

# **EXHIBIT C**

*White Paper Regarding Merchant Cash Advance Entities*

## WHITE PAPER REGARDING MERCHANT CASH ADVANCE ENTITIES

Presented by the Business Law Section of the Florida Bar  
Bankruptcy/UCC Committee  
Merchant Cash Advance Study Group

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## I. Brief Introduction and Summary of Proposals

This Merchant Cash Advance Study Group (the “**Study Group**”) was originally formed in connection with the then proposed Florida Commercial Financing Disclosure Law. At its inception, the Study Group’s primary focus concerned Florida Statute § 559.9613, a statute that regulates a number of disclosures required in commercial financing transactions.

At the June 2025 meeting of the Bankruptcy/UCC Committee (the “**Committee**”), the Study Group was reconstituted to investigate a particular definition found in the Florida Commercial Financing Disclosure Law; and, at the meeting of the Bankruptcy Judicial Liaison Committee, the mandate was further expanded to investigate a corollary service issue stemming from party identification in the Florida Secured Transaction Registry. For the next year, the Study Group organized numerous discussions, analyzed legislative history, Shephardized relevant statutes, and researched comparative language from other jurisdictions. The Study Group, whose members span across the entire state and whose practices involve representation of both debtor and creditor bodies, ultimately proposes that the Business Law Section of the Florida Bar (the “**Section**”) advance two amendments to the Florida Commercial Financing Disclosure Law. Specifically, for the reasons set forth herein, the Study Group recommends the following:

- 1) **Florida Statute § 559.9611(1):** As used in this part, the term: (1) “Accounts receivable purchase transaction” means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business’s accounts or payment intangibles as those terms are defined in s. 679.1021(1) at a discount to the expected value of the account or payment intangibles. ~~For purposes of this part, the provider’s characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.~~
- 2) **Florida Statute § 559.9613(4):** This subsection applies to a provider in a commercial financing transaction that has filed a Florida financing statement pursuant to the Florida Uniform Commercial Code – Secured Transactions which designates, as the secured party, the name of an agent or representative of the provider. A person who (i) is designated in the financing statement as the debtor, (ii) seeks to effect service on the provider, and (iii) has no knowledge, as defined by s. 671.201(27) and (29), Florida Statutes, that the agent or representative is an agent or representative for a particular provider, may elect to properly serve the designated agent or representative with a Request as defined in s. 679.210(1)(a), Florida Statutes. If the agent or representative fails, within 14 days after receipt, to provide the debtor in writing the name and address of the provider in the commercial financing transaction, then the debtor is authorized to effectuate service, including but not limited to service of process, on the provider in the commercial financing transaction by serving the agent or representative who is designated as the secured party in the financing statement. Service on the agent or representative must be made in accordance with applicable law. The provisions of this subsection are cumulative to any remedies identified in s. 679.625, Florida Statutes, or other applicable law.

## II. General Background to Merchant Cash Advance (“MCA”) Entities

“The mechanics behind these [MCA] transactions are relatively simple, with a merchant receiving funds within days – and sometimes hours – of beginning the application process.”<sup>1</sup> In essence, “[i]n exchange for cash up front, the merchant pledges its future business income to the funder, and the funder is repaid through daily or weekly ACH transfers from the merchant’s bank account.”<sup>2</sup> “Proponents argue that they fill a void in small business lending, providing a financial lifeline to businesses that are not eligible for traditional financing sources. MCAs are also advertised as being more flexible and adaptable than traditional bank loans.”<sup>3</sup> However, others view MCAs “as a form of predatory lending, tantamount to fraudulent and usurious loans.”<sup>4</sup>

Whether an MCA relationship is a true sale or a disguised loan turns on the economic substance of the transaction.<sup>5</sup> Ultimately, the critical factor in the loan versus sale characterization is the transfer of risk – if the “buyer” is absolutely entitled to repayment under all circumstances then the risk remains with the “seller” and the transaction should be classified as a loan.<sup>6</sup> “Usually, courts weigh three factors when determining whether repayment is absolute or contingent: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the [seller] declare bankruptcy.”<sup>7, 8</sup> Either way, “[t]he role and impact of MCAs cannot be ignored. This is an ever-growing industry that is increasing in sophistication.”<sup>9</sup> One relatively recent study “concluded that the global MCA market was valued at \$17.9 billion in 2023 and is projected to reach \$32.7 billion by 2032, reflecting a projected compound annual growth rate of 7.2 percent during that period.”<sup>10</sup>

## III. Florida Commercial Financing Disclosure Law

**A. Legislative History.** The Florida Commercial Financing Disclosure Law was enacted primarily to **(i)** require disclosures by commercial financing transaction providers, **(ii)** prohibit certain activities by brokers, and **(iii)** grant the Attorney General exclusive oversight.<sup>11</sup>

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<sup>1</sup> Scott J. Bogucki, *How “Ordinary” Are Merchant Cash Advance Transactions?*, 43-DEC AM. BANKR. INST. J. 18, 18 (2024).

<sup>2</sup> Kara J. Bruce, *Revenue-Based Finance in Bankruptcy and Beyond*, 45 No. 4 BANKR. LAW LETTER NL 1 (Apr., 2025).

<sup>3</sup> *Id.*

<sup>4</sup> Kathleen L. DiSanto & Luis E. Rivera, II, *Know When to Hold ‘Em, Know When to Fold ‘Em: The Differences Between a Loan and Merchant Cash Advance*, 42-JAN AM. BANKR. INST. J. 78, 78 (2023); Caitlyn Coates & Michael Markham, *Merchant Cash Advance Claims in Bankruptcy*, THE DISCLOSURE STATEMENT (Spring 2025) (“These short repayment periods can come laden with fees and effectively high interest rates, the high cost of which the seller may not fully realize at the outset of the agreement. Far too often, this rapid rate of payback becomes too much for a small or medium business to sustain, leading it to seek out yet another merchant cash advance to cover its first one.”).

<sup>5</sup> *In re GMI Group, Inc.*, 606 B.R. 467, 485 (Bankr. N.D. Ga. 2019).

<sup>6</sup> *LG Funding, LLC v. United Senior Properties of Olathe, LLC*, 122 N.Y.S.3d 309, 312 (App. Div. 2020).

<sup>7</sup> *Id.* (internal citations omitted).

<sup>8</sup> *See also Elmer v. Comm’r*, 65 F.2d 568, 569-70 (2d Cir. 1933) (examining factors distinguishing loans versus sales nearly one hundred years ago).

<sup>9</sup> Hannah W. Hutman, *Understanding and Addressing Merchant Cash Advances in Bankruptcy*, (unpublished memorandum) (on file with author).

<sup>10</sup> Bogucki, *supra* note 1 (citing *Merchant Cash Advance Market Size, Share, Competitive Landscape and Trend Analysis Report, by Repayment Method, by Application: Global Opportunity Analysis and Industry Forecast, 2023-2032*, Allied Merchant Research (Apr. 2024), [alliedmarketresearch.com/merchant-cash-advance-market-A323338](https://alliedmarketresearch.com/merchant-cash-advance-market-A323338)).

<sup>11</sup> Fla. H.R. Comm. on Commerce, CS/HB 1353 (2023) Post-Meeting Staff Analysis (Apr. 19, 2023).

The legislative history notes that the “bill provides that a provider’s characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money.”<sup>12</sup> The language is most likely intended to protect a good faith creditor in the event of a reclassification. This means that if a creditor reasonably believes the transaction is an accounts receivable purchase transaction and makes those necessary disclosures, but, ultimately a court deems it a disguised loan, the creditor would otherwise face the risk of liability for failing to provide loan-specific disclosures. However, the issue of reclassification is mooted due to all commercial financing transactions having the same disclosures under Florida Statute § 559.9613.

**B. Relevant Statutes.** The Florida Commercial Financing Disclosure Law’s definitions currently read: As used in this part, the term: (1) “Accounts receivable purchase transaction” means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business’s accounts or payment intangibles as those terms are defined in s. 679.1021(1) at a discount to the expected value of the account or payment intangibles. *For purposes of this part*, the provider’s characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.<sup>13</sup>

In turn, this definition is only used once in the remaining statute. Specifically, in the definition of a “Commercial Financing Transaction” which reads in pertinent part: [A] commercial loan, *an accounts receivable purchase transaction*, or a commercial open-end credit plan to the extent the transaction is also a business purpose transaction. . . .<sup>14</sup>

**C. Interpretation and Comparative Language.** There are scant reported Florida decisions as to Florida Statutes §§ 559.9611(1) or (6).<sup>15</sup> However, there are at least two known instances of parties utilizing the definition for “accounts receivable purchase transaction”. First, in a state court matter, an MCA argued that this definition precluded any argument that the subject transaction was a loan.<sup>16</sup> Second, in a bankruptcy case, the MCA attached the statutes to its proof of claim, in support of its characterization of the transaction as binding on the court.<sup>17</sup>

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<sup>12</sup> Fla. S. Comm. on Fiscal Policy, CS/CS/SB 1624 (2023) Pre-Meeting Staff Analysis (Apr. 24, 2023).

<sup>13</sup> Fla. Stat. § 559.9611(1) (emphasis added).

<sup>14</sup> *Id.* at § 559.9611(6) (emphasis added).

<sup>15</sup> *But see JLK Constr. V. Alva Advacne, LLC et al.*, 2025 WL 3681827, at \*4 n. 30 (Bankr. W.D. Mo. 2025): Florida enacted the Florida Commercial Financing Disclosure Law (FCFDL) in 2023. Fla. Stat. §§ 559.961-15 (2023). Under the FCFDL, a provider’s characterization of an MCA transaction as a sale is conclusive evidence that the transaction is not a loan. Fla. Stat. § 559.9611(1) (2025) (“For purposes of [the FCFDL], the provider’s characterization of an [MCA] transaction as a purchase is conclusive that the . . . transaction is not a loan . . .”). The FCFDL, however, does not govern this court’s characterization of the transactions because: (1) “the conclusive nature of a provider’s characterization of an [MCA transaction] as a purchaser [is] limited in its application to . . . the FCFDL,” *In re IVF Orlando, Inc.*, No. 6:24-bk-05475-TPG, 2025 WL 2831400, at \*12 n.33 (Bankr. M.D. Fla. Oct. 3, 2025); and (2) this adversary proceeding and all the transactions at issue predate the FCFDL’s effective date. The court, therefore, applies the law as it existed at the time of the transactions.

<sup>16</sup> Order Granting Motion for Summary Judgment (Doc. No. 39), *Funding Experts Inc v. Rush Masonry Inc et al*, 2024-008317-CA-01 (Fla. 11th Cir. Ct. Feb 24, 2025).

<sup>17</sup> *In re IVF Orlando, Inc.*, No. 6:24-BK-05475-TPG, 2025 WL 2831400, at \*12 n. 33 (Bankr. M.D. Fla. Oct. 3, 2025).

Thus, in at least two Florida cases, a party meant to do away with the prefatory language “for the purposes of this part” and sought to expand the import of the definition. This is most likely why the majority of other jurisdictions who have enacted similar laws have avoided that language. A survey of nine other jurisdictions reflects seven do not have conclusive language, while only two (Kansas and Missouri) have conclusive language:<sup>18</sup>

State	Statute Citation	Definition
California	Cal. Fin. Code § 22800(b)	For purposes of this division: . . . “Accounts receivable purchase transaction” means a transaction as part of an agreement requiring a recipient to forward or otherwise sell to the provider all or a portion of accounts, payment intangibles, or cash receipts that are owed to the recipient or are collected by the recipient during a specified period or in a specified amount.
Connecticut	Conn. Gen. Stat. § 36a-861(8)	As used in this section and sections 36a-862 to 36a-872, inclusive: . . . “Sales-based financing” means a transaction that is repaid by the recipient to the provider over time (A) as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient, or (B) according to a fixed payment mechanism that provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue[.]
Georgia	Ga. Code Ann. § 10-1-393.18(a)(1)	As used in this Code section, the term: . . . “Accounts receivable purchase transaction” means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business’s accounts, as defined in Code Section 11-9-102, or payment intangibles, as defined in Code Section 11-9-102, at a discount to the accounts’ or payment intangibles’ expected value.
Kansas	Kan. Stat. Ann. § 75-783(b)(2)	As used in the commercial financing disclosure act: . . . “Accounts receivable purchase transaction” means any transaction in which a business forwards or otherwise sells to a provider all or a portion of accounts of such business, cash receipts or payment intangibles at a discount to the expected value of such accounts or payment intangibles. The provider’s characterization of an accounts receivable purchase transaction as a purchase shall be conclusive that such accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance or detention of money.
Missouri	Mo. Rev. Stat. § 427.300(2)(2)	For purposes of this section, the following terms mean: . . . “Accounts receivable purchase transaction”, any transaction in which the business forwards or otherwise sells to the provider all or a portion of the business’s accounts or payment intangibles at a discount to their expected value. The provider’s characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money[.]
New York	N.Y. Fin. Serv. § 801(j)	For purposes of this article: . . . “Sales-based financing” means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

<sup>18</sup> Dustin C. Alonzo & Adair L. Kingsmill, *State Survey of the Standard Commercial Financing Disclosure Laws*, 80 BUS. LAW. 2 (June 2025).

State	Statute Citation	Definition
Texas	Tex. Fin. Code § 398.001(8) <sup>19</sup>	In this chapter: . . . “Sale-based financing” means a transaction that is repaid by the recipient to the provider of the financing: (A) as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient; or (B) according to a fixed payment mechanism that provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.
Utah	Utah Code Ann. § 7-27-101(1)	As used in this chapter: “Accounts receivable purchase transaction” means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business’s accounts, as defined in Section 70A-9a-102, or payment intangibles, as defined in Section 70A-9a-102, at a discount to the accounts’ or payment intangibles’ expected value.
Virginia	Va. Code Ann. § 6.2-2228	As used in this chapter, unless the context requires a different meaning: . . . “Sales-based financing” means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

**D. Conclusion.** Because the language at issue would change neither the fundamental definition nor the requirements to comply with the Florida Commercial Financing Disclosure Law, coupled with the potential abuse of this definition beyond its intended relief, the Study Group recommends revisions to the statutory language as identified herein.

**IV. Florida Secured Transaction Registry and Service**

**A. Relevant Statutes.** Florida Statutes specify a financing statement is sufficient if it “[p]rovides the name of the secured party or a representative of the secured party...”<sup>20</sup> However, the “[f]ailure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.”<sup>21</sup>

In practice, when these statutes are applied to MCAs, they become troublesome for two reasons. First, many obligors stack their MCA obligations. This means that one obligor will have multiple MCAs in second, third, fourth, etc., position. This complicates the identification of creditors to specific obligations, especially if the obligor never received or kept a copy of the underlying agreement, UCCs were not filed at or near the transaction date, and similar collateral descriptions (such as “all assets”) are invoked.

<sup>19</sup> Daniel B. Pearson & Eric T. Mitzenmacher, *Texas Commercial Financing Disclosure and Registration Law Threatens Sales-Based Financing Industry*, Mayer Brown (June 30, 2025), <https://www.mayerbrown.com/en/insights/publications/2025/06/texas-commercial-financing-disclosure-and-registration-law-threatens-sales-based-financing-industry> (“While the Act stops short of declaring sales-based financing to be a *per se* loan or credit transaction, sales-based financing transactions will no longer benefit from the conclusive presumption that they are not loans . . .”).

<sup>20</sup> Fla. Stat. § 679.5021(1)(b) (emphasis added).

<sup>21</sup> *Id.* at § 679.5031(4); *see also id.* at § 679.5061(2) (marking the insufficiency of the debtor’s name as seriously misleading but no such statement for the creditor’s name).

Second, recognizing stacking and other territorial concerns, many MCAs will identify an agent or representative as opposed to identifying the secured party. And, MCAs will often collateralize and sell their portfolios providing another reason to have an agent identified on the financing statement. These considerations result in a single obligor having multiple financing statements without being able to identify the secured party.<sup>22</sup>

But knowing the identity of the secured party is important, particularly with respect to a bankruptcy proceeding. There, assuring proper service is important for a variety of aspects in a proceeding, including, but not limited to the use of cash collateral, determination of secured positions and avoidance of liens, stay relief, declaratory relief, claims objections, and actions to avoid preferences and fraudulent transfers.<sup>23</sup> Discovery, such as a rule 2004 examination, may be available to an obligor to likewise determine this information. However, the cost and time constraints of discovery may mean this avenue is not always practical.

**B. Proposals.** How then is an obligor to ascertain the secured party information? Currently, the Florida Statutes entitle an obligor to “request” various information from the creditor.<sup>24</sup>

First, an obligor may request an accounting of the unpaid obligations.<sup>25</sup> Second, an obligor can request a list of collateral securing the obligation.<sup>26</sup> Third, an obligor can request a statement of account whereby “the recipient must approve or correct a statement indicating what the obligor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date.”<sup>27</sup> In all three instances, if the secured party claims no interest, it must disclaim any interest and provide the name and contact information for any assignee or successor.<sup>28</sup> And, in all three instances, the secured party “shall comply with a request within 14 days after receipt[.]”<sup>29</sup>

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<sup>22</sup> Nor will bank statements always be able to provide the answer. Many times an obligor’s records are in such disarray they do not have the statements readily available to provide to counsel. Because of garnishment or other reasons an account may be closed and access to those records lost. And, especially in the case of stacking, there may not be sufficient funds to pay lower priority MCAs hence they do not show on the account.

<sup>23</sup> DiSanto, *supra* note 4, at 99-100; Hutman, *supra* note 9, at 11-13; Molly Considine, *Analyzing Merchant Cash Advance Agreements Under § 365*, 45-MAR Am. Bankr. Inst. J. 24, 24 (2026).

<sup>24</sup> The Uniform Commercial Code Comment provides the following rationale:

3. Requests by Debtors Only. A financing statement filed under Part 5 may disclose only that a secured party may have a security interest in specified types of collateral. In most cases the financing statement will contain no indication of the obligation (if any) secured, whether any security interest actually exists, or the particular property subject to a security interest. Because creditors of and prospective purchasers from a debtor may have legitimate needs for more detailed information, it is necessary to provide a procedure under which the secured party will be required to provide information. On the other hand, the secured party should not be under a duty to disclose any details of the debtor’s financial affairs to any casual inquirer or competitor who may inquire. For this reason, this section gives the right to request information to the debtor only. The debtor may submit a request in connection with negotiations with subsequent creditors and purchasers, as well as for the purpose of determining the status of its credit relationship or demonstrating which of its assets are free of a security interest.

U.C.C. § 9-210 cmt. 3.

<sup>25</sup> Fla. Stat. § 679.210(1)(b).

<sup>26</sup> *Id.* at § 679.210(1)(c).

<sup>27</sup> *Id.* at § 679.210(1)(d).

<sup>28</sup> *Id.* at §§ 679.210(4)(a), (5)(a).

<sup>29</sup> *Id.* at § 679.210(2).

This Study Group proposes expanding Florida Statute § 559.9613 – disclosures - to include a new subsection (4) clarifying an obligor may request the name and address of the secured party. If a debtor as defined by Uniform Commercial Code – Secured Transactions properly serves a request and the agent or representative fails to identify the name and address of the secured party within 14 days after receipt of the request, then the debtor can effect service on the agent or representative.<sup>30</sup> This is cumulative to any additional remedies that may be afforded an obligor in those circumstances.

This language represents a compromise between the competing interests of the parties.<sup>31</sup>,  
<sup>32</sup> The obligor has a statutory tool to ascertain the true creditor behind a financing statement, while simultaneously preserving the creditor’s right to publicly utilize an agent or representative.<sup>33</sup> The proposal, however, would be hollow without a sufficient enforcement mechanism to ensure compliance. The current remedial framework is largely defensive, at times discretionary, and does not specifically address the change raised herein. Therefore, the Study Group is couching the change in Florida’s commercial financing statutes so that if a request is unanswered the obligor still has an offensive path forward without depriving the creditor of any substantive rights.

Two points of clarification which limit the statute’s applicability. First, the proposal contemplates that only the party seeking the request can avail itself of the remedies. Thus, if there is both a borrower and guarantor on an obligation, and only the borrower makes the request, then only the borrower can utilize the enforcement mechanism. Second, the proposal contemplates that the obligor can utilize the enforcement mechanism only for those transactions subject to the request. For instance, if a single borrower has multiple obligations with the same MCA, but only makes a request as to one UCC, then the borrower can avail itself of the enforcement mechanism only as to the one UCC identified in the request.

**C. Alternative Models.** In evaluating the above proposal it is useful to contrast it against three alternative models. First, the current state of affairs requires an agent to forward a request for information to the secured party. But, the agent is not required, and in fact will often refuse, to directly divulge the secured party’s information. As one agent encapsulates their requirements:

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<sup>30</sup> This remedy may be applicable when the MCA is a foreign individual or entity pursuant to Florida Statute § 48.193(1)(a), however, the court must be satisfied that its long-arm jurisdictional requirements are still satisfied. *See, e.g., Milberg Factors, Inc. v. Greenbaum*, 585 So.2d 1089, 1091 (Fla. 3d DCA 1991) (“The record fails to establish that Milberg had any contacts with Florida that meet the requirements of either of these sections. . . . Milberg’s isolated contacts with Florida were limited to entering into five factoring agreements over a ten-year period with Florida-based companies, filing U.C.C. financing statements in Florida, and filing lawsuits against account debtors in Florida. With respect to Milberg’s five Florida clients, these clients generated less than 2% of Milberg’s total revenues.”).

<sup>31</sup> There are presently several examples of Florida law recognizing service on an agent – both inside and outside of Chapter 48. *See, e.g.,* Fla. Stat. §§ 48.071 (including agents in charge of the business in the state), 48.181 (appointing the Secretary of State as authorized agent on parties who conceal their name/address or nonresidents), 569.346 (mandating nonresident manufacturers of nicotine dispensing devices appoint and engage a service agent in the state), 626.742 (appointing the Chief Financial Officer as the agent for licensed nonresident insurance agents), and 655.0201 (directing federal and state financial institutions to designate a service agent with the Department of State).

<sup>32</sup> Likewise, there is precedent for service on an unknown party. *See, e.g.,* Fla. Stat. §§ 48.184, 49.011, and 49.021.

<sup>33</sup> And, because the remedy is only available to the UCC obligor, a rival MCA cannot use the proposed revision to circumvent the MCA’s right to publicly name an agent or representative.

When a UCC-1 is filed with a UCC Secured Party Representative Service, the representative’s name appears on the financing statement, not the secured party’s name. In the instance of an inquiry on a UCC with a representative named instead of the secured party, *the secured party representative forwards all authenticated inquiries to the secured party to respond directly, at the secured party’s discretion. The representative’s obligations end there.*<sup>34</sup>

In summary, the current framework does not require a representative to reveal the information. One competing proposal would mandate treating an agent or representative akin to a registered agent, whereby service on the agent or representative is always proper.<sup>35</sup> This proposal may place an unforeseen burden on the agent or representative’s infrastructure. If an agent is the UCC agent for hundreds, or thousands, of secured parties, it may not have the manpower and processes in place for handling that many service requests.

Second, an alternative remedy would be to invalidate the lien or obligation upon the failure to respond to a request. However, this consequence is disproportionately punitive to the situation. And, such a framework raises much more stringent due process considerations.

Third and finally, an additional recommendation would be to formulate alternative sanctions, such as fee shifting. However, taxing fees as to the agent may prove unfair since an answer to a request comes from a third party outside of its control (the secured party). And, taxing fees as to the principal may prove meaningless if the true party is never identified.

**D. Comparative Language.** The Florida Statutes currently adopt in large part the model language from the Uniform Commercial Code:

UCC Section	Title	Language
§ 9-210(a)(1)	Request for Accounting; Request Regarding List of Collateral or Statement of Account	In this section: “Request” means a record of a type described in paragraph (2), (3), or (4).
§ 9-502(a)(2)	Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement	Subject to subsection (b), a financing statement is sufficient only if it: . . . provides the name of the secured party or a representative of the secured party; . . .
§ 9-625(g)	Remedies for Secured Party’s Failure to Comply with Article	If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

<sup>34</sup> First Corporate Solutions, *UCC Secured Party Representative Service – Explained*, Risk Management Blog (last visited March 26, 2026), <https://ficoso.com/ucc/ucc-secured-party-representative-service-explained/#:~:text=When%20a%20UCC%2D1%20is,The%20representative's%20obligations%20end%20there> (emphasis added).

<sup>35</sup> Absent express contractual appointment or statutory designation for service of process, the general agency principals do not dictate that a UCC agent or representative may not presently be authorized to accept service of process on behalf of the secured party. This is manifest, in part, by the lack of signature on a UCC.

By housing the proposed changes in Chapter 559, not Chapter 679, Florida maintains the uniformity of the secured transaction statute.

**E. Conclusion.** Because the suggested language is an extension of existing concepts and the “teeth” does not substantively change the parties’ rights, the Study Group recommends revisions to the statutory language as identified herein.

#### **V. Request for Approval by Triple Motion**

The Study Group respectfully requests the Executive Council of the Section support a bill containing these amendments by triple motion, substantially in the form attached hereto as **Appendix A**.

Appendix A1 - Technical Amendments

Commercial Financing, Funding, and Servicing  
Amendments Act of 2027

An act relating to merchant cash advances and other accounts receivable purchase transactions; amending s. 559.9611(1) to remove substantive text from the definition of "accounts receivable purchase transaction"; creating s. 559.9613(4) to deem the failure to respond to a request for the name and address of the secured party to enable a debtor to effectuate service on the agent or representative; and, providing an effective date to the amendments.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 559.9661, Florida Statutes, is amended to read:

"Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts or payment intangibles as those terms are defined in s. 679.1021(1) at a discount to the expected value of the account or payment intangibles. ~~For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.~~

Section 2. Subsection (4) of section 559.9613, Florida Statutes, is created to read:

Appendix A1 - Technical Amendments

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36 This subsection applies to a provider in a commercial  
37 financing transaction that has filed a Florida financing  
38 statement pursuant to the Florida Uniform Commercial Code -  
39 Secured Transactions which designates, as the secured party, the  
40 name of an agent or representative of the provider. A person  
41 who (i) is designated in the financing statement as the debtor,  
42 (ii) seeks to effect service on the provider, and (iii) has no  
43 knowledge, as defined by s. 671.201(27) and (29), Florida  
44 Statutes, that the agent or representative is an agent or  
45 representative for a particular provider, may elect to properly  
46 serve the designated agent or representative with a Request as  
47 defined in s. 679.210(1)(a), Florida Statutes. If the agent or  
48 representative fails, within 14 days after receipt, to provide  
49 the debtor in writing the name and address of the provider in  
50 the commercial financing transaction, then the debtor is  
51 authorized to effectuate service, including but not limited to  
52 service of process, on the provider in the commercial financing  
53 transaction by serving the agent or representative who is  
54 designated as the secured party in the financing statement.  
55 Service on the agent or representative must be made in  
56 accordance with applicable law. The provisions of this  
57 subsection are cumulative to any remedies identified in s.  
58 679.625, Florida Statutes, or other applicable law.

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60 Section 3. This act shall take effect July 1, 2027.

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62 Section 4. This act shall be referred to as the Commercial  
63 Financing, Funding, and Service Amendments Act of 2027.

## Appendix A2 – Triple Motion

**RESOLVED**, that the Florida Bar Business Law Section (the “**Section**”) supports proposed legislation (the “**Proposed Legislation**”) relating to merchant cash advances and other accounts receivable purchase transactions; by amending s. 559.9611(1) to remove substantive text from the definition of “accounts receivable purchase transaction”; and, by creating s. 559.9613(4) to deem the failure to respond to a request for the name and address of the secured party enabling a debtor to effectuate service on the agent or representative, with such Proposed Legislation substantially in the form presented to the Executive Council of the Section by the Bankruptcy/UCC Committee – Merchant Cash Advance Study Group – White Paper Regarding Merchant Cash Advance Entities.

**RESOLVED**, that the Proposed Legislation: **(1)** is within the Section’s subject matter jurisdiction as described in the Section’s bylaws; **(2)** is within the bar’s permissible legislative or political activity and the proposed Section position is not inconsistent with any official bar position on that issue; and **(3)** does not have the potential for deep philosophical or emotional division among a substantive segment of the bar’s membership.