirements for notices of and public participation in proceedings, and for a thirty-day delay in the effective date of any newly issued rule, do not apply to rulemakings that have no effect on any person domiciled in the Zone.<sup>41</sup> A rulemaking cannot have any effect on a person domiciled in the Zone if no such person exists, and the CDEZ registered its first business only on September 29, 2022.<sup>42</sup> As a consequence, the discussion immediately below of the Digital Assets Regulation and the Resolution Adopting U.C.C. Article 12 for Digital Assets shows them issuing directly from the Zone Authority without notice or public participation and having immediate effect. Only more recently has the Administrative Procedure Regulation begun having fuller effect, as demonstrated by the currently pending regulations discussed later in the paper.

## B. Digital Assets Regulation

With its second regulation, the Digital Assets Regulation it adopted on July 6, 2022, the Zone Authority focused on fintech.<sup>43</sup> The Zone Authority judged regulations elsewhere “not optimally suited for the advent of technically innovative forms of commerce”<sup>44</sup> and discriminatory on the principle that “businesses using innovative technology for benign purposes should be treated equally to other businesses in similar sectors using traditional means of commerce.”<sup>45</sup> The Digital Assets Regulation aims to

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<sup>40</sup> Administrative Procedure Regulation, *supra* note 32, § 103(b).

<sup>41</sup> *See id.* § 304(c) (notice requirements); *id.* § 306(f) (public participation); *see also id.* § 305(g) (allowing waiver of the requirement for preparation of a regulatory analysis for regulations adopted within one year of the adoption of the Administrative Procedure Regulation).

<sup>42</sup> Letter from Joseph McKinney, CEO of CDEZ, to author (Dec. 14, 2022) (on file with author).

<sup>43</sup> *See* Digital Assets Regulation, *supra* note 33.

<sup>44</sup> *Id.* pmbl., para. 2.

<sup>45</sup> *Id.* pmbl., para. 3.

rectify the failings of legacy jurisdictions. The regulation's preamble explains that it "aims to offer all engaged in peaceful trade a safe haven for legal digital commerce"<sup>46</sup> by providing "a framework for trade in intangible properties and services by clarifying their treatment under the Zone Civil Code."<sup>47</sup>

The Digital Assets Regulation largely limits itself to fine-tuning pre-existing laws in the CDEZ. This it can do because the Zone launched with a full suite of rules for regulating commerce, including a wide selection of *Restatements of the Common Law* and Uniform Commercial Codes.<sup>48</sup> It acquired these trusted and tested rule sets by incorporating version 1.2 of Ulex, an open-source legal system.<sup>49</sup>

The Zone Authority subsequently repealed most of the Digital Assets Regulation in its Resolution Adopting U.C.C. Article 12 for Digital Assets, which addresses many of the same topics.<sup>50</sup> After that fine-tuning to harmonize CDEZ law with U.C.C. Article 12, the Digital Assets Regulation consists for the most part of definitions of legal terms crucial to fintech and clarifications of the classifications of different kinds of digital assets. The definitions, appearing in Section 102, run as follows:

1. "Blockchain" means a distributed ledger database that uses a consensus-based, decentralized, and mathematically verifiable process to reliably record an ordered sequence of transactions in Digital Assets.
2. "Digital Asset" means a machine-readable representation of rights to access, use, control, erase, or transfer information, and is either a Digital Consumer Asset, Digital Security, or Virtual Currency.
3. "Digital Consumer Asset" means a Digital Asset used, borrowed, or bought primarily for consumptive, personal or household purposes and that does not fall within the meaning of Digital Security or Virtual Currency under this section.
4. "Digital Security" means a Digital Asset that is a security, and that is not a Digital Consumer Asset or Virtual Currency.
5. "Virtual Currency" means a Digital Asset that is:
  - (A) Used as a medium of exchange, unit of account, or store of value;
  - (B) Not recognized as legal tender by the United States government; and

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<sup>46</sup> *Id.* pmb., para. 1.

<sup>47</sup> *Id.* pmb., para. 4.

<sup>48</sup> See ZONE CIVIL ORDINANCE, *supra* note 21, tit. III–VIII.

<sup>49</sup> *Ulex Open Source Legal Operating System Version 1.2*, GITHUB (2022), <http://github.com/ulex-opensource/Ulex/tree/master/versions/1.2#ulex-open-source-legal-operating-system-version-12-2022> [<http://perma.cc/BGP5-6K2D>].

<sup>50</sup> See RESOLUTION ADOPTING U.C.C. ARTICLE 12, *supra* note 34, at 2 (repealing Digital Assets Regulation Sections 103(a)(3) and 104–105).

(C) Not a Digital Consumer Asset or Digital Security.

6. “Non-Fungible Token” or “NFT” means a type of indivisible Digital Asset verified by a Blockchain to have unique attributes and associated with an electronic signature.<sup>51</sup>

Most of those definitions draw on examples from Wyoming’s recent path-breaking fintech legislation. The Wyoming Digital Asset Statute, passed in 2019 and subsequently amended, defines digital assets and classifies them as a form of general intangible property subject to the same laws of acquisition, keeping, and transfer applicable to other forms of intangible property.<sup>52</sup> It also makes digital assets subject to Uniform Commercial Code provisions allowing for the perfection of security interests in digital assets, recognizes smart contracts as means for controlling digital assets, and provides a framework for banks to establish custodial services for digital assets.<sup>53</sup>

With its Digital Asset Statute, Wyoming became the first jurisdiction in the United States to offer comprehensive fintech legislation.<sup>54</sup> The CDEZ followed close behind. The self-proclaimed “Cowboy State”<sup>55</sup> must therefore now share the legal frontier with a small but daring Native American Tribe.

The CDEZ drew its definitions of “Digital Asset,” “Digital Consumer Asset,” “Digital Security,” and “Virtual Currency” from definitions in the Wyoming Digital Asset Statute.<sup>56</sup> For its definition of “blockchain,” the CDEZ evidently drew on the version that Wyoming used in its 2019 Utility Token Act<sup>57</sup> and 2020 Financial Technology Sandbox Act,<sup>58</sup> eschewing the slightly different definition in the state’s later Digital Asset Statute.<sup>59</sup> Wyoming apparently offers no example at all for the last of the terms defined

<sup>51</sup> Digital Assets Regulation, *supra* note 33, § 102.

<sup>52</sup> WYO. STAT. ANN. §§ 34-29-101–104 (2022).

<sup>53</sup> See WYO. STAT. ANN. § 34-29-101 *et seq.* (2022).

<sup>54</sup> *Digital Assets a General Intangible Under Wyoming’s UCC*, NCS CREDIT (Apr. 12, 2019), <http://www.ncscredit.com/education-center/blog/digital-assets-general-intangible-ucc/> [<http://perma.cc/BP7T-4N3B>].

<sup>55</sup> *Cowboy Culture*, Travel Wyoming, <http://travelwyoming.com/things-to-do/western-culture/cowboy-culture/> [<http://perma.cc/28EH-G2K3>] (last visited Mar. 14, 2023).

<sup>56</sup> See WYO. STAT. ANN. § 34-29-101(a)(i) (2022) (“digital asset”); *id.* § 34-29-101(a)(ii) (“digital consumer asset”); *id.* § 34-29-101(a)(iii) (“digital security”); *id.* § 34-29-101(a)(iv) (“virtual currency”).

<sup>57</sup> See *id.* § 34-29-106(g)(i) (defining “blockchain” as “a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature”).

<sup>58</sup> See *id.* § 40-29-102(a)(i) (defining “blockchain” as “a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature”).

<sup>59</sup> See *id.* § 34-29-106(g)(i) (defining “blockchain” as in Wyoming Statutes Annotated Section 40-29-102(a)(i)).

in the CDEZ's Digital Asset Regulation, "Non-Fungible Token" ("NFT").<sup>60</sup> For that, the CDEZ had to blaze its own trail.

The CDEZ represents one of the first U.S. jurisdictions to define "non-fungible token" by statute, regulation, or other executive action, and it appears to be the first to use the term in the context of comprehensive fintech regulations. Tennessee defined the term in a statute passed April 14, 2022,<sup>61</sup> but put it to work only in requiring that the state treasurer give prior written approval to any attempt to pay funds due in the form of an NFT.<sup>62</sup> Arizona also approved a definition on July 6, 2022, which became effective on January 1, 2023.<sup>63</sup> However, the state uses the term only in the narrow context of calculating gains and losses under its tax code.<sup>64</sup>

In addition to legally defining the building blocks of the fintech universe, the CDEZ's Digital Regulation Act clarifies which laws apply to each.<sup>65</sup> In this, the Digital Regulation Act followed up on a provision in the Zone Civil Ordinance, fulfilling a mandate that the Zone Authority had been born with. The Zone Civil Ordinance launched fintech regulation in the Zone by classifying each kind of "Digital Asset" as intangible personal property.<sup>66</sup> The same provision empowered and ordered the Zone Authority to "define, classify, and regulate Digital Assets and their treatment under" the CDEZ's Commercial Code.<sup>67</sup> The Zone Authority began filling in those details with the Digital Regulation Act, which clarifies the law applicable to four of the terms defined above: Digital Assets; Digital Consumer Assets; Digital Securities; and Non-Fungible Tokens.<sup>68</sup> More specifically, the Digital Assets Regulation clarifies that:

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<sup>60</sup> *Id.* § 34-29-106.

<sup>61</sup> TENN. CODE ANN. § 9-3-602(4) (2022) (repealed effective June 30, 2025) (defining "non-fungible token" as "a non-fungible cryptographic asset on a blockchain that possesses unique identifiers or other metadata that distinguishes the asset from another token or asset in a manner that makes the asset irreplaceable and non-exchangeable for a similar token or asset").

<sup>62</sup> *See id.* § 9-3-601.

<sup>63</sup> *See* ARIZ. REV. STAT. ANN. § 43-1028(B)(3) (2023) (defining "non-fungible token" as "a non-fungible cryptographic asset on a blockchain that possesses unique identifiers or other metadata that distinguishes the asset from another token or asset in a manner that makes the asset irreplaceable and nonexchangeable for a similar token or asset").

<sup>64</sup> *See id.* §§ 43-1022(29)–(30), 43-1028(A).

<sup>65</sup> *See* Digital Assets Regulation, *supra* note 33.

<sup>66</sup> ZONE CIVIL ORDINANCE, *supra* note 21, tit. VI, ch. 10.

<sup>67</sup> *Id.*

<sup>68</sup> *See* Digital Assets Regulation, *supra* note 33, at § 103(a)–(c).

- A Digital Consumer Asset is a general intangible under U.C.C. Article 9;<sup>69</sup>
- A Digital Security is a security under U.C.C. Article 8 and investment property under U.C.C. Article 9;<sup>70</sup>
- A Digital Asset may qualify as a financial asset under U.C.C. Article 8 if its owner so agrees;<sup>71</sup> and
- A Non-Fungible Token may be classified as a Digital Consumer Asset or Digital Security depending on its use.<sup>72</sup>

The first three of these provisions largely duplicate provisions of the Wyoming Digital Asset Statute.<sup>73</sup> The fourth and last could hardly do likewise, given the silence of Wyoming law about non-fungible tokens. The Zone Authority's classification of non-fungible tokens thus apparently represents another of its many firsts.

The CDEZ's Digital Asset Regulation contains a smattering of other terms. Again following Wyoming law, one of these stipulates that a bank providing custodial services for digital assets qualifies as a "securities intermediary" under the Zone's version of U.C.C. Article 8.<sup>74</sup> That proves notable because, as discussed below, the CDEZ has initiated a rulemaking proceeding comprehensively regulating banking in the Zone.<sup>75</sup> The rest of the Digital Asset Regulation concerns what might be called "regulatory housekeeping" matters and a great many provisions were negated and superseded by the Resolution Adopting U.C.C. Article 12 for Digital Assets, discussed next.

### C. Resolution Adopting U.C.C. Article 12 for Digital Assets<sup>76</sup>

The Uniform Law Commission recently approved the final version of its much anticipated U.C.C. article 12.<sup>77</sup> This, the latest of the U.C.C.'s 14 articles (they number more than 12 thanks to U.C.C. articles 2A and 4A), focuses on digital assets. U.C.C. Article 12 provides rules for commerce in cryptocurrencies, non-fungible tokens, digital assets, and other intangible bundles of rights

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<sup>69</sup> *Id.* § 103(a)(1).

<sup>70</sup> *Id.* § 103(a)(2).

<sup>71</sup> *Id.* § 103(b).

<sup>72</sup> *Id.* § 103(c).

<sup>73</sup> See WYO. STAT. ANN. § 34-29-102(a)–(b) (2022).

<sup>74</sup> Compare Digital Assets Regulation, *supra* note 33, § 103(d), with WYO. STAT. ANN. § 34-29-102(c) (2021).

<sup>75</sup> See *infra* note 159 and accompanying text.

<sup>76</sup> RESOLUTION ADOPTING U.C.C. ARTICLE 12, *supra* note 34.

<sup>77</sup> See generally UNIF. COM. CODE AMENDS. (UNIF. L. COMM'N & AM. L. INST. 2022) (containing prefatory notes and comments).

created and traded on the fintech frontier. The Zone Authority wasted little time in adopting the new article and amendments to related articles of the U.C.C.<sup>78</sup> This subsection reviews what that means for fintech in the CDEZ.

U.C.C. Article 12 addresses objects of central concern to fintech and, thus, the CDEZ. The Uniform Law Commission describes the aim of U.C.C. Article 12 thusly:

The amendments respond to market concerns about the lack of definitive commercial law rules for transactions involving digital assets, especially relating to (a) negotiability for virtual (non-fiat) currencies, (b) certain electronic payment rights, (c) secured lending against virtual (non-fiat) currencies, and (d) security interests in electronic (fiat) money, such as central bank digital currencies.<sup>79</sup>

The adoption package for Article 12 includes amendments to a good many other U.C.C. Articles, including 1, 2, 2A, 3, 4, 4A, 5, 7, 8, and 9.<sup>80</sup> These amendments ensure that the new provisions for digital assets interface well with older provisions that address such matters as: money; sales and leases of goods; negotiable instruments; bank deposits and collections; funds transfers; letters of credit; documents of title; securities; chattel paper; secured transactions; controllable accounts or payment intangibles; deposit accounts; investment property; and transferable records under the federal E-SIGN law or the Uniform Electronic Transactions Act (“UETA”).<sup>81</sup> Article 12 and the other amendments in its adoption package thus upgrade the Uniform Commercial Code to handle fintech.

Given the widespread popularity of the U.C.C. among the many jurisdictions that have adopted its Articles and their proven success over many decades, the CDEZ could hardly have gone wrong in adopting Article 12. Existing CDEZ law already included U.C.C. Articles 1, 2, 2A, 3, 4, 4A, 5, 7, 8, and 9.<sup>82</sup> The amendment package accompanying Article 12 calls for amending select parts of those Articles, too. The Zone Authority followed suit, thereby ensuring that old and new Commercial Codes would work together

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<sup>78</sup> See RESOLUTION ADOPTING U.C.C. ARTICLE 12, *supra* note 34.

<sup>79</sup> UNIF. L. COMM’N & AM. L. INST., A SUMMARY OF THE 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE 1 (2022), <http://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2a18c952-5db5-ca16-2274-8c7531990903&forceDialog=0> [http://perma.cc/4J7Y-6TXA].

<sup>80</sup> See UNIF. COM. CODE AMENDS., *supra* note 77, at 1–4.

<sup>81</sup> See A SUMMARY OF THE 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE, *supra* note 79, at 3.

<sup>82</sup> ZONE CIVIL ORDINANCE, *supra* note 21, tit. VI ch. 1–9.



in support of fintech.<sup>83</sup> Happily for the clarity of CDEZ law, none of these edits alter provisions used in the classifications made by its Digital Assets Regulation.<sup>84</sup>

The Nation and Zone Authority thereby had good reason to adopt U.C.C. Article 12 and its accompanying amendments and duly did so, the former by Ordinance and the latter by Resolution.<sup>85</sup> Left unvoiced was another reason to favor Article 12 and the other Articles, when building out the Zone's legal system, over the statutes of any particular state. Being a creation of the Uniform Law Commission, a nonprofit unincorporated association, and the American Law Institute, a private nonprofit organization, the Uniform Commercial Code implies no unseemly dependence on the laws of another sovereign. The Catawba have doubtless had enough of that.

U.C.C. Article 12 takes as its central concern what it calls "controllable electronic records" ("CERs") and what others call "digital assets": cryptocurrencies, non-fungible tokens and other bundles of intangible rights.<sup>86</sup> It defines *control* of a CER as "a record stored in an electronic medium that can be subjected to control under Section 12-105."<sup>87</sup> Article 12 excludes from the definition of CER these digital equivalents of conventional financial instruments: "a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record."<sup>88</sup> That still leaves CER applicable to not just cryptocurrencies and

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<sup>83</sup> RESOLUTION ADOPTING U.C.C. ARTICLE 12, *supra* note 34, at resolve 2 ("To adopt the UCC Amendments and the new Article 12 - Controllable Electronic Records, as approved and recommended for enactment in all the states by the Uniform Law Commission on July 13, 2022 at its 131st annual meeting."). Note that the apparent effect of this Resolution is to adopt all the amendments set forth for recommended enactment with Article 12, and not just the amendments for Articles 1 and 9, notwithstanding that "whereas" clause 6 in the same Resolution cites only the latter two Articles. It did so in quoting the CDEZ Civil Ordinance's earlier preparation for adopting Article 12: "[t]his update shall include all changes affecting Chapters 1 and 9 of this Title and the addition to this Chapter of proposed UCC Article 12: Controllable Electronic Records." ZONE CIVIL ORDINANCE, *supra* note 21, tit. VI, ch. 10, § 2. The Nation evidently did not foresee when it passed the Ordinance in February 2022, that the U.C.C. Article 12 amendment package that issued in July, 2022, would amend Articles besides 1 and 9. Saying that the Ordinance "shall include" Articles 1 and 9 by no means forbids amending other Articles, too.

<sup>84</sup> Compare Digital Assets Regulation, *supra* note 33, §§ 101, 102(a), (d), with UNIF. COM. CODE AMENDS., *supra* note 77, at 11–12.

<sup>85</sup> See RESOLUTION ADOPTING U.C.C. ARTICLE 12, *supra* note 34, at resolve 2; ZONE CIVIL ORDINANCE, *supra* note 21, tit. VI, ch. 10, § 2.

<sup>86</sup> See U.C.C. § 12-102(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*



NFTs, but to digital assets more generally, including the Digital Consumer Assets and Digital Securities recognized in the CDEZ's Digital Assets Regulation.<sup>89</sup>

A CER functions legally like tangible personal property, with “control” substituting for “possession” when it comes to establishing a presumption of ownership. Article 12 says that a person has control of a CER if the electronic record associated with it gives the person: substantially all the benefits of the CER; exclusive power to deny others substantially all of the CER's benefits; and exclusive power to transfer control to another person.<sup>90</sup> Control of a CER also entails having the power to identify oneself as the party with benefits to and powers over it.<sup>91</sup> Exclusivity generally obtains even if control might be subject to change as part of a protocol built into the system in which the CER is recorded, as with digital assets subject to a smart contract, and if others share control of the CER, as in a multi-signature arrangement.<sup>92</sup>

For example, a person who owned the private key to a digital wallet containing cryptocurrencies would ordinarily thereby have control over the assets therein, making them CERs under Article 12. That control allows the person to use digital locks to prevent others from using the digital asset.<sup>93</sup> It also allows the owner of the CER to spend the cryptocurrencies by transferring their control to another person.<sup>94</sup>

Article 12 makes “control” the determining factor in determining ownership in a CER in almost all cases.<sup>95</sup> It gives the controlling person a claim superior to one who asserts a security or other interest in the CER<sup>96</sup> and even to one who has perfected such an interest through filing.<sup>97</sup> Commentators describe this as giving the claim of one with control over a CER “super-priority”

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<sup>89</sup> See Digital Assets Regulation, *supra* note 33, § 103(a)–(b).

<sup>90</sup> See U.C.C. § 12-105(a)(1) (AM. L. INST. & UNIF. L. COMM'N 2022).

<sup>91</sup> See *id.* § 12-105(a)(2).

<sup>92</sup> See *id.* § 12-105(b)–(c).

<sup>93</sup> See A Summary of the 2022 Amendments to the Uniform Commercial Code, *supra* note 79, at 2–3.

<sup>94</sup> *Id.*

<sup>95</sup> See *generally* U.C.C. § 12 (AM. L. INST. & UNIF. L. COMM'N 2022) (detailing how “control” factors into ownership of CERs).

<sup>96</sup> See U.C.C. § 12-104(e) (AM. L. INST. & UNIF. L. COMM'N 2022) (“A qualifying purchaser acquires its rights in the [CER] free of a claim of a property right in [it].”); see also *id.* § 9-326A (2022 amendments) (noting that the security interest of a party having control of digital asset has priority over a conflicting security interest held by a secured party without control).

<sup>97</sup> U.C.C. § 12-104(h) (AM. L. INST. & UNIF. L. COMM'N 2022) (providing that filing of a financing statement under Article 9 is not notice of a claim to a CER).

over any other claimant to it.<sup>98</sup> It has the practical effect of allowing a “qualifying purchaser”—one who takes control of a CER “for value, in good faith, and without notice of a claim of a property right” by another in the CER—the benefit of the same “take free” rule that applies to tangible personal property.<sup>99</sup> The same holds true under the amendments suggested to Article 9 for an electronic copy of a record evidencing chattel paper, a controllable account, or a controllable payment intangible.<sup>100</sup> Similarly, the new amendments give priority to security interests in a CER, controllable account, or controllable payment intangible to a party having control of it.<sup>101</sup>

These rules greatly decrease uncertainty in fintech transactions by making it relatively easy to establish uncontested property rights in a CER and other digital assets. In the CDEZ, for example, a person who purchases an NFT innocent of any awareness that it was stolen or pledged as security for a loan can rest assured that nobody else has better claim to it.<sup>102</sup> Only a purchaser who had actual knowledge that the NFT was stolen or pledged as security would have reason to worry. Constructive knowledge, such as that ordinarily provided by the filing of a finance statement, would not suffice.<sup>103</sup> These rules strike a balance between discouraging illegal activity and encouraging honest trade, lowering transaction costs for commerce in the Zone.

Relevant to cryptocurrencies, a topic of central concern to fintech, the post-Article 12 U.C.C. distinguishes between fiat and non-fiat versions. Only the former now qualifies as “money”—a medium of exchange that is currently authorized or adopted by a domestic or foreign government.”<sup>104</sup> In the newly revised U.C.C., money may exist in its traditional tangible form or, for the first time, in electronic form.<sup>105</sup> Security interests in electronic money

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<sup>98</sup> Andrew Hinkes, *Why Crypto Needs UCC Article 12*, COINDESK (Oct. 28, 2022), <http://www.coindesk.com/layer2/2022/10/28/why-crypto-needs-ucc-article-12/> [perma.cc/R3VV-TKDE].

<sup>99</sup> U.C.C. § 12-102(2) (AM. L. INST. & UNIF. L. COMM’N 2022) (defining “qualifying purchaser”).

<sup>100</sup> U.C.C. § 9-105 (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (outlining the amendments regarding electronic copy of a record evidencing chattel paper); U.C.C. § 9-107A(b) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (outlining the amendments regarding controllable account and controllable payment intangible).

<sup>101</sup> U.C.C. § 9-326A (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments).

<sup>102</sup> See generally RESOLUTION ADOPTING U.C.C. ARTICLE 12, *supra* note 34.

<sup>103</sup> U.C.C. § 12-104(h) (AM. L. INST. & UNIF. L. COMM’N 2022).

<sup>104</sup> U.C.C. § 1-201(24) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments).

<sup>105</sup> U.C.C. § 9-102(a)(31A) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (defining “electronic money” as “money in an electronic form”).

may be perfected only by the same sort of control required for perfection of interests in CERs.<sup>106</sup>

The new definition of “money” goes on to expressly exclude Bitcoin and other cryptocurrencies not created by governments: “The term does not include 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.”<sup>107</sup> Non-fiat cryptocurrencies like Bitcoin and Ether qualify as CERs, however, making the rules for perfecting security interests the same for all electronic media of exchange, fiat or otherwise.<sup>108</sup> As with digital assets in general, these rules ensure that electronic money and cryptocurrencies flow smoothly in the CDEZ, unhindered by doubts about who owns what.

Because the disembodied nature of fintech transactions makes it difficult to determine where they happen, several of the new U.C.C. rules aim to make it easy to define the applicable law and forum in advance. A CER can be made subject to a jurisdiction that it or the system in which it is recorded expressly designates.<sup>109</sup> The law of the CERs with which they are associated govern controllable accounts or controllable payment intangibles, making them susceptible to a similar treatment.<sup>110</sup> Enforceable choice of law and choice of forum clauses can also be built into negotiable instruments<sup>111</sup> and letters of credit.<sup>112</sup>

Article 12 and the other 2022 amendments effectuated other changes to the U.C.C. Provisions that originally described transactions on paper, such as “sign” and “writing,” were updated to also apply to electronic transactions.<sup>113</sup> The treatment of hybrid

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<sup>106</sup> Compare U.C.C. § 9-105A (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (outlining the control of electronic money), with U.C.C. § 12-105 (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (outlining control of CERs); see also U.C.C. § 9-312(b)(4) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (limiting perfection of security interest in electronic money to means described in § 9-314); U.C.C. § 9-314 (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (referencing Section 9-105A standards of control for perfection of security interest in electronic money).

<sup>107</sup> U.C.C. § 1-201(24) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments).

<sup>108</sup> See A SUMMARY OF THE 2022 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE, *supra* note 79, at 6–7.

<sup>109</sup> U.C.C. § 12-107(c) (AM. L. INST. & UNIF. L. COMM’N 2022).

<sup>110</sup> U.C.C. § 9-306B(a) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments).

<sup>111</sup> U.C.C. § 3-104(a)(3)(iv)–(v) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments).

<sup>112</sup> U.C.C. § 5-116 (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments).

<sup>113</sup> U.C.C. § 1-201(37) (AM. L. INST. & UNIF. L. COMM’N 2022) (2022 amendments) (substituting “record” for “writing” in definition of “sign”); see also U.C.C. § 1-201(10) (AM.

transactions that combine aspects of a sale or lease of goods with the sale, lease, or licensing of other property or with the provision of services was clarified.<sup>114</sup> Thanks to the Zone Authority's Resolution Adopting U.C.C. Article 12 for Digital Assets, these became part of the CDEZ's law, too.

### III. PENDING CDEZ REGULATIONS

The Zone Authority continued to build the CDEZ legal system in 2022 by launching proceedings for three additional rules:

- A Distributed Autonomous Organization (“DAO”) Regulation;<sup>115</sup>
- A Stablecoin Regulation;<sup>116</sup> and
- A Banking and Commercial Services Code.<sup>117</sup>

The Zone Authority has published drafts of each prospective rule but as yet has finalized none.<sup>118</sup>

In each case, it appears that the Zone Authority largely complied with the Administrative Procedure Regulation that it issued earlier in 2022. Indeed, the Zone Authority exceeded the requirements of that regulation in the case of the DAO Regulation and Stablecoin Regulation by issuing advanced notices of proposed

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L. INST. & UNIF. L. COMM'N 2022) (2022 amendments) (redefining “conspicuous”); U.C.C. § 1-201(36) (AM. L. INST. & UNIF. L. COMM'N 2022) (2022 amendments) (redefining “send”).

<sup>114</sup> See U.C.C. § 2-106(5) (AM. L. INST. & UNIF. L. COMM'N 2022) (defining “hybrid transaction”); U.C.C. § 2A-103(1)(h.1) (AM. L. INST. & UNIF. L. COMM'N 2022) (defining “hybrid lease”); see also U.C.C. § 2-102 (AM. L. INST. & UNIF. L. COMM'N 2022) (2022 amendments) (defining scope of Article); U.C.C. § 2A-102 (AM. L. INST. & UNIF. L. COMM'N 2022) (2022 amendments) (same).

<sup>115</sup> Draft Decentralized Autonomous Organization Regulation, Reg. 003-022 (draft Aug. 13, 2022) [hereinafter DAO Regulation Draft], <http://zoneauthority.io/wp-content/uploads/2022/08/DAO-Rule-Notice-of-Proposed-Rule-.pdf> [http://perma.cc/BB2X-Q3KC]; *PR004 – Catawba Digital Economic Zone Issues Proposed Regulation on DAOs*, CATAWBA DIGIT. ECON. ZONE (Aug. 13, 2022), <http://catawbadigital.zone/pr004-catawba-digital-economic-zone-issues-proposed-regulation-on-daos> [http://perma.cc/A67U-P3X3] (dating issuance of draft regulation).

<sup>116</sup> Draft Stablecoin Regulation, Reg. 004-22 (draft Oct. 27, 2022), <http://zoneauthority.io/stablecoin-regulation-draft/>; *PR007 – Stablecoin Regulation: Draft*, CATAWBA DIGIT. ECON. ZONE (Oct. 27, 2022), <http://catawbadigital.zone/pr007-stablecoin-regulation-draft/> [http://perma.cc/Q2MJ-PLDB] (dating issuance of draft Stablecoin Regulation).

<sup>117</sup> Draft Banking and Commercial Services Code (draft Oct. 27, 2022) <http://zoneauthority.io/banking-and-financial-services-code/> [http://perma.cc/A87A-2AGD]; *PR007 – Stablecoin Regulation: Draft*, CATAWBA DIGIT. ECON. ZONE (Oct. 27, 2022), <http://catawbadigital.zone/pr007-stablecoin-regulation-draft/> [http://perma.cc/R3MV-4CTW] (dating issuance of draft Banking and Commercial Services Code).

<sup>118</sup> *Banking and Financial Services Code*, Catawba Digit. Econ. Zone, <http://zoneauthority.io/banking-and-financial-services-code> [http://perma.cc/A87A-2AGD] (last visited Mar. 16, 2023).

rulemakings for each, on June 1 and September 7, respectively.<sup>119</sup> That was strictly speaking unnecessary because, as discussed above, the Administrative Procedure Regulation imposed no requirements for notices of or public participation in rulemakings before the Zone won its first resident, on September 29.<sup>120</sup> In the case of the Banking and Commercial Services Code, the Zone Authority went straight to issuing a draft rule and soliciting public commentary on that.<sup>121</sup> While skipping an advance notice of rulemaking did not violate the as-yet inoperative Administrative Procedure Regulation, the Zone Authority appears to have published an incomplete version of the Code, thereby marring its otherwise impressive performance.<sup>122</sup>

This section briefly reviews each of the three pending rules listed above, in order. It would hardly repay the effort to scrutinize them closely given that none have yet reached their final and binding form. Instead, the discussion aims to discern from these ongoing proceedings the future of fintech in the CDEZ.

#### A. DAO Regulation Draft

Though the fintech world very much wants distributed autonomous organizations, the legal world has struggled to figure them out. The Zone Authority has taken up that challenge. It began on June 1, 2022, by giving advance notice of an upcoming regulation for DAOs.<sup>123</sup> The Zone Authority described DAOs as:

blockchain-based, decentralized, distributed organizations, shaped more as a network than a traditional corporate hierarchy or pyramid. DAOs are organized via smart contracts. They are a way for parties with a mutual goal to coordinate, share resources, and distribute benefits. Even without traditional hierarchical structures, DAOs can provide democratic mechanisms of decision making. They also provide novel ways of structuring membership shares, voting rights, and contributions, compared to traditional organizations. DAOs can use

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<sup>119</sup> See *Advance Notice on Upcoming DAO Regulation*, CATAWBA DIGIT. ECON. ZONE (June 1, 2022), [http://zoneauthority.io/wp-content/uploads/2022/06/DAO\\_ANPRM\\_with\\_Letterhead-3.pdf](http://zoneauthority.io/wp-content/uploads/2022/06/DAO_ANPRM_with_Letterhead-3.pdf) [<http://perma.cc/FT7L-7UP3>]; *Advance Notice of Proposed Rulemaking (ANPRM) on Stablecoins*, CATAWBA DIGIT. ECON. ZONE (Sept. 7, 2022), <http://zoneauthority.io/advance-notice-of-proposed-rulemaking-anprm-on-stablecoins/> [<http://perma.cc/D3DT-KRBC>].

<sup>120</sup> Administrative Procedure Regulation, *supra* note 32, § 103(b).

<sup>121</sup> See generally, *Banking and Financial Services Code*, *supra* note 118.

<sup>122</sup> After this Paper was submitted for publication and the author had notified the CDEZ of the incomplete publication, it vowed to remedy the mistake and reopen the draft regulations for public commentary. Letter from Joseph McKinney, CEO of CDEZ, to author (Dec. 23, 2022) (on file with author).

<sup>123</sup> *Advance Notice on Upcoming DAO Regulation*, *supra* note 119.

tokens to vote, incentivize and pay members, among many other activities normally performed by organizations.<sup>124</sup>

As the Zone Authority's description makes clear, DAOs seem optimized for fintech. They do not easily fit into legacy legal systems, however.

The Advance Notice reviewed the state of the art in regulating DAOs and suggested that the CDEZ might again, as in enacting rules for digital assets, follow Wyoming's lead. One of the few states to offer legal personhood to DAOs, Wyoming allows them to take the form of a kind of limited liability company ("LLC").<sup>125</sup> The Advance Notice hinted that the Zone Authority might go beyond Wyoming, however, by allowing DAOs the alternative of forming as cooperative organizations ("co-ops").<sup>126</sup> The Zone Authority also welcomed the public to suggest still other classification options. Comments on the Advance Notice closed on July 15, 2022.<sup>127</sup>

The Zone Authority issued its Decentralized Autonomous Organization Regulation Draft ("DAO Regulation Draft") on August 13, 2022.<sup>128</sup> The draft regulation offers DAOs two options for their form of organization: an LLC or an unincorporated nonprofit association ("UNA").<sup>129</sup> The Civil Ordinance that established the basic legal framework of the CDEZ recognizes both forms of legal person.<sup>130</sup> On top of these frameworks, the draft regulation imposes a number of conditions adapting them for life as a DAO.

Each such entity must, for example, register under a name including "DAO LLC" or "DAO UNA".<sup>131</sup> Its governing public documents must furthermore include this disclosure: "The rights of members in a decentralized autonomous organization may differ materially from the rights of members in other limited liability companies or unincorporated nonprofit associations," and that zone law, underlying smart contracts, and internal governance "may define, reduce, or eliminate fiduciary duties and may restrict transfer of ownership interests, withdrawal, or resignation from the decentralized autonomous organization, return of capital contributions and dissolution of the decentralized autonomous

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<sup>124</sup> *Id.* at 2.

<sup>125</sup> WYO. STAT. ANN. § 17-31-104 (2022).

<sup>126</sup> See generally *Advance Notice on Upcoming DAO Regulation*, *supra* note 119, at 4.

<sup>127</sup> See *Advance Notice on Upcoming DAO Regulation*, *supra* note 119, at 4.

<sup>128</sup> DAO Regulation Draft, *supra* note 115; *Catawba Digital Economic Zone Issues Proposed Regulation on DAOs*, *supra* note 115 (providing date of DAO Regulation Draft's issuance).

<sup>129</sup> DAO Regulation Draft, *supra* note 115.

<sup>130</sup> See ZONE CIVIL ORDINANCE, *supra* note 21, tit. II, ch. 7 (LLCs), ch. 9 (UNAs).

<sup>131</sup> DAO Regulation Draft, *supra* note 115, § 104(d).



organization.”<sup>132</sup> So that prospective members can understand the rights they will have in the organization, the founding documents of each DAO LLC or DAO UNA must “establish how the decentralized autonomous organization shall be managed by the members, including to what extent the management will be conducted algorithmically.”<sup>133</sup> In these, as in many other particulars, the CDEZ’s draft DAO regulations follow the lead of Wyoming DAO legislation.<sup>134</sup>

The CDEZ draft regulations impose still other requirements on DAOs that want to form as LLCs or UNAs in the CDEZ. These, too, tend to mirror those of Wyoming’s DAO legislation. Both require that an applicant DAO provide digital identifiers for any smart contracts used to manage it, for instance.<sup>135</sup> It appears, however, that the CDEZ draft regulations go further than Wyoming law in requiring digital identifiers for all of the DAO’s members.<sup>136</sup> That is not necessarily to say, however, that these identifiers must disclose who stands behind them; they might conceivably function as mere pseudonyms.

The CDEZ’s DAO Regulation Draft also improvises in allowing to DAOs to take the form of UNA. That such an entity is called “nonprofit” suggests that it might not offer an attractive platform for fintech. The DAO Regulation Draft offers a partial fix of that seeming deficiency. Although the CDEZ’s framework for UNAs forbids them from paying dividends or making distributions to members or managers, it allows a UNA to “pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered” and confer benefits consistent with its nonprofit purpose.<sup>137</sup> The DAO Regulation Draft clarifies that this exception “includes, but is not limited to, payments and compensations for potential staking and the assumption of risk in regard to the staking of a token being held in relation to the DAO UNA governance, . . . which shall not be construed as a distribution of profits to the members” in contravention of the

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<sup>132</sup> *Id.* § 104(c).

<sup>133</sup> *Id.* § 104(e).

<sup>134</sup> Compare DAO Regulation Draft, *supra* note 115, § 104, with WYO. STAT. ANN. § 17-31-104 (2022).

<sup>135</sup> Compare WYO. STAT. ANN. § 17-31-106(b) (2022), with DAO Regulation Draft, *supra* note 115, § 105(a)(4) (DAO LLC smart contracts), and DAO Regulation Draft, *supra* note 115, § 105(b)(5) (DAO UNA smart contracts respectively).

<sup>136</sup> See DAO Regulation Draft, *supra* note 115, § 105(a)(1) (DAO LLC members); *id.* § 105(b)(2) (DAO UNA members).

<sup>137</sup> ZONE CIVIL ORDINANCE, *supra* note 21, at tit. VII, ch. 9, § 25(a)–(b)(2) (forbidding dividends or distributions but allowing reasonable compensation and reimbursement).



limits imposed on UNAs.<sup>138</sup> In this way, the draft regulation leaves room for DAO UNA members to make money from participating in the governance of their nonprofit organization.

Why would any DAO bother complying with these requirements? Because doing so would afford its individual members the protection of limited liability for acts of the DAO.<sup>139</sup> Without that shelter, DAOs would likely qualify as partnerships or joint ventures, the members of which would bear joint and several liability for debts of the entity.<sup>140</sup> Whatever the form of its final regulations for DAOs, the CDEZ will doubtless want to ensure that they provide both commercial opportunities and protections from personal liability.

#### B. Stablecoin Regulation Draft

The Zone Authority gave advance notice of a proposed rulemaking for stablecoins on September 7, 2022.<sup>141</sup> Comments on that notice closed on September 30, 2022.<sup>142</sup> The Zone Authority published its Stablecoin Regulation Draft on October 27, 2022, concurrent with publication of the Banking and Commercial Services Code Draft discussed in the next subsection.<sup>143</sup> As the Zone Authority explained in an accompanying press release, the framework set forth in these two drafts “is guided by financial stability and consumer protection, requiring that all stablecoins be issued by regulated entities, holding a 11 ratio of assets to stablecoin tokens, and limiting those assets only to high-quality, liquid ones.”<sup>144</sup>

What motivated the Zone Authority’s interest in stablecoins? As the advance notice observed, stablecoins offer fintech a way to smooth out the high volatility characteristic of popular cryptocurrencies like Bitcoin or Ethereum.<sup>145</sup> The value of a stablecoin is pegged to a relatively stable asset such as a fiat currency, a commodity like gold, or a specially designed financial

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<sup>138</sup> DAO Regulation Draft, *supra* note 115, § 117.

<sup>139</sup> See ZONE CIVIL ORDINANCE, *supra* note 21, at tit. VII, ch. 7, § 304 (providing for limited liability of member of LLC); *id.* tit. VII, ch. 9, § 8 (providing same for UNA).

<sup>140</sup> Advance Notice on Upcoming DAO Regulation, *supra* note 119.

<sup>141</sup> Advance Notice of Proposed Rulemaking (ANPRM) on Stablecoins, *supra* note 119.

<sup>142</sup> PR006 – Tribal Nation-Backed Economic Zone Solicits Feedback for New Stablecoin Regulatory Structure, CATAWBA DIGIT. ECON. ZONE (Sept. 8, 2022), <http://catawbadigital.zone/wp-content/uploads/2022/09/PR006-CDEZ-ANPRM-Stablecoins-Press-Release-with-letterhead.-Sep-8th-2022.docx.pdf> [<http://perma.cc/H54M-UENM>].

<sup>143</sup> PR007 – Stablecoin Regulation: Draft, *supra* note 117.

<sup>144</sup> *Id.*

<sup>145</sup> Advance Notice of Proposed Rulemaking (ANPRM) on Stablecoins, *supra* note 119.

instrument.<sup>146</sup> Unfortunately for the nascent fintech sector, stablecoins have proven unreliable in practice. The Zone Authority aims to correct that deficiency by providing regulatory clarity and certainty for stablecoins without stymying innovation.<sup>147</sup>

How does the Stablecoin Regulation Draft try to satisfy those goals? By limiting the issuance of stablecoins to select financial entities, chosen for their capacity to deliver on their promises.<sup>148</sup> Specifically, a Zone Payment Stablecoin Regulator will assess any would-be stablecoin issuer for its ability applicant “to maintain reserves backing its outstanding payment stablecoins on an at least a 1-to-1 basis.”<sup>149</sup> These reserves shall consist of U.S. coins and currency (including Federal Reserve notes), funds held as insured deposits, and other liquid assets as defined in federal laws or regulations or as provided for in the Zone’s own banking code.<sup>150</sup> Entities that fail to meet those standards would be strictly forbidden from offering or issuing stablecoins.<sup>151</sup>

One stablecoin evidently already has a lead in winning approval under the pending rules. Informed third parties claim that the CDEZ “is designed to utilize a new and innovative digital currency known as Fluent.”<sup>152</sup> This commentary, co-written by parties involved in designing CDEZ,<sup>153</sup> one of whom serves as Chief Legal Officer of Nest,<sup>154</sup> the company issuing Fluent,<sup>155</sup> describes the stablecoin as “a bank-led, transparent stablecoin, designed with federated custody across multiple institutions to offer maximum stability.”<sup>156</sup> In compliance with the reserve requirements of the Stablecoin Regulation Draft, “the digital currency utilized in the Fluent system is one-to-one with the U.S. dollar, with all minted tokens backed with cash and approved assets.”<sup>157</sup>

Comments on the Stablecoin Regulation Draft closed on November 26, 2022.<sup>158</sup> No final rule has yet issued. Even if it had,

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Draft Stablecoin Regulation, *supra* note 116, § 103.

<sup>149</sup> *Id.* § 104(a)(4)(A).

<sup>150</sup> *Id.* § 106.

<sup>151</sup> *Id.* § 111.

<sup>152</sup> Guedel & Viles, *supra* note 8, at 600.

<sup>153</sup> *Id.* at 592.

<sup>154</sup> *See id.* at 591 n.\* (introducing W. Gregory Guedel).

<sup>155</sup> *FLUENT: Federated Tokenization of Currency*, NEST FIN. GRP., <http://www.nestgroup.io/products#Fluent> [<http://perma.cc/T8RM-RY7D>] (last visited Dec. 22, 2022).

<sup>156</sup> Guedel & Viles, *supra* note 8, at 600.

<sup>157</sup> *Id.* at 600–01.

<sup>158</sup> *PR007 – Stablecoin Regulation: Draft*, *supra* note 116.

the draft's reliance on the Zone's still-prospective banking code would leave it less than fully realized. The discussion now turns to that, the last of the three currently pending rulemaking proceedings.

### C. Banking and Commercial Services Code Draft

The Zone Authority published its Banking and Commercial Services Code Draft<sup>159</sup> simultaneously with the publication of its Stablecoin Regulation Draft, on October 27, 2022.<sup>160</sup> That makes sense administratively, given that the two sets of rule address interrelated matters. As the Zone Authority explained, "The banking code allows a large range of regulated institutions, including trusts, Special Depository Institutions, money transmitters, and full-scale banking corporations. The stablecoin framework complements the draft banking code and specifies the regulated entities that are permitted to issue stablecoins."<sup>161</sup>

More than any other prospective rule, the Banking and Commercial Service Code Draft operates at a wholesale level rather than a retail one. In other words, it aims to provide a foundation on which large regulated commercial enterprises can build the infrastructure necessary to support smaller and more freewheeling entities, such as DAO LLCs and DAO UNAs dealing in stablecoins and other digital assets.<sup>162</sup> As one might expect of enterprise-grade code for large, regulated entities, the Banking and Commercial Service Code Draft runs long—allegedly, for 129 pages of single-spaced text.<sup>163</sup> So voluminous a document would defy easy summary in any event. As the use of "allegedly" suggests, however, there is another problem with assessing the Banking and Commercial Service Code Draft: it was not initially published in full. Whereas the document's table of contents indicates that it ends after Chapter 190, the document published by the Zone Authority ends part way through Chapter 150 with a notice reading, "Page 80 of 129".<sup>164</sup>

Notified of this oversight, the CDEZ pledged to set matters right by publishing the entirety of the draft regulation and reopening public comments.<sup>165</sup> For present, the Zone Authority's

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<sup>159</sup> Draft Banking and Commercial Services Code, *supra* note 117.

<sup>160</sup> Though the draft Code bears no date, its issuance was announced by a separate press release. *PR007 – Stablecoin Regulation: Draft*, *supra* note 116.

<sup>161</sup> *Id.*

<sup>162</sup> See Draft Banking and Commercial Services Code, *supra* note 117.

<sup>163</sup> See *id.* at 95 (ending with notice, "Page 80 of 129").

<sup>164</sup> *Id.* at 1, 95.

<sup>165</sup> Letter from Joseph McKinney, CEO of CDEZ, to author (Dec. 23, 2022) (on file with author).

own summary of the Banking and Commercial Service Code Draft will have to suffice. The press release accompanying the draft's publication says it was based on the state-level banking codes of Wyoming, South Dakota, and North Dakota.<sup>166</sup> The Zone Authority explains these choices:

Wyoming was selected because of its provisions allowing banks to conduct digital assets business. Unlike Wyoming, this ability is not limited solely to special depository institutions. The framework takes most of its inspiration from South Dakota, which is the most widely used banking framework in the United States, holding the most assets under management of any State. The code also ensures that each bank is held accountable for the highest standards of compliance, including in money laundering, financial stability, and consumer protection. The proposed banking regulation draws on North Dakota for its implementation of a Public Bank. Like North Dakota, the Catawba Public bank is a "bank of banks", facilitating payment rails and regulation of banks chartered within the Zone. The Banking Code also provides support in engaging key financial and regulatory stakeholders.<sup>167</sup>

Further commentary on the prospective Banking and Commercial Services Code comes from third parties evidently tasked to help write it, W. Gregory Guedel and Philip H. Viles, Jr.<sup>168</sup> They summarize their Code's contents and conclude that it "not only provides the Tribal government with the means of exercising sovereign governance over economic activity, but it also attract and facilitates new business within the Nation's jurisdiction, thereby serving as a substantial and effective catalyst for economic development within Native American communities."<sup>169</sup> It is impossible to say at this time to what degree the enacted Code will embody the author's version and what effect it will have in practice.

The deadline to submit comments on the Banking and Commercial Services Code Draft originally fell on November 26th, 2022.<sup>170</sup> Having been notified that less than the entire draft was published, however, the Zone Authority pledged to publish the whole and extend the deadline for comments.<sup>171</sup> It is not too late

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<sup>166</sup> *PR007 – Stablecoin Regulation: Draft*, *supra* note 116.

<sup>167</sup> *PR007 – Stablecoin Regulation: Draft*, *supra* note 116 (paragraph break omitted).

<sup>168</sup> Guedel & Viles, *supra* note 8, at 605 (claiming the paper's authors developed the CDEZ's Banking and Financial Services Code).

<sup>169</sup> *Id.* at 608.

<sup>170</sup> See *PR007 – Stablecoin Regulation: Draft*, *supra* note 116 (giving the deadline for comments on both the Stablecoin Regulation Draft and the Banking and Commercial Services Code Draft of Nov. 26, 2022).

<sup>171</sup> Letter from Joseph McKinney, CEO of CDEZ, to author (Dec. 23, 2022) (on file with author).

to do so; the Zone Authority has not yet issued a final version of the Banking and Commercial Services Code.

#### CONCLUSION

This paper has reviewed the birth and rapid maturation of the CDEZ, a special jurisdiction dedicated to bringing the rule of law to fintech. The CDEZ already boasts of a number of firsts: the first entirely virtual zone to focus on fintech; the first time that a Native American tribe has taken up the regulation of a whole field of commerce; and the first special jurisdiction in the United States to provide its own civil laws and legal system. If all goes as planned, the CDEZ will also soon host the first tribal public bank in the United States.

The CDEZ launched in the spring of 2022 with a comprehensive set of rules for commerce, borrowed from tried and trusted sources. Before the year's end, it added to these an Administrative Procedure Regulation, a Digital Asset Regulation, and a Resolution adopting as local law new U.C.C. Article 12 and related amendments. The Zone Authority has begun rulemaking proceedings for regulations addressing DAOs, stablecoins, and banking.

Though the CDEZ has made a strong start, it will face considerable challenges in its campaign to establish a thriving online commercial hub. It remains unclear how best to adapt old rules for such novelties as cryptocurrencies, NFTs, and other digital assets. The Zone Authority will likewise have to blaze trails in figuring out how to regulate DAOs, stablecoins, and a tribal public bank. The Catawba will not be entirely alone in this pioneering effort—other jurisdictions have begun trying to attract the same businesses and customers—but it can hardly expect much help. Will the CDEZ win another first in the race to bring good governance to the fintech frontier? Only time will tell.