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I. Introduction

Good morning. And thank you for having me here today to talk about the Federal Trade Commission's ongoing work to protect consumers and educate dealers in the auto marketplace. We have enjoyed a very constructive, decades-old partnership with NIADA that has helped improve dealers' understanding of how to comply with the fundamental consumer protection laws we enforce. In fact, just last week, with NIADA's significant assistance, the Commission released a detailed set of Frequently Asked Questions and answers for auto dealers on the recently-amended Used Car Rule. Given our work together, and the vital role that you play in the industry, I am very pleased to be joining you today.

I should also note that the views I express are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

This morning, I plan to talk primarily about two things. First, I want to discuss the FTC's recent approach and priorities under the leadership of Acting Chairman Ohlhausen. Second, I plan to talk about our recent and ongoing work in the auto marketplace – including our law enforcement work. But I also want to emphasize our significant work to provide useful business guidance and our other important outreach efforts to help market participants stay on the right side of consumer protection law.

II. The Commission's Recent Approach & Priorities Under Acting Chairman Ohlhausen

Let me start off by briefly describing the FTC's recent overall approach and priorities. Since taking lead of the agency in January, Acting Chairman Ohlhausen has pursued a positive consumer protection agenda. The agency has focused its law enforcement on addressing clear violations of fundamental FTC Act prohibitions and curbing other unlawful conduct that causes concrete consumer injury. As I'll be detailing shortly, I believe our history of enforcement in the auto marketplace has been rooted in upholding these basic consumer protection principles.

Further, the Acting Chairman has pushed for more transparency as to how the agency operates and more clarity in standards for industry. This includes providing more and even better business guidance to industry members. Guidance ensures that companies who want to comply with the law can do so. As you all know, it also saves money for businesses – in particular, small businesses like many auto dealers who have limited budgets for legal assistance.

Finally, under Acting Chairman Ohlhausen, the FTC has worked to reduce undue and unnecessary burdens on industry associated with our investigations, regulations, and orders. For example, in July, we announced several process reforms regarding our civil investigative demands designed to streamline information requests and improve transparency in our investigations.

Overall, in keeping with the Acting Chairman's goals for the agency, we have worked to ensure that we are effective at our core mission of protecting consumers, while being mindful of the legal and prudential limits on our use of governmental power.

III. The FTC's Ongoing Work in the Auto Marketplace

The FTC has a long history of protecting consumers and educating businesses in the auto marketplace. As you know, we have broad legal authority under the FTC Act and a variety of other important statutes and rules. And we act as the primary federal law enforcement agency for many dealers. Auto transactions are important to us because they are so important to consumers' day-to-day lives and finances, and we have focused on ensuring that consumers are protected from unlawful practices in connection with purchasing, leasing, or financing a vehicle. We have done this using a variety of tools, including law enforcement, business guidance and education, and outreach efforts.

So let me now turn to how we have been using each these tools in our recent work.

A. Law Enforcement

Over the last few years, the FTC has brought dozens of actions against auto dealers and others in the auto marketplace for conduct alleged to violate the FTC Act and other important laws. Our actions are rooted in decades-old legal principles that are worth highlighting again today.

1. Deceptive Advertising Claims

Of course, one fundamental principle that underlies the FTC's enforcement efforts is that dealers should make truthful advertising claims to consumers. When they fail to do so, they harm not only consumers, but also competitors who are complying with the law. The agency has taken a variety of actions to stop dealers from making deceptive claims about important aspects of auto transactions.

Deceptive purchasing, financing and leasing claims. The Commission has brought a number of recent cases against dealers for making prominent deceptive claims that consumers could purchase, finance or lease cars for attractive terms that proved to be illusory, like very low prices, down payments, or interest rates. These types of claims were at the root of many of the actions we took in our two large national enforcement sweeps, *Operation Ruse Control* (in 2015) and *Operation Steer Clear* (in 2014). In these cases, we alleged that dealers often only revealed the true terms of their offers, like large hidden fees or important restrictions, in buried fine print disclaimers. As we charged in these cases and others, such conduct violates Section 5 of the FTC Act, and, in many cases, other laws like the Truth-in-Lending Act and Consumer Leasing Act. And our orders in these cases prohibit misrepresentations regarding the costs of purchasing or leasing a vehicle, as well as violations of the TILA or CLA.

Deceptive Promotion of Deals Not Available to the Typical Consumer. Similarly, in our recent cases, we have worked to stop dealers from prominently and deceptively touting attractive prices, discounts, or other terms that are simply unavailable to the

typical consumer. For instance, in last year's *Progressive Chevrolet* matter, the Commission issued an order against auto dealers who advertised attractive lease terms, like "zero down," when in fact fewer than 20% of consumers would qualify for these terms based on credit score requirements. The dealers in this case allegedly buried this important restriction in a confusing fine print disclaimer that consumers would be unlikely to notice or understand – and, thus, violated the FTC Act. And so the order in that case prohibits the promotion of attractive terms without clearly and conspicuously disclosing qualifications or restrictions on the consumer's ability to obtain those terms, including if a majority of consumers are unlikely to meet applicable credit score requirements.

Deceptive Claims Regarding Add-Ons. The Commission has also pursued deceptive practices associated with the marketing of add-ons, like payment programs, extended warranties, or GAP insurance offered to consumers by dealers' F&I departments after they have selected a car. In 2015, we brought an action that charged the *Matt Blatt* dealerships with deceptively touting that a "Biweekly Payment Plan" would save consumers money, while failing to disclose that, in many instances, consumers were charged hundreds of dollars in fees and ended up paying *more* money under this plan. At the same time, the Commission also charged the third-party company that administered this payment plan for similar, deceptive marketing claims. These cases also highlight that the FTC Act's protections against deception extend beyond general

advertising claims made in TV, radio, and print ads, and include the representations dealers and their employees make when consumers visit their lots.

Deceptive Claims Regarding Auto Recalls. The Commission also has tackled deceptive ad claims associated with another critical issue: auto recalls. The agency brought complaints against General Motors and five dealers, alleging that they each violated the FTC Act by touting the rigorousness of their used car inspections, while failing to adequately disclose that some of these cars were subject to unrepaired safety recalls. The agency's orders, among other things, require these companies to qualify their inspection claims with clear and conspicuous disclosures regarding the existence of recalls.

Deceptive Environmental Claims – Volkswagen. In addition to our recent cases targeting safety-related advertising, our action against *Volkswagen* reinforces the Commission's commitment to stop deceptive environmental claims. In this case, we alleged that Volkswagen deceptively touted its "clean diesel" cars as environmentally-friendly, even though it fitted such cars with illegal defeat devices designed to mask high emissions. In settlements with the FTC and other law enforcers, the company agreed to pay up to \$11 billion to compensate consumers. As we've been publicizing in our business and consumer education materials, affected consumers may be eligible for an all-cash buyback or the possibility of a technical modification to their cars. And we would encourage you to ask consumers to check the eligibility of their cars at VWCourtSettlement.com. The FTC has also been cautioning dealers to avoid making

misleading claims that relate to this case – for example, promotional offers that falsely imply they are associated with the *Volkswagen* settlement.

2. Privacy, Data Security, & the FCRA

Beyond the many deceptive advertising cases I've detailed, the Commission will also continue its leadership in protecting consumers from unlawful privacy and data security practices. I think a few of our law enforcement actions are worth highlighting:

Some of our work has focused on the Fair Credit Reporting Act. For example, in *Tricolor Auto Group*, filed in 2015, we alleged that the loan-servicing arm of an auto dealer violated the FCRA's Furnisher Rule. Specifically, we charged the company with failing to have written policies and procedures regarding the accuracy of reported credit information, and failing to properly investigate disputes. The order in this case required the company to pay over \$82,000 in civil penalties, and prohibits it from future violations of the Furnisher Rule.

Additionally, with respect to the FCRA, dealers should stay abreast of the requirements of the Risk-Based Pricing Rule. In general, this Rule requires creditors – which can sometimes include auto dealers – to notify consumers when using information in their credit report to offer them credit on materially less favorable terms than the best material terms available to most consumers. While the agency has not taken action under the Rule in an auto financing case, we did recently bring a matter against *Sprint* for

allegedly failing to give the required notice to consumers who were placed in a program for those with lower credit scores and charged an extra fee each month.

Finally, it is important to emphasize that auto dealers, like other companies that handle consumers' sensitive personal information, should be vigilant about data security. The FTC has brought roughly 60 cases against companies that engaged in unfair or deceptive practices that put consumers' personal data at unreasonable risk. Among those cases was an action in 2012 we took against an auto dealer, *Franklin's Budget Car Sales*, for its alleged failure to employ reasonable security measures to protect consumers' sensitive information. So we will continue to monitor the marketplace to ensure that companies are protecting such information. And, of course, auto dealers should pay close attention to the Commission's robust business guidance on these issues – which I will be describing next..

B. Education & Outreach

While the FTC is primarily a law enforcement agency, we believe that education and outreach are critical for helping companies – and, in particular, small businesses – understand the law so they can comply with it. Accordingly, the agency has created a wide variety of businesses guidance and other educational materials relevant to auto dealers. We have also hosted some public workshops on emerging trends and other consumer protection issues in this marketplace.

1. Business Guidance & Education

Let me start with our large suite of business guidance and educational materials:

FAQs & Other Guidance on the Amended Used Car Rule. As I've mentioned, just last week, with the collaboration of NIADA, the FTC issued a detailed set of Frequently Asked Questions for auto dealers on the amended Used Car Rule. We have also updated our other business guidance on the Rule to reflect the recent amendments.

As you know, the Used Car Rule generally requires that dealers display a Buyers Guide window sticker on vehicles providing warranty and other important information. In late 2016, the Commission issued amendments to the Rule designed to provide consumers with more information and make it easier for dealers to disclose warranties. Among other things, the amended Buyers Guide sticker will recommend that consumers get a vehicle history report before buying a car and direct them to the Department of Transportation's safercar.gov website for information about safety recalls. It will also clarify the meaning of "As Is" sales, and add boxes dealers can check to disclose third-party warranties, available service contracts, and unexpired manufacturer warranties. Further, the Guide will direct Spanish-speaking consumers to ask for a copy in Spanish if the dealer conducts the sale in Spanish.

Our new FAQs on the Used Car Rule are designed to help dealers understand and implement the updated Buyers Guide, as we approach the January 2018 deadline for adopting it. We are grateful to NIADA for working with us to prepare these materials

and help members comply with the amended Rule. Partnering with you on this sort of guidance helps us ensure that it is relevant and useful to dealers – which ultimately serves to advance the interests of consumers.

Other Important Business Guidance for Dealers. Beyond our most recent guidance on the Used Car Rule, the Commission has produced a library of educational pieces for auto dealers. We maintain a website portal dedicated specifically to dealers, with guidance on everything from online disclosures to business computer security.¹ Just go to our website, ftc.gov, and click on “Tips and Advice” and then on “Business Center,” and select the auto industry. Among other useful materials, this dealer portal includes our Advertising FAQs for Small Businesses, which go through the analysis we use to determine whether an advertising claim is deceptive. The portal also includes our popular “.Com Disclosures” publication, which provides guidance on how companies can make effective online disclosures to consumers. We have also released 80 business blog posts with information relevant to auto dealers – you can subscribe to them or find them in the business blog section of our website.

Additionally, we’ve also issued a variety of publications for companies on data security in particular, including our *Start with Security* Guide, subsequent *Stick with Security* blog posts, and our special guide for auto dealers on complying with the Gramm-Leach-Bliley Act’s Privacy Rule. The agency also maintains a website portal dedicated to providing information to small businesses more generally – including

¹ See <https://www.ftc.gov/tips-advice/business-center/selected-industries/automobiles>

information on how to avoid scams and protect consumers' personal information. That's at ftc.gov/smallbusiness. And our own senior attorney, Lesley Fair, even writes a monthly column for *Used Car Dealer* magazine!

Needless to say, the agency has worked hard to provide auto dealers with a wide variety of relevant, actionable guidance to make it easier and cheaper to comply with the legal requirements we enforce. And we will continue to look for opportunities to do so, and welcome NIADA's feedback and contribution to these efforts.

2. Outreach – Public Workshops

Of course, our education and outreach efforts are not limited to written guidance. We also frequently host public workshops and other events to educate law enforcers, industry, consumers, and other stakeholders on important emerging issues in the marketplace. On that front, I want to highlight a couple of our very recent events for you:

Connected Cars Workshop. In June, the FTC and National Highway Traffic Safety Administration co-hosted a public workshop on Connected Cars. As you know, cars are increasingly being equipped with technologies that enable them to connect to the Internet and to exchange and use data for entertainment, performance, and safety purposes. These technologies, like others the FTC examines, present significant potential benefits and risks for consumers. So the Connected Cars Workshop brought together experts to discuss how connected car technologies work and may develop; cybersecurity risks and related efforts to protect consumers; and the privacy and data security

implications of these technologies. In all, this event provided a great opportunity to improve public understanding about developments in this industry, and discuss how to foster both innovation and consumer protection.

Military Consumers Workshop. Additionally, this past July, the FTC held a workshop in San Antonio, Texas, to examine financial issues and fraud affecting military consumers, including servicemembers and veterans. The workshop's first panel focused on how auto purchasing, financing and leasing impact this community. During the panel, experts discussed how deployment (and returning from deployment) can affect servicemembers' auto transactions. Panelists also discussed military consumers' experience with negative equity and add-on products and services. Particularly given the extraordinary sacrifices made by servicemembers, veterans, and their families, I know we all care about making sure they receive the consumer protections to which they are entitled.

IV. Conclusion

Throughout the FTC's long history of protecting consumers in the auto marketplace, we have relied (and will continue to rely) on a combination of enforcement, education, and outreach efforts. As you know, we have also benefited greatly from the expertise and feedback of industry partners like NIADA to ensure that we are effective and efficient in our mission. So I am grateful to you for inviting me here today, and welcome your questions. Thank you.