Alexander Grishman, Santiago Herrera in Law360: Applying UCC Notice Exemptions To Cryptocurrency Sales

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For secured parties, a collateral disposition in a default scenario requires significant forethought to avoid actions that violate the Uniform Commercial Code. The required planning and documentation is compounded when the collateral sold is a new and volatile asset class. In this article, we will consider whether certain exemptions to notice of sale under the UCC might apply to bitcoin (and similar cryptocurrencies), specifically when sold in an exchange or online platform.

Collateral Disposition Rules

Collateral disposition in the context of secured transactions is mainly governed by Section 9-610 et seq. of the UCC. Under Section 9-611(b), known as the notice requirement, secured parties must notify obligors (and specified persons) of their intent to sell the collateral.

Certain types of collateral, however, are exempted from the notice requirement pursuant to Section 9-611(d), namely (1) collateral that is perishable or threatens to speedily decline in value (referred to as the drop exemption); and (2) collateral that is customarily sold on a recognized market (referred to as the market exemption).

The former is based on the asset's nature or its price volatility; the latter, on the pricing mechanism used in certain markets. They both allow secured parties to sell without notice but selling in a recognized market brings the additional (and substantial) benefit of shielding the sale from all potential claims based on commercial unreasonableness, not just those based on deficient notice. Thus, whenever feasible, secured parties should sell their collateral in recognized markets. …

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