



February 12, 2016

Via Web

Office of the Secretary
Federal Trade Commission
Suite CC-5610 (Annex B)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Holder Rule Review
FTC File No. P164800

Dear Secretary:

The National Automobile Dealers Association (“NADA”)¹ submits the following comments in response to the Notice entitled “Rules and Regulations Under the Trade Regulation Rule Concerning Preservation of Consumers’ Claims and Defenses” (“Holder in Due Course Rule”) that the Federal Trade Commission (“FTC” or “Commission”) published in the *Federal Register* in the above captioned matter.²

NADA fully supports the Commission’s efforts to periodically review whether its rules and guides continue to serve their intended purpose, reflect developments in the marketplace, and fully account for the costs and benefits they impose on and provide to consumers and businesses, particularly small businesses.

As it relates to the FTC’s current review of the Holder in Due Course Rule, NADA does not believe it is necessary to modify the notification requirement imposed on sellers in 16 C.F.R. §433.2, and NADA is not otherwise aware of any basis to expand or alter the scope of the rule. However, NADA does wish to address the Commission’s request for information concerning the degree of industry compliance with the Holder Rule.

In Question 11 of the Notice under Request for Comment, the Commission asks:

¹ NADA represents over 16,000 franchised dealers in all 50 states who (i) sell new and used cars and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members collectively employ over 1 million people nationwide. Most of our members are small businesses as defined by the Small Business Administration.

² 80 Fed. Reg. 75,018 - 75,020 (Dec. 1, 2015).



What evidence is available concerning the degree of industry compliance with the Holder Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?³

In a press release dated May 16, 2011 entitled “FTC Finds Broad Compliance Among Auto Dealers with Rule That Protects Consumers with Car Loans,”⁴ the FTC reported that it had completed investigations of nearly 50 automobile dealers across the country to assess their compliance with the FTC Holder Rule and “found broad compliance with the Rule among auto dealers.”⁵ The FTC specifically stated:

In November 2010, the FTC staff asked nearly 50 franchised and independent auto dealers in 45 states, and two large online automobile dealers, for copies of consumer credit contracts executed after October 1, 2009. FTC staff’s review of these contracts found broad compliance with the Holder in Due Course Rule. *Because all of the responding dealers disclosed the required Holder Notice in their finance contracts, the FTC staff is closing its investigations of them.*⁶

The results of this investigation, which was recent, broad, conducted by the FTC, and unanimous in its findings, demonstrates that automobile dealers are fulfilling their seller obligations under the Holder in Due Course Rule. Consequently, the available evidence does not provide an appropriate basis to modify this requirement.

Thank you for the opportunity to comment.

Sincerely,

Paul D. Metrey
Vice President, Regulatory Affairs

³ 80 Fed. Reg. at 75,019.

⁴ Currently available at <https://www.ftc.gov/news-events/press-releases/2011/05/ftc-finds-broad-compliance-among-auto-dealers-rule-protects>.

⁵ Id.

⁶ Id. (emphasis added).