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PROVIDERS & ADMINISTRATORS

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PROVIDERS & ADMINISTRATORS

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F&I PROVIDERS
RELIEF FUND
FOR F&I MANAGERS

To all,

I hope all of you, your families and your teams are well. I am sure each of you are dealing with similar challenges and opportunities. Last week, I was thinking of the dramatic impact this is not only having on us, but the dealers and their F&I employees who have supported our companies and our livelihood for years. Like each of our companies, they all are facing serious challenges and having to enact layoffs, furloughs or make deep cuts in pay for the F&I managers nationwide. While we are all focused on our companies, I feel that as a group we could make a difference for many F&I families. I know that giving at a time like this may be a challenge, but by doing this, we can show just how committed we are to the industry.

Since launching this initiative last week, we have had overwhelming responses from many in our industry, raising over \$200,000 with a goal of \$1 million *in only five days*. AS part of this outstanding progress, we have partnered with Kelly Price at NAE to use her 501c3 charity “Changing Lives” (EN number 83-1369892) to administrate this effort. In addition, we have established an advisory board of five industry leaders who represent a wide range of services including administrators, underwriters, roadside assistance and technology. Their objective will be to help raise funds, oversee where they will go, and decide how they can be best distributed to have maximum impact. Our commitment would be to give 100 percent back to as F&I many professionals as possible.

And, we have established clear guidelines on individual grants with no personal information being shared with the board (dealership name, geographic region, etc.). This will ensure that we are making the best decision for each based on need. Our grants will range from \$500 to \$2,000 per family. While this is not a lot of money, it will help defray some of the hardship they are being faced with every day.

I have personally committed \$10,000 along with a \$10,000 match from our company. I would ask each of you to make a similar commitment, but I know that for some, this may not be possible, and that is fine. But I would ask you to think about the good we can do as a group for the people who have always supported us.

There is still much work to be done, but with the passion and determination of this group, we will get this done quickly. I know that as a common voice, united in our efforts, we can be more impactful than as individuals and can show that our commitment runs deep.

Thank you for your time and please let me know if you have any questions.

Sincerely,

Tony Wanderon

Making a difference for F&I families

208 Ponte Vedra Park Drive
Ponte Vedra Beach, FL 32082



PROVIDERS & ADMINISTRATORS

UNITE

When Tony Wanderon of National Auto Care decided to launch a relief fund for F&I professionals, it was a personal thank you to all that F&I professionals have done to take care of providers in the past. It is a hope that once the pandemic crisis has passed and some level of economic security emerges, the Relief Fund will continue to support auto professionals in need.

BY NANCY DUNHAM

When Tony Wanderon, chief executive officer of National Auto Care, decided to launch a relief fund for F&I professionals it was personal.

That's why he chose a select group of colleagues with whom to share the idea and noted that he personally contributed \$10,000 to the fund, and his company matched it.

"Then I left it totally up to up to each of them to make a decision on a donation. I understood that donating is a personal decision, and while we set a target

to match, it was totally up to each and I could not have been any happier with the commitment they have made. All the responses so far have been very generous" he said. "The F&I professionals are the people who have taken care of us and our companies for quite some time. They support us every day when business is normal. Now in their time of need, we are here to support them."

Within a week of introducing the idea, Wanderon had started the "F&I Providers Relief Fund for F&I Managers." Contri-

butions rose quickly and now sit at more than \$232,000. Beyond that, he found that F&I providers recognized the great need for support with the F&I community and rallied to help.

Word of the fund spread quickly within this group, donations were collected, and the criteria that F&I professionals needed to qualify for the support were set. In fact, a full application was already online at that point. The commitment and generosity of founding members and other supporters within the automotive community to move beyond their personal concerns was swift.

A look at the Relief Fund's website already lists categories of donors including Founding Donors (\$20,000 and over), Champion Donors (\$10,000 to \$19,999) and Advocate Donors (\$5,000 to \$9,999).

"As word spreads, donations follow," said Wanderon. "In fact, F&I providers are anxious to show their commitment to F&I professionals during this economic downturn." And this first group of supporters are ready to get the word out to all to hopefully get us to our goal of \$750,000."

"Many F&I professionals have been affected pretty dramatically by COVID-19," said Wanderon. "They lost their jobs, they've been put on furlough or are just not making enough deliveries to make ends meet. That message clearly resonated with the group [of colleagues I contacted]."



Tony Wanderon



Kelly Price

and cut through much of the red tape that is needed to administer a fund of this nature utilizing a charitable foundation.

"Tony and I have had a great relationship for many years," said Price. "And he knows charitable works are in my heart. I was one part of the original group and kind of jumped in and started helping Tony."

The Beginning of The Relief Fund

The first lines on the Relief Fund's website tell the basic thoughts that led Wanderon to kick off the charity:

"During COVID-19, the auto industry has seen unprecedented losses in

contributors) probably makes up less than 5% of the overall industry, maybe 20% just from a sheer volume perspective."

The seven Relief Fund board members are representatives from an array of organizations. That was done purposefully, so that bias towards a certain automaker, dealership group or region would not come into play when relief is extended.

"We will not be providing the board with what dealership they work at or anything like that. We don't really want to know," Price said. "That's not part of the reason for the grant. We want to change lives. And Changing Lives Foundation is not charging to administer the program at all. We're doing

"The F&I professionals are the people who have taken care of us and our companies for quite some time. They support us every day when business is normal. Now in their time of need, we are here to support them."

Wanderon credits Kelly Price, CEO of National Automotive Experts/NWAN, a Strongsville, Ohio-based F&I products provider and administrator with much needed support during the Relief Fund's rapid acceleration. Price was not only a founding member, but readily agreed to set up a system to bring the administrative and other tasks of the F&I Providers Relief Fund under the umbrella of Changing Lives Foundation, of which she is the Executive Director. Her experience also allowed her to answer questions, resolve concerns

sales. F&I managers around the country have been impacted and they are facing serious challenges including loss of income, illness and deep pay cuts."

Although there are many relief programs for others within and outside the auto industry, Wanderon realized that aid is not readily available to F&I managers.

"There's just never been anything that I've seen that specifically was there to help fund F&I managers through these hard times," he said, noting the potential donor pool is deep. "That number [of founding

this so people can eat and pay their bills."

The application for Relief Fund support is bare-bones basic. Applicants are asked for their names, addresses, telephone numbers, emails and reason for the grant. They are then asked to choose a desired grant amount: \$500, \$750, \$1,000, \$1,250, \$1,500, \$1,750 or \$2,000. Documents in support of the application can be uploaded online. Finally, the applicant is asked for their title and years of service in the auto, powersports or RV industry.

"The problem is there are probably so



F&I PROVIDERS RELIEF FUND FOR F&I MANAGERS

many [F&I managers and professionals],” Wanderon said. “We likely won’t be able to take care of each and every person that needs relief.”

But that doesn’t mean they won’t try.

Wanderon and Price want to grow the F&I provider outreach as quickly as possible. They hope word-of-mouth by the original founding members will create a buzz that continually grows.

“They’ve all stepped up and provided generous donations and offered to do anything that they can to help us in our mission to support those in need,” Wanderon said. “We’ve reached a broader group, if you will, that includes underwriters, roadside companies, technology platforms and other people that are directly involved in dealerships.”

Reaching As Many As Possible

Wanderon and Price said the amount of need is great among F&I professionals, and they don’t expect that to drop off anytime soon.

This means the founding members have made support of the Relief Fund a priority and have committed to regular work on the program, despite other professional and personal obligations.

“We’re going to do everything we can to continue to try to raise funds. And we’re hoping that a second round of requests to providers will assist us in getting the message out,” he said. “We want to get five times the amount or ten times the amount that we’ve generated so far. But we need to be strategic from organizational and provider perspectives.”

Price’s array of experience with charitable work made her the perfect partner in

the Relief Fund venture, Wanderon said. Her expertise and knowledge of charities combined with the successful up-and-running charity she oversees, Changing Lives Foundation, has greatly contributed to the immediate success of the group.

The Changing Lives Foundation that Price started has been in place for years, so bringing the Relief Fund under its umbrella allowed for an expedited launch. It also adds credibility to the Relief Fund charity, said Wanderon.

“I totally agree with Tony that our businesses are driven by the passion and energy that F&I managers provide each and every day to sell our products and to provide good consumer protection. And even though they’re continuing to do their jobs, they’re struggling. This is the first time that I know of that we’ve had an opportunity to give back to them in a time of need.”

Although Price and Wanderon have both supported charities that aid auto professionals whose lives have been ravaged by floods, hurricanes and other disasters, most of those efforts were localized. The Relief Fund is the first time they’ve had a chance to make a national impact.

That underscores that they need to choose wisely on how the Relief Fund operates and limit relief to F&I professionals.

“Knowing that we wouldn’t have millions and millions of dollars to distribute, we really felt like we should zone in on helping the F&I managers that help us each and every day and try to create a great cause,” said Price of the Relief Fund. “I believe that we should all give back to somebody when we have the opportunity.”

Wanderon agreed, noting that is another element that sets the Relief Fund apart from other charities.

“I think one of the things that is different about this and other charities is we personally know who we are impacting and where the money is going,” he added.

Although the Relief Fund is somewhat narrowly focused, its mission to offer immediate help to those in distress fits comfortably with the mission of the Changing Lives Foundation.

“That’s what Changing Lives [Foundation] is all about, really helping those who need a helping hand today,” said Price. “We’re not doing fundraisers for efforts like medical research or something like that. We’re trying to help people that are impacted today.”

How to Get Help

Although the Relief Fund is under the umbrella of the Changing Lives [Foundation] the donations made in honor of the Relief Fund are earmarked specifically for grants distributed under the Relief Fund.

The founding members of the Relief Fund laid out specific criteria for how recipients would pre-qualify and receive aid.

“We created a special board of seven individuals that will handle the incoming grants and the approval of the grant,” said Wanderon. “We really don’t want to know [specifics about the recipients].”

Once applications are approved by the board, the process is something akin to a pre-qualification for a mortgage; the prospective recipient’s information will be verified, and money will be distributed.

“I can’t guarantee how long or how fast we could move, but we’ll do it as fast as we can,” said Wanderon, of dispensing monetary relief. “It will really be a combined effort of all of us working together to get donations. We’re just trying to finalize all of that currently and then see the best way to get funds out.”

Both Price and Wanderon are pleased that business groups such as theirs have joined with others, including some competitors, to offer the most relief to as many F&I professionals as possible.

“When you put the right people together, you do what you can do to get things done in a good, expeditious way,” said Wanderon. “And that’s what we’ve done. So we have good teams. We’ve got great partners here.”

Wanderon and Price hope that once the pandemic crisis has passed and some level of economic security emerges, the Relief Fund will continue to support auto professionals in need.

“While this has been borne out of the current crisis, we’re hoping that we’ll keep this charity in play forever,” said Wanderon. “Then, when there are normal disasters, we are able to help more specifically in different areas of the country. But right now, clearly the focus is on those affected by the coronavirus pandemic.” **RA**

Those that want to learn more about the F&I Providers Relief Fund for F&I Managers can call 440-274-5114 or go to www.changinglivesfound.org/fandiprovidersreliefund.

P&A is Here for You



This goal of this issue is to offer our readers advice and insight during this unprecedented time.

BY KATE SPATAFORA

I believe the story you just read speaks for itself in demonstrating the effort that providers and administrators are putting forth to help other members of the automotive F&I community. Over the past weeks and months, I have received hundreds of press releases from product providers, technology administrators, agencies, F&I training companies and so many more, all announcing the steps they have taken to offer the automotive industry support in whatever ways possible. Now more than ever, I am truly honored to work with you all and to be able to help by spreading your messages to those who need it most.

The remaining pages of this issue are filled with advice, experience and knowledge from industry leaders.

“The severity of the restrictions under which we labor, and the breathtaking

damage we have seen our economy suffer, could only be justified by the most serious of threats.” Mosaic Compliance Service’s James Ganther recognizes this as our current reality and offers an inside look at how the dealers you do business with are handling this crisis and pushing forward with revised day-to-day processes and procedures; as well as addressing one possible silver lining.

In this edition of Compliance Hazards, resident expert Terrence O’Loughlin uncovers the rules and regulations surrounding the sale of used cars. Over the past ten years, the disparity between the cost of new vehicles versus used vehicles has continued to increase. Within this evolving sales dynamic, compliance issues regarding used vehicle sales are growing in significance.

P&A had the opportunity to sit down with Gina Cocking, recently appointed CEO of Colonnade Advisors, a boutique mergers and acquisitions investment bank with expertise in the automotive F&I industry. Gina takes us down the road that led her to Colonnade, shares her thoughts on the current global crisis and the importance of female leaders in the investment banking industry.

Last, but certainly never least, we close out this issue with a few words from Automotive Compliance Education’s Gil Van Over. ACE has recently developed a compliance program for providers and administrators and Van Over is here to state his case for certification.

Be it interviews and articles, press releases and company announcements, or webinars and digital training; the team here at P&A is working to assist the industry we serve in whatever ways possible. If you would like more information on anything you have read, or wish to reach out to share your own thoughts or stories, please do not hesitate to contact me at kate.spatafora@bobit.com. From all of us here, we wish you and your families’ good health and prosperity both now and in the future. **RA**

— Kate Spatafora



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DEALER OPS IN THE TIME OF A PANDEMIC

All across the country, states have stay-at-home orders in response to the COVID-19 pandemic. How did we come to such a state, and how are the dealerships you serve surviving?

BY JIM GANTHER

As I write this, 31 states and the District of Columbia have stay-at-home orders in place in response to the COVID-19 pandemic. How did we come to such a state, and how can the dealerships you do business with survive?

The severity of the restrictions under which we labor, and the breathtaking damage we have seen our economy suffer, could only be justified by the most serious of threats. Short of war, perhaps the only such threat is a pandemic of epic proportions.

Indeed, the first predictions of the impact of COVID-19 were grim. Dr. Neil Ferguson of Britain's Imperial College warned

of death tolls of 550,000 in the U.K. and over 2 million in the U.S., in a report published on March 16.

Ferguson's model assumed a high level of contagiousness, measured as an Ro value (pronounced "R-nought"). Seasonal flu has an Ro of 1.3, meaning each infected person is assumed to infect another 1.3 people. COVID-19 was presumed to have an Ro of 2.6 in Ferguson's most-dire scenario, twice as contagious as the seasonal flu. For comparison, measles has an Ro of 12-18.

Ferguson's doomsday scenario also assumed no mitigation efforts were put in place, and no effective treatments em-

ployed. In the weeks since the publication of that report, those underlying assumptions have not proven true. Ferguson has been accused of "walking back" his earlier prediction, but he responded that the lower death tolls "on the right columns" of the Imperial College's charts turned out to be more accurate.

In other words, the initial death estimates ranged from less-than-seasonal-flu to catastrophic. World leaders reacted to the most extreme estimate, and here we are.

How serious is COVID-19 in the U.S., really? We don't know yet, and probably won't until the virus is months behind us.

COMPLIANCE

This is because we don't yet have fatality numbers we can trust. One big reason for the uncertainty is the National Vital Statistics System's (NVSS) March 24 directive that "COVID-19 should be reported on the death certificate for all decedents where the disease caused or is assumed to have caused or contributed to death ... If the decedent had other chronic conditions such as COPD or asthma that may have also contributed, these conditions can be reported in Part II."

This directive could result in the over-reporting of COVID-19 as a cause of death. The reality of that impact is evident from the precipitous decline in deaths caused by pneumonia in the U.S. In January, that number was over 4,000 per week. In the week following the NVSS's directive, that number had fallen to under 2,400.

None of this is to say that COVID-19 is a hoax or should not be taken seriously. It can kill and certainly hasten the death of those with underlying comorbidities. If

and distribution facilities (including those who repair and maintain electric vehicle charging stations)."

Does that cover retail automotive sales? In Florida, the answer is yes. In other jurisdictions, the answer may be no. Consult your state or local dealer association or, better still, local counsel, for a reliable answer.

Let's assume for the purposes of this article that your dealership is legally permitted to sell vehicles. How should you go about it? What legal concerns, if any, should you consider?

Premises Liability

It is hornbook law that businesses owe their customers a safe environment. This is most often thought of in terms of slip-and-fall: grocery stores can't allow a fallen banana to linger in the aisle, and dealerships can't permit an oil spill to remain on the showroom floor.

COVID-19 adds another wrinkle to what constitutes a safer environment: rea-

- Require your employees to keep their own work areas clean (and provide them the supplies to do so). Focus on keyboards, phone buttons and receivers, and cell phones. Even if your employees don't all interact with customers in their workspaces, it is important to keep your employees healthy, too.
- Document the steps you've taken, including what training you've provided your employees, the frequency of cleaning, etc.

Dealerships could consider going farther. Surfaces can become infected again soon after being disinfected. There are products and equipment that contribute to a healthy indoor environment with proper good bacteria/bad bacteria balance throughout the entire dealership environment. This compliments good housekeeping practices and promotes a healthy environment for both dealership employees and customers.

One last showroom consideration: Should you apply a long-lasting antimicro-

The severity of the restrictions under which we labor, and the breathtaking damage we have seen our economy suffer, could only be justified by the most serious of threats.

you are elderly or suffering from COPD, Type-II diabetes, pneumonia, or are otherwise immune-compromised, COVID-19 is a very real threat.

As is seasonal flu. In the 2017-2018 flu season, for example, over 61,000 Americans died from the seasonal flu. Of that number, almost 51,000 were over 65 years old, and many of these had underlying illnesses. For the young and healthy, the seasonal flu is usually an inconvenience. For the old and sick, it can be fatal.

How Are Dealerships Operating?

In the 31 states (plus D.C.) that have stay-at-home orders in place, on-site work is limited to "essential businesses." Depending on your jurisdiction, dealerships may or may not be considered essential. Florida, where I live, cites the Department of Homeland Security's definition of the term to include:

"Automotive repair, maintenance, and transportation equipment manufacturing

sonable steps to prevent the spread of the disease. And while it is probably impossible to prove that any particular person contracted COVID-19 at any particular place, it is possible to prove what steps a dealership took to prevent it.

Here your mother's advice is best (as always): Clean up your room. In other words, exercise appropriate industrial hygiene. Steps you should take include:

- Regularly disinfect commonly-touched surfaces (door handles, desktops, refrigerator handles, coffee pot handles, etc.).
- Keep your bathrooms clean, and disinfect toilet handles and faucets. Now is not the time to fire your janitorial service; it might be time to increase the frequency of service.
- Train your employees to sneeze in their elbow while turning away from others, to frequently wash their hands, and to understand/employ the CDC guidelines for social distancing.

bial treatment to every vehicle for consumer safety? In a perfect world, yes, but those programs can get expensive (I'm hearing \$40 - \$50 per vehicle, plus the time and labor to apply it). There is no shortage of options: Exogloss, PermaSafe, Xzilon - the list goes on and on.

One solution is to pre-load the treatment on every vehicle and recoup the cost through an addendum sticker. Legal considerations abound, so please check out "Preloads, Profits, and Payment Packing" in the Q1 edition of *Providers & Administrators* magazine.

That should cover the showroom. But what about the cars on the lot?

Remember that the most effective way to transmit COVID-19 is virus-bearing water droplets. That is, a sneeze. One good sneeze inside a vehicle will circulate the virus to those surfaces a driver touches: the steering wheel, dashboard, radio/touch screen, wiper control arm, blinker, and gear shift knob. All



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Insurance Considerations

That should exhaust the legal considerations surrounding COVID-19, right? Wrong. Here's one for the road: the off-site sale of insurance products.

Some states prohibit the sale of insurance products away from a physical branch of the insurance license holder (i.e., the dealership). In those states, the sale of credit life or credit disability would be prohibited. No great loss to most transactions, but remember that in certain states GAP is considered an insurance product. Is this a factor in your state? Again, consult your state or local dealer association or, better still, local counsel, for a reliable answer.

One Possible Silver Lining

While the long-term impact of COVID-19 on the retail automotive industry is yet to be known, the short-term impact has been devastating. In order to survive, many dealerships are offering off-site test drives and deliveries. What is now a survival mechanism may endure as a long-term silver lining.

Consider this: Carvana and Vroom have been expanding their market share by offering online sales and deliveries to a customer's home. Although limited to used cars, consumers obviously love the convenience. Carvana's annual revenues grew from \$130 million in 2015 to a staggering \$394 billion in 2019. This home delivery thing seems to be catching on.

The COVID-19 situation is encouraging new car dealerships to follow suit. Once the kinks are worked out, which dealership wants to be the first in its market to stop providing this convenience? In short, a communicable disease may do more to erode Carvana's market share than inertia ever could. And that may prove to be a silver lining to this whole miserable stay-at-home saga. **RA**



James Ganther is president of Mosaic Compliance Services and co-founder of Automotive Compliance Education, a compliance training and industry certification company.

those surfaces should be wiped down with a disinfectant before the customer enters the vehicle; don't forget to wipe down the exterior door handles before the customer uses them. Also, be sure to properly dispose of the wipes once you're done.

Off-Site Test Drives

Taking the vehicles off-site for a test drive may extend the range of premises liability all the way to your customer's door, at least with respect to the vehicle itself. Let's assume you've taken all the steps necessary to reasonably clean and sanitize the vehicle. What other concerns should you be aware of?

If your dealership offers off-site test drives, be sure to advertise that fact on both your website and in the terms of the service:

- Offered as a convenience for the consumer.
- Dealership employees will wear gloves and masks if requested.
- Valid driver license must be provided (photo from a cell phone will do) before test drive is scheduled.
- In consideration of the service, consumer waives any claims related to COVID-19 or other communicable disease.

Check with your local counsel – that last point may be best documented by a signed waiver and release.

Off-Site Deliveries

Everything said above concerning off-site test drives applies to off-site deliveries as well, along with a few more angles:

- Use Skype, Zoom, or similar applications for a "face-to-face" F&I process.
- Sign documents using DocuSign or menu software (assuming customers have the capability on their side).
- Maintain social distancing to the extent possible. If electronic signatures are not possible and the contracts must be signed in person, be sure to indicate every spot requiring a signature or initials with a "sign here" sticker. You don't want to be leaning over the customer's shoulder indicating where to sign.
- Send two employees to make the delivery. You may do this already so the delivering employee has a ride back to the store but having a second employee present is also beneficial as a witness in case the customer later claims an infection-causing sneeze.
- Take a picture of the happy customer next to the delivered vehicle – with a big smile documented, it's hard to later claim an unpleasant delivery experience.

One other thing to consider is employee safety. Do you want to send your employees to make a delivery in a questionable area? Yet, if you refuse to make deliveries to a dicey address, you run the risk of a discrimination claim. What to do?

You might want to include in your website disclosures that deliveries may be made at convenient neutral locations at the discretion of either the customer or the dealership.

Cream Puffs, Sleds, & Clunkers – A Compliance Compendium For Used Vehicle Sales

The disparity between the cost of new vehicles versus used vehicles has been increasing over the past 10 years. With this changing sales dynamic, compliance issues regarding used vehicle sales are growing in significance.

BY TERRENCE J. O'LOUGHLIN, J.D., M.B.A.

The disparity between the cost of new vehicles versus used vehicles has been increasing over the past 10 years.

The average price of a new vehicle in 2010 was \$29,000 versus \$19,000 for a used one, or a \$10,000 difference. In 2020, the average new vehicle price is now \$37,000 whereas the average used vehicle price is \$20,000, or a \$17,000 difference. Many thrifty consumers recognize this cost disparity, and the resulting increased monthly payment, which will strain their budgets. Consequently, they are purchasing more used vehicles now more than ever.

With this changing sales dynamic, compliance issues regarding used vehicle sales are growing in significance. Dealers and F&I managers should ensure that they are addressing these distinct compliance needs.

In general, the same legal requirements pertain to retailing new and used vehicles. However, there are various distinctions between retailing these types of vehicles. This distinction may be developing in importance due to a number of factors. This article will address this growing phenomenon focusing on relevant legal standards, primary compliance challenges, and secondary legal risks.

What are the Relevant Legal Standards?

There are varying federal and state-specific statutes and regulations governing used vehicle sales. Generally, the all-encompassing law is the Unfair and Deceptive Trade Practices Act (UDTPA) on both the federal and state levels. This basic standard for the UDTPA is the following question: Does the dealer business practice have the tendency or capacity to mislead a consumer? Violating federal law, the Federal Trade Commission (FTC) Act, for example, could produce a penalty per violation of \$43,280. State agencies could possibly apply harsher penalties. As with any compliance protocol, dealers should always consider the concept of “good, better, and best.” Best practices should be the goal, as potential liability will be better corralled.

There are various primary compliance challenges associated with used vehicle sales: the Used Car Buyers Guide, prior use and damage disclosures, warranty of title, certified pre-owned vehicles, “as is” sales and warranty requirements, and odometer tampering.

Used Car Buyers Guide

This guide is a 1985 creation of the FTC that was revised in 2017. (The term “buyer”

is plural and, hence, there is no apostrophe as there would be if this form was similar to a buyer’s order.) It must be completed and displayed on every used vehicle offered for sale, except in Maine and Wisconsin. The language and format of the guide is draconian in nature and dealers must strictly follow its mandates. A 2018 FTC audit found only seven of 94 dealers compliant with this form. These non-compliant dealers, 87 of them, could have faced those fines of \$43,280 per violation. State attorneys general are an even greater threat than the FTC, as they routinely monitor used vehicle lots for compliance. These are easy cases to make and also readily avoidable. Every dealer should have a protocol for these documents.

Prior Use and Damage Disclosures

In various states, it is deceptive to misrepresent or fail to disclose the nature of a car’s prior use, such as that it had been repossessed or was used as a demonstrator, executive car, taxicab, police car, driver’s education car, or rental vehicle. Misrepresenting the number or prior owners is a UDTPA violation. Affirmative misrepresentations are central to this problem, such as representing that a vehicle is new when, in fact, it has been previously owned. This practice occurs more frequently than one might expect.

Warranty of Title

The implied warranty of title applies in every sale unless effectively disclaimed. It guarantees that the seller has the legal right to transfer the goods, and they will be delivered free from liens or encumbrances that the buyer did not know about at the time of contracting. It is a UDTPA violation to sell a vehicle with a lien against it without disclosure. It can also be a UDTPA violation for a licensed dealer, even if the dealer is unaware of the lien.

Selling ‘Certified’ Pre-Owned Vehicles

The requirements for certified pre-owned vehicles are relatively simple. If posted as a “certified” pre-owned vehicle it must have a manufacturer or dealer warranty. A manufacturer’s representative must certify the



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vehicle if it is to comport with the manufacturer's program. Dealers are also advised to document any additional inspections and cure outstanding recalls. Certain states, such as California and Minnesota, may have other state mandates.

"As Is" Sales and Warranty Requirements

Most states allow "as is" sales, meaning that a dealer can convey certain risks of the vehicle's performance to the purchaser. F&I managers should be conversant with the law regarding what the terms "express warranty" and "implied warranty" mean, which is a convoluted subject.

Odometer Tampering

Odometer tampering can occur in both new and used vehicle sales, but the crime is far more common in used vehicle sales. It is a federal felony and can be accompanied by monetary fines: possibly three years in jail and a \$10,281 fine per incident pursuant to the Federal Odometer Act. It can also be prosecuted by state authorities. Dealer principals who are aware of such tampering can be held liable for the actions of dealer personnel. Remarkably, inexpensive devices can be purchased online to readily roll back digital odometers. As a corollary to prohibiting odometer tampering, the Federal Odometer Act mandates that dealers disclose the odometer reading.

Secondary Compliance Risks of Vehicle Sales

There is a laundry list of secondary legal issues that demarcate new vehicle versus used vehicle sales, which includes advertising, missing airbags, appraisals, gray market, recalls, licensing, maintaining records, disclaimers, insurance, Lemon Law vehicles, leasing, hurricane and water damaged vehicles, and salvage and rebuilt vehicles. Several of these topics raise unusual issues.

Missing Airbags

Replacing utilized airbags is an expensive repair. Certain vendors provide kits to cover the missing airbags and give the appearance that the airbags are extant. This is clearly a UDTPA violation and has been the subject of state attorney general investigations.

Gray Market Vehicles

Vehicles from Canada are not designed for the U.S. market and the manufacturer's warranties may be void. Such vehicles also may fail to meet U.S. safety and environmental standards.

Licensing

Dealers have a pronounced set of obligations as a consequence of being licensed. For example, in states such as California, prior vehicle use must be disclosed. Advertising standards are broadly construed for licensees and may impact used vehicle

advertisements. Dealers must be keenly aware of the demands of state licensing, as they may impose broader obligations than one might surmise.

Lemon Law Vehicles

The process of laundering is the failure to disclose that the vehicle has been repurchased through a state Lemon Law program. Dealers need to know the Lemon Laws in their states and oblige them. A few states have used vehicle Lemon Laws such as Massachusetts.

Leasing

Leasing used vehicles and "lease here, pay here" vehicles have grown in popularity. However, dealers need to assign a realistic residual value to avoid the allegation that the lease contract is a disguised retail installment sale contract.

Salvage and Rebuilt Vehicles

It can be legal to sell cars with a salvage title, but the salvage title must be clearly and conspicuously disclosed to the buyer. This must be an actual disclosure and not buried in the fine print. A vehicle with a salvage title may be rebranded as a rebuilt title. In most cases, a rebuilt title is only provided after the vehicle has been fixed and inspected by the jurisdiction that issues titles. If the repairs were satisfactory, the title is changed from "salvage" to "rebuilt" in order to reflect the repairs that were performed and note that the car is now fixed.

More than one franchise dealer has remarked that selling used vehicles is more lucrative than retailing new vehicles. In addition, other franchise dealers have said that selling used vehicles provides much greater control over the inventory and protocols. These observations may be true, but, as one can readily see, selling used vehicles presents distinct legal challenges not to be dismissed.

Govern yourselves accordingly. **RA**



Terrence J. O'Loughlin, J.D., M.B.A. is director of compliance at The Reynolds and Reynolds Company.



An Interview with Gina Cocking

Gina Cocking was recently appointed CEO of Colonnade Advisors, a mergers and acquisitions investment bank with expertise in the automotive F&I industry. Cocking has a storied professional background that includes high-profile positions in investment banking and as CFO at major financial institutions.

BY NANCY DUNHAM

Gina Cocking was recently appointed CEO of Colonnade Advisors, a boutique mergers and acquisitions investment bank with expertise in the automotive F&I industry. Cocking has a storied professional background that includes high-profile positions in investment banking and as chief financial officer (CFO) at major financial institutions. Cocking served as vice pres-

ident at Colonnade from 1999 to 2003. She returned to the company in 2014 with CFO experience.

Her many awards include recent inclusion to the 2020 Most Influential Women in Mid-Market M&A.

Cocking recently spoke to us about her career, the pandemic's impact on her company and the industry and the

paths women can follow into careers such as hers.

Q I see you have an undergraduate degree in economics from the University of Chicago. They are, of course, second to none especially in economics education. I have to ask why you decided to pursue an MBA rather than a doctorate in economics?



Gina Cocking, pictured with fellow owners of Colonnade Advisors, Christopher Gillock (L) and Jeff Guylay (R).

Q What took you to Colonnade?

A I was employee Number One back in 1999. The founder of Colonnade and I worked together at J.P. Morgan. I enjoyed it but had to leave after four years. I never thought I would have the opportunity to return to the industry. Coming back to Colonnade was a dream come true, and I'm grateful to my partners for it.

Q What are the best parts of working at Colonnade?

A I enjoy working with middle market clients and did not often have that opportunity at J.P. Morgan. In working with large corporations, I dealt with incredibly talented people, but the transaction was just another aspect to their job. When I work with middle market companies, the executives are the business owners and founders and the transaction is transformational. We help create generational wealth. Working with middle market clients is an absolutely deeply personal experience. There is a lot of emotion involved in these transactions. These deals are impactful, which I find professionally fulfilling.

In the early years, we focused on technology companies and over time, financial services and business services companies. I loved it but I was traveling a lot.

Q What made you get off that track?

A I had a young daughter and a husband and it became difficult to balance time with my family with my time on the road. I left the industry and became the CFO of several companies. I led those companies through capital raises and a sale process. It was intense but manageable because I was not traveling. At night I could put my daughter to bed and then pick up my work again.

Q What do you see in business as we move through this pandemic?

A This week, most companies are trying to make sense of it all and protect their employees and the long-term viability of their business. But there are some pockets that are flat and even some that are flourishing. In the states that are not

A Well, that's a great question. I originally wanted to be a lawyer because growing up, the professionals I knew were either doctors or lawyers. But, as I went through university, I discovered that I enjoyed the study of economics. I thought about pursuing a Ph.D., but it is a lot of research and I wanted a career where I'd work more directly with people.

After graduation, I thought I would work in investment banking for a few years and then go on to law school. I found that I loved investment banking. I enjoy the pace, the analytics and the opportunity to interact on a day-to-day basis with people who are at the top of their game. I was in my 20s and working with intense, brilliant executives, meeting CFOs and CEOs at major companies. It was exhilarating. I returned to school to get my MBA and then continued in the field.

Q I'm sure you have a million, but I'd love to hear some of the highlights of your investment banking career, which you really enjoyed, something of which you're especially proud.

A I worked with J.P. Morgan & Co. in equity capital markets, where I advised companies on public equity issuances, such as IPOs. As my prior experience included investment banking for the insurance industry at Kidder Peabody, I was staffed on a number of multinational insurance deals that sent me to Europe. That was an incredible opportunity.

Q Were there downsides?

A Yes, lots of travel during that period. It felt like I was getting three hours of sleep a night, but it was exciting.

under lockdown, dealerships are still selling cars. Direct-to-consumer financial product sales are strong, which does not surprise me. The direct-to-consumer vehicle service contract industry largely grew out of the recession.

Over the past five years, we have encountered a number of company founders that had been in business through the recession and decided to diversify their personal balance sheet by selling their company. These decisions coincided with a period of the largest private equity capital raising that we've ever seen.

At the beginning of 2020, there was \$1.5 trillion in undeployed capital, aka "dry powder" to be invested, the highest level in history. Additionally, credit became easier and cheaper. These financial trends fueled M&A volume.

Today, the capital is still there to be deployed. For quality companies, it may still be a good time to be a seller. However, if we find ourselves in a protracted recession, capital could retreat.

Q What do you see for F&I?

A Companies grow either organically or through acquisitions. The F&I industry has seen a number of platform investments by private equity firms. Private equity firms need growth and organic growth may not be as simple over the next year as it was over the past few years. This may fuel more M&A in the industry.

Valuations in the F&I industry were high in 2019 and will be scrutinized in the coming period. There will be a lot of analysis on how companies performed during the crisis. However, I do not think that valuations should be cut just because sales are down. Everything has been down during this novel crisis. Buyers should benchmark: how did company A do compared to company B? How did the company do during the last recession?

There is still capital available and interested buyers. I'm keeping an eye on the M&A market trends.

Q What does this pandemic mean for your company?

A The most immediate impact has been to curtail travel, which has the upside of more productive hours during the work week. Instead of face-to-face meetings, we are picking up the phone. We are using this time to not only service our exist-

ing clients, but to research and study the industries we cover.

Colonnade will remain strong. The Company was founded 21 years ago and it will be around for 20-plus years more. We value our role as a trusted advisor to our clients and we build long term relationships. Unlike other investment banks, we have remained steadfast in our focus on financial services and business services. We have been covering F&I and insurance premium finance sectors for over a decade. We call on companies and develop a relationship and will be there when the owner decides to transact in the future. We are using this time in quarantine to check-in with companies. The work we are doing now will pay dividends three, five, 10 years out.

Q What else have you done to move the company ahead?

A Over the past five years, we've built our knowledge base in auto F&I. When industry players think of mergers and acquisitions, they often think of Colonnade, which is a huge compliment. We have been involved in the majority of the recent transactions in the space, either on the buy-side or the sell-side. That gives us a unique position because we have a good view, an insider's view, on how these companies should perform. We are able to benchmark and interpret the data. Our experience also allows us to say, 'We keep seeing these types of questions coming up over the last year, so we need to prepare for this issue.' In addition to our engagements, we spend a lot of time talking to private equity firms about trends in the industry. This helps us stay close to the potential buyers of F&I companies.

As I mentioned earlier, we get to know companies before they are ready to transact. We have recently increased our engagement with companies on how to maximize shareholder value over the long term before they are ready to hire an investment bank. Our advice is both general and industry specific, drawing on Colonnade's 21 years of history. We have increased our outreach in our targeted industries through podcasts, blog posts, articles, roundtable breakfasts, and speaking engagements.

We are using this quarantine time to continue to develop deep knowledge in the industries we cover.



Q So, work hasn't lessened?

A No, we are busy.

We have a number of deals that are going swimmingly. In fact, we just signed a new client last week. Potential sellers are assessing their businesses and realizing that they will get through this. Thus, it is a good time to get ready for a sale and evaluate how and when to go to market after the crisis.

We have changed our internal processes. We try to keep bureaucracy to a minimum but found that under quarantine orders, we needed to connect company-wide daily. Originally, we did conference calls, but we transitioned to Zoom meetings to continue the personal connection. Even our Friday cocktails have moved to a virtual venue.

Q Technology has certainly changed our culture.

A Technology has enabled boutique mergers and acquisitions firms like ours to flourish.

The human capital needed to transact on a deal is less than was necessary 20 years ago.

By the same token, it has enabled more private equity firms to come into

existence, which has significantly impacted Colonnade. There are more buyers for companies. For example, 20 years ago, when we were marketing a company for sale, we would spend a lot of time trying to get the attention of private equity firms. Now, the private equity firms reach out to us to see more of our deal flow.

As we've spoken, I've seen emails from three different private equity firms.

Q Why do you believe so few women are in positions such as yours?

A Industry-wide, an estimated one in four analyst positions and only 17% of senior leadership roles are filled by women. Investment banking is a tough industry because it is so intense. When we walk into a meeting, the client expects us to be as intelligent or more so about their business than they are. It takes a lot of effort to prepare. You need to get really smart,

very quickly, which means a lot of hours in a condensed period. Additionally, the business involves significant travel, which makes it difficult for investment bankers with children, especially dual-earning families. I believe that the time commitment is one of the biggest challenges for women.

One of the things that I have said to women's groups that I've talked to is that the best advice I can give to women starting their career is to "marry well." I'm not saying to find a wealthy partner but, to find one is going to support your career. I have been incredibly lucky. My husband is amazing. He has always been my partner and just as involved in our daughter's life.

By human nature, it's easier for people to connect with those like them: men generally connect more easily with men, women connect more easily with women. Leadership in investment banks is large-

ly male. Investment banks are cognizant of the potential unintended bias and are working to make the industry more open and appealing to women. However, there are still challenges from unexpected quarters. We had a college intern who was recruited the next summer to intern with Goldman Sachs. She was at a top university with close to a 4.0. Her male classmates said to her that she only got the job because she is a female. I was shocked. That is what I heard 28 years ago. When you walk into a place of work and your colleagues look at you like you did not get in because of merit, it can be hard to assimilate.

I think a recognition as being one of the most influential women in middle market is a platform I can use to connect with women, especially analysts and associates. I can demonstrate that there is a path you can take in investment banking. Keep at it. **RA**

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The Case for Certification

Our industry differs from the other professional industries in that we do not require an industry certification or continued education. Now, ACE has extended its certification offering to include a Product Specialist curriculum.

BY GIL VAN OVER

We are an industry of business professionals. Salespeople know more about the features and benefits of the vehicles they sell than the average citizen. Sales and F&I managers know how to calculate monthly payments for retail and leases while many consumers would struggle to do so. Agents know the intricacies of complicated F&I products while the public refers to service contracts as extended warranties.

Like other industries filled with professionals, we have our share of kinks. Lawyers are disbarred. Doctors are stripped of their licenses. Teachers can no longer teach. CPAs stop counting. No industry is without its bad seeds.

Our industry differs from the other professional industries in that we do not require an industry certification or continued education. Lawyers, physicians, nurses, dentists, teachers, engineers, and CPAs must pass a test to become certified. They also must demonstrate continual learning in their field to maintain their certification.

Continuing Education

Automotive Compliance Education (ACE) to the rescue. ACE provides seven different curricula for the automotive industry professional, depending upon the level of responsibility in



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the dealership or vendors serving the industry.

The curricula range from two hours of online training for the sales person and BDC staff to 15 hours of modules delivered online for the company compliance officer. The time to complete curricula for the sales manager, office manager, compliance clerk, and F&I manager fall within this range.

After completing the course work, the student takes an exam to confirm a legitimate level of understanding of the curriculum and is certified.

More importantly, the certified professional is required to complete a shorter course load as part of the continuing education process. The courses include required annual training such as ethics, discrimination, sexual harassment, Safeguards, and Red Flags. Additional training is provided for any new topics since the professional was last certified.

The Agents' Risk and Role in the Broad Spectrum

Agents and their employees play an important role as a trusted advisor to their dealer clients. After the primary role of income development, many agents are asked to assist to varying degrees with compliance. Unfortunately, I've run across a few agents, providers, or administrators and a larger number of situations where they provide bad advice to their client. Most often, after a fruitful discussion, it turns out the advice had been given out of naivety.

Curriculum for Providers and Administrators

ACE has extended its certification offering to include a Product Specialist curriculum. The modules within this course offering include basic legal requirements that agents and providers or administrators may face on a frequent basis. Included are modules on discrimination, sexual harassment, Red Flags Rule, Safeguards Rule, and Unfair & Deceptive Practices Act.

Also included are processes that may not be required legally but have certainly gained status as best practices to help a dealer client establish a potential litigation minimization strategy. Some best practice modules include F&I menus, menu vocabulary, and the paper trail.

The differentiation that sets this curriculum apart is the modules that train and test the student on what Voluntary Protection Products do. These are not modules with word tracts about features and benefits to help an F&I manager sell the products. Rather these are modules to certify that the agent understands what the products cover and do not cover. The core Voluntary Protection Products (Vehicle Service Contract, Maintenance, GAP, Credit Life, Credit Disability, and Tire & Wheel) as well as ancillary products, are all covered by these modules.

Stay Safe, Good Luck and Good Selling. **RA**



Gil Van Over is the Executive Director of Automotive Compliance Education (ACE). He is also the Founder and President of gvo3 & Associates.

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A.M. Best's rating upgrade follows years of strong performance where DAC has consistently outperformed its peers in operating ratios, profitability, and total return on equity. In combination with our new ownership by iA Financial Group, DAC is in a much stronger and more competitive position than ever before. — *Kristen Gruber, President of Dealers Assurance Company*

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In March 2020, A.M. Best increased DAC's Financial Strength Rating to A (Excellent).

iA Financial Group is a business name and trademark of iA Financial Corporation, Inc. and Industrial Alliance Insurance and Financial Services, Inc.. As of March 2020, iA Financial Group reported assets of \$189.5 billion (Canadian). See www.ia.ca.