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AG chasing closed dealers who didn't settle customer trade-ins

An assistant Illinois attorney general reported a growing problem of new-car dealerships that close before they pay off the loan balances on their customers' trade-ins, and he indicated his office might resort to warning consumers of the "dangers" of trading in a car.

Greg Grzeskiewicz led the Sept. 23 meeting of the Illinois Attorney General's Advisory Committee, which meets occasionally to discuss dealer-related issues and includes representatives of the CATA, the IADA, and the Better Business Bureau of Chicago.

"I've worked on four or five of these (cases) this year," Grzeskiewicz said. "It's a big drag on the resources of our office."

When a dealership is sold, the attorney general can make sure that trade-in pay-offs appear as a line item on the sales contract. But Grzeskiewicz said that oversight is harder when the dealership closes.

"With the economy the way it is, it's not going away, and probably will get worse," he said.

If the problem persists, Grzeskiewicz suggested that a dealer fund might have to be created to retire the loans, and his office might turn to a program to educate consumers "on the dangers of trading in a car."

The Advisory Committee agreed two years ago that dealers should pay off any loan balances on their customers' traded-in vehicles within 21 days. Although not a statutory time limit, the 21-day recommendation came after Illinois Attorney General Lisa Madigan sued two Chicago dealerships for taking from 45 days to 167 days to settle their customers' loan balances, creating late-payment remarks on the credit reports of 17 customers.

In other discussions at the meeting:

• Miles-per-gallon claims in an ad must apply to a representative model of the vehicle, BBB attorney Patricia Kelly reminded the committee, and "not of a stripped-down four-cylinder with a manual transmission." The BBB monitors the area dealers' advertising.

Kelly also spoke about Federal Trade Commission restrictions which mandate that if both city and highway miles-per-gallon fuel economy are referred to in an ad, both the Environmental Protection Agency's "Estimated City mpg" and the

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Shoppers say gas mileage is a new vehicle's biggest selling point

More new-vehicle buyers are citing gas mileage as a reason for choosing one car over another, according to a study of vehicle preferences.

The study released Sept. 24 by J.D. Power and Associates also said a growing number of potential car buyers are considering buying Asian brands, while the number considering cars from domestic automakers is shrinking.

"Fuel economy has definitely become a more important issue, and I think if we were in the field with the survey right now, I think it would be even more important," said Tom Gauer, senior director of automotive retail research at J.D. Power.

The results of the study, conducted from May to July, come at a time when U.S. automakers are scrambling to get fuel-sipping vehicles to the market.

Ford and GM have been ramping up production of small cars to meet demand, while cutting back production of slow-selling light trucks and sport-utility vehicles. GM also plans to sell a new global compact car, the Chevrolet Cruze, in the U.S. in 2010, the same time Ford will introduce its new European-designed Fiesta. Both cars are expected to get close to 40 miles per gallon.

Twenty percent of buyers in the survey cited inadequate gas mileage as a reason for rejecting one car in favor of another, up 3 percentage points from 2007, making it the biggest year-over-year increase among the reasons cited for rejecting a car.

CPA examines how to move through an automotive recession

By Erich Merkle

There has been much talk recently about whether the United States is in a recession. Although we first saw signs of a correction in the housing sector of our economy, the automotive sector remained remarkably healthy, all things considered, through most of 2007.

Recently, however, we have begun to witness a spillover of the problems in the housing sector into U.S. light-vehicle sales. This weakness grew more evident in July as the industry produced a very disappointing seasonally adjusted annualized rate of 12.6 million units.

Why so glum?

A close look at consumer sentiment might help shed some light on the sharp decline in auto sales. The University of Michigan consumer sentiment index historically has tracked very consistently with auto sales.

Declines in consumer sentiment during the early 1980s, early 1990s, and in current years provide a significant amount of downward pressure on consumers' ability and willingness to purchase new vehicles. A slight dip in consumer sentiment during the early part of this decade wasn't significant enough to materially pull sales down.

Sales numbers got some help at that time from automakers pushing incentives. General Motors initiated the incentives drive in October 2001, just after Sept. 11, with its "Keep America Rolling" zero-percent financing offers. Other automakers soon followed, which allowed the industry to artificially prop up demand for cars and light trucks for a considerable period of time. Additionally, the very mild recession of 2000-01 was not a consumer-driven recession; rather, it was a result of a contraction in capital spending on the part of U.S. businesses.

Today's challenges

Consumers today face a number of challenges that will likely make this automotive recession look much more like that of the correction in 1991-92. Consumers are facing high levels of debt against the backdrop of declining asset values.

Home values, once thought to be impervious to decline, continue to slide. As the value of most consumers' largest asset declines and the price of fuel continues to rise, consumers have begun to feel less secure financially.

Combine this with deterioration in the labor markets, and light vehicles sales will continue to be muted for some time as a result.

Credit markets in the near term, including banks and the lending arms of automakers, will also place continued downward pressure on light vehicle sales, as many are just not inclined to provide lease financing any longer given the uncertainty surrounding vehicle residual values.

When many of the leases on pickup trucks and sport utility vehicles were made in 2005 and 2006, the residuals of these vehicles were thought to be rock-solid.

New-home construction was hitting record levels and gasoline was extremely affordable by historical standards, creating a very fertile environment for these large products.

Today, new-home construction, which dramatically supports and is highly correlated to sales of pickups, has declined to almost 20-year lows. Additionally, fuel prices are at record levels, even when adjusted for inflation.

When does it turn?

While these types of corrections can be difficult to determine, history does provide some clues. We have been through credit crunches before. Fuel price spikes aren't new either. We submit that this period of instability in the credit markets and the current spike in fuel prices will not last forever.

Although the automotive industry will weather these latest challenges, the next 12 months will not be without a little pain and uneasiness.

A deeper recession?

It is reasonable to believe that this automotive recession will be deeper than the one experienced in 2000-01, especially given the soft sales numbers to date, consumer sentiment levels, and credit conditions.

The current correction is already well beyond that of 2000-01, with July annualized sales results down almost 9 percent year-over-year.

Conversely, we don't see conditions in the overall state of the economy producing a correction anything like the one experienced in 1980-81; today's economy is not experiencing the same double-digit inflation and unemployment levels it was then, so light vehicle sales should bottom out by midyear 2009.

While we should start to see some sales gains on a sequential basis by the second quarter of 2009, gains on a year-over-year comparative basis likely won't come until the second half of next year.

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NADA working to improve auto-financing difficulties

By Ray Scarpelli Sr.
Metro Chicago NADA Director

Annette Sykora, chairman of the NADA, issued this statement about the nation's current credit crunch:

"America's financial liquidity crisis, created by mortgage lending, is constraining the availability of auto credit, which is the lifeblood of both dealerships at the wholesale level and car buyers at the retail level. Industry experts agree that the economics of auto financing are sound and that vehicle financing did not cause the current crisis.

"Nonetheless, banks and finance companies are reluctant to lend. Consumers—even those with good credit—are finding it increasingly difficult to get financing. To address the issue, the NADA is moving forward on several fronts.

"First, the NADA is meeting with the major associations representing the banking and financial services industries to emphasize the fundamental soundness of the existing auto-finance model and to highlight the fact that it is, therefore, in the economic interests of finance sources to continue making credit available for automotive retailing.

"In addition, the NADA is supporting congressional efforts to stabilize liquidity in the economy and provide government funding that would make available $25 billion in loans for the auto industry.

"Our message to the financial community and Congress is simple: Auto financing is sound. We just need liquidity to do our jobs."

In other NADA news . . .

• The NADA's immediate customer follow-up and complaint-resolution program, **NADA-24, recently completed its five-millionth interview**. Launched in 2005, the program provides feedback to dealers the day after a customer buys or services a vehicle, enabling quick responses to customer problems and helping to build loyalty. Contacted customers are asked three questions to gauge their satisfaction level. Visit www.nada-24.com for more.

• Ford Motor Co. President and CEO **Alan Mulally will give the keynote address** at the opening session of the NADA's convention, Jan. 24-27 in New Orleans. Before joining Ford in 2006, Mulally was executive vice president of the Boeing Co. and president and CEO of Boeing Commercial Airplanes. Other speakers include President George H.W. Bush and former NFL quarterback Archie Manning. For more, visit www.nada.org/convention. Ten hotels already are sold out.

• **NADA Used Car Guide has introduced two additional trade-in value categories** to help businesses better define used-vehicle pricing for a broader spectrum of vehicles. The new "Rough Trade-In" and "Average Trade-In" values are included in all guide electronic products, and are part of the printed guidebook this month. The new categories complement the existing "Clean Trade-In," "Clean Loan" and "Clean Retail" values. The majority of vehicles in the wholesale market—about 50 percent—are considered "average" in condition, according to NADA market data. Vehicles in the "clean" category represent about 15 percent of the market, while those in the "rough" category—typically considerably damaged but not "salvage" vehicles—are about 20 percent. The remaining vehicles fall into the "extra clean" or "salvage" category.

For more on the guide's vehicle value categories, as well as its full lineup of electronic and print products and services, visit www.nada.com/b2b.

In regulatory news . . .

• The NADA has finalized two new publications to help dealers comply with several new **federal legal requirements**. All members will receive via mail a free printed copy of "A Dealer Guide to the FTC Affiliate Marketing Rule" and "Electronic Disclosure Rules for Dealership Online Commerce." However, because Oct. 1 was the compliance deadline for each of these new rules, NADA Management Education is making these two publications available immediately in PDF form. The PDF files are free to members upon request. Send an e-mail to Management Education at me@nada.org, and include your NADA member identification number with your request.

• **Individuals and organizations with 25 or more trucks, tractors or other heavy vehicles** used on highways are required to make their excise tax filings with the Internal Revenue Service electronically, rather than by paper. Form 2290, Heavy Highway Vehicle Use Tax Return, is used to report and pay highway-use excise taxes. E-filing of Form 2290 began in August 2007. Electronic filing streamlines the processing of Form 2290. It is safer and more reliable than paper filing and reduces preparation and processing errors. Another advantage of e-filing Form 2290 is that taxpayers don't have to wait for a stamped version of the Schedule 1, Schedule of Heavy Highway Vehicles, to be returned by mail. They will almost instantly receive the equivalent of a stamped version electronically. For additional information, contact NADA/ATD Regulatory Affairs at regulatory@nada.org. To view the entire press release, visit www.irs.gov/newsroom/article/0,,id=185565,00.html.

Financing getting tougher, but it's out there, analysts say

Credit availability has been a top issue in the automotive industry for months, leading to serious congestion for new-car buyers who want financing.

But one dealer blames the problem not on Wall Street woes, but on customers who are upside down in their trade-ins.

With 72-month loans now commonplace, many customers have trade-ins that are worth less than what they still owe on them, forcing the amount due on the old car to be wrapped into the new-car payments.

Tawny Arnaud said the financing problem facing dealers has been brought on by dealers and auto financing companies themselves.

"People really should be thinking in terms of short-term financing," said Arnaud, vice president of sales for Galpin Motors, a chain of nine dealerships in the Los Angeles area.

Almost all dealers surveyed recently by Automotive News said they were having a harder time finding loans for customers with poor credit. About 60 percent said they are having more trouble getting financing even for customers with good credit.

During the housing boom, home equity loans often were used to finance car purchases. But the housing market collapse has put more pressure on auto financing.

J.D. Power and Associates forecasts a very slight upturn in auto sales, from a projected 14.2 million sales in 2008 to 14.3 million next year.

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EPA's "Estimated Highway mpg" must be disclosed.

In all fuel economy ads, the EPA must be identified as the source of the information, and all numbers must be referred to as "estimates."

"We are starting to see mileage claims without any basis," said Kelly.

Kelly also said that ads for used cars cannot make mpg claims because the conditions of used vehicles are not consistent.

• Some dealers are offering $20 gas cards to shoppers who test-drive a vehicle—not a problem. But the customer must first buy $100 worth of gasoline at the same station, and of the same octane, before qualifying for the complimentary fuel.

"If it's free, it must be without condition," said Grzeskiewicz, who noted the company that generates the cards hails from Florida.

• Grzeskiewicz recounted a lawsuit filed Aug. 27 against two Orland Park dealerships for using deceptive envelopes in 2007 direct-mail campaign. The envelopes reportedly were stamped "Important Vehicle Recall Information" and "Do Not Destroy." But the contents of the envelope had nothing to do with a recall. They instead promoted an "exclusive credit amnesty event."

"If you give someone a false premise to open the envelope, you're on notice that we are looking at it," said Jim Kole, an assistant attorney general.

• How is the area's No. 1 dealer computed? Steve Bernas, president of the BBB, questioned the top-selling claim of a dealer who combines his retail and fleet sales to reach the plateau. Dealer Mike McGrath Jr. said such a claim is hard to defend because manufacturers report fleet sales differently.

But CATA President Jerry Cizek dismissed the issue, remembering one bygone dealer who based his "largest dealer" claim on his store's acreage, and another who said he was the "biggest" because he weighed 430 pounds.

Illinois Assistant AG Gil Fergus said the claim is not an advertising regulations infraction, and "It is not in the public interest to use AG resources to investigate an issue that doesn't harm consumers."

NADA offers 2 new legal compliance publications online; effective date Oct. 1

The NADA has finalized two new publications aimed at helping dealers comply with several new federal legal requirements. All members will receive via mail a free printed copy of "A Dealer Guide to the FTC Affiliate Marketing Rule" and "Electronic Disclosure Rules for Dealership Online Commerce."

However, Oct. 1 was the compliance deadline for each of these new rules, NADA Management Education has made these two publications available immediately, in PDF form, free to members upon request.

The FTC's Affiliate Marketing Rule specifies when certain credit-related information received from a company's affiliates may be used for marketing purposes. The guide covering this new rule defines key terms, explains the new rule's relationship to existing information-sharing restrictions under the Fair Credit Reporting Act, and provides examples of the notices required under the new rule.

The Federal Reserve Board's Electronic Disclosure Rules affect dealers who currently engage in certain online activities (such as advertising leases online, advertising credit online, or providing access to/accepting online credit applications), or envision doing so in the future. This publication explains the rules, discusses amendments to certain regulations—including Regulations B, M, and Z—and provides context and compliance considerations.

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