Volume 115, No. 10 May 21, 2018

Voting ends June 8

6 candidates vie for 5 CATA board seats

Six candidates, including four incumbents, have been nominated to fill five openings on the board of directors of the Chicago Automobile Trade Association. Each term last three years beginning next month.

Election ballots will be sent May 25 to all CATA dealer members whose association dues are up-to-date. Completed ballots must be received by 12 p.m. June 8 by the CATA's auditing firm, Crowe Horwath LLP, which will tally the submissions. Results will be announced at the CATA's annual meeting, June 12 at Cog Hill Golf & Country Club in Lemont.

Incumbents on the ballot include **Jay Hopkins** (Hopkins Ford, Elgin); **Kevin Keefe** (Brilliance Honda, Crystal Lake; Brilliance Subaru, Elgin); **JC Phelan** (Jack Phelan Chevrolet, Lyons; Jack Phelan Chrysler-Dodge-Jeep-Ram of Countryside) and **Thomas F. Shirey** (Shirey Cadillac, Oak Lawn).

Newcomers on the ballot are **Ryan Kelly** (Kelly Nissan, Oak Lawn) and **Anthony Loquercio** (Chicago Northside Toyota; Elgin Chrysler-Dodge-Jeep-Ram; Elgin Genesis; Elgin Hyundai; Elgin Toyota; and Honda City, Chicago).

A director can serve a maximum of three terms. Keefe and Shirey are seeking their third terms; Hopkins and Phelan, their second. A committee of former CATA board chairmen met last month to identify candidates for nomination.

CATA looks to overcome tollway transponder change

When the Illinois State Toll Highway Authority insisted in January that every vehicle traversing the state's tollways have a transponder in the vehicle or face paying a toll's cash rate, which posed a problem for dealers, some of whom have loaner fleets in excess of 200 vehicles.

Effective Jan. 1, the tollway authority said it no longer was enough to register many vehicles to a single transponder because it takes manpower to match a transponder-less vehicle to an account to charge for the toll. Without the change, said Shana Whitehead, the tollway's chief of business systems, toll fees would have had to be raised for all motorists.

Some dealers said they had to hire additional staff to oversee transponder activity, including checking whether a transponder remained in the vehicle after a loan. And with fleet units turning over every few months, the transponders must be re-registered to another vehicle.

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CATA office closed May 28

The CATA administrative office will be closed May 28 to commemorate the Memorial Day holiday.

Business hours resume May 29.

Open Sundays bill likely dead

As Illinois state lawmakers near the scheduled May 31 conclusion of the General Assembly's spring session, two bills that would impact dealers likely won't cross the finish line.

State Sen. Jim Oberweis's perennial attempt to open dealerships to sales on Sundays has never come to a vote. The Republican from Sugar Grove framed this year's Senate Bill 2420 as the Freedom to Choose Act, al-

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More consumers skip high-rate auto payments than during '08 crisis

Borrowers in the U.S. are defaulting on subprime auto loans at a higher rate than during the 2008 financial crisis, according to Fitch Ratings, and lenders are responding by pulling back on financing to applicants with shaky credit histories and requiring higher standards for loans that they bundle and sell on to investors.

The delinquency rate for subprime auto loans more than 60 days past due reached the highest since 1996 at 5.8 percent, according to March data, the most recent available from Fitch. That compares with a default rate of about 5 percent in 2008.

The number of auto loans and leases extended to subprime borrowers fell by almost 10 percent from a year earlier in January, which is the latest data available from the credit reporting agency Equifax. Auto-lease origination to those customers decreased by 13.5 percent.

However, the volume of bond sales backed by these loans are likely to remain the same because banks and credit unions, many of whom are more risk-averse, don't turn most of their loans into securities.

"ABS is a fraction of the total auto credit market, which is mainly funded on balance sheets," Wells Fargo analyst John McElravey said in an interview. "If the pullback from subprime is more from the balance-sheet lenders, banks, then maybe securitization keeps moving along."

So far that's been the case. Subprime-auto asset-backed security sales are on pace with last year at about $9.5 billion compared to $9.6 billion a year ago, according to data compiled by Bloomberg. With new transactions from Santander, GM Financial, Flagship, and Credit Acceptance expected to hit the market this week, volume may exceed 2017's total of about $25 billion.

This bond market looks very different than it did even a few years ago. An influx of generally riskier, smaller lenders flooded into it in the post-crisis years, bankrolled by private-equity money, which pursued the riskiest borrowers in order to stay competitive.

"Neither banks nor credit unions have done 'deep subprime' lending," Gunnar Blix, deputy chief economist at Equifax, said in a recent phone interview. "That's mainly done by smaller dealer-finance and independent finance companies" who rely almost solely on ABS for funding.

Indeed, only about 10 percent of $437 billion of outstanding subprime auto loans have been securitized into ABS, according to Wells Fargo.

Moreover, bond investors generally consider these securities bulletproof, as issuers bake in credit protections to insulate buyers from losses.

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Besides the extra workload for the tollway authority to match transponderless vehicles to an account, Whitehead said that, during winter months, it can be difficult to capture images of license plates on cars without a transponder, resulting in lost revenue for the authority.

Directors and staff of the CATA met with top officials of the tollway authority in early May to discuss how dealers can comply with the new mandate, short of equipping every car with a transponder.

At the CATA board meeting on May 15, the directors agreed that the most sensible procedure for dealers would be to register any loaner vehicles to a single transponder but have customers consent to use their own transponders or pay the dealership for any tolls or red-light camera tickets amassed during a loan. Under such a procedure, the dealer's maximum exposure for a missed toll fare is the cash rate.

If the transponders of both the dealer and the customer are in a car, Whitehead said there is a 60 percent to 70 percent chance they both would get dinged at a tollbooth.

For vehicles not associated with a transponder account, unpaid tolls can become a violation after seven days, and eventually may lead suspension of a vehicle's registration.

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lowing for the sale of motor vehicles on any six days of the week chosen by the business owner, instead of on any day but Sunday. It was the fifth time since he became an Illinois lawmaker in 2013 that Oberweis has tried to open Illinois new-car dealerships on Sundays.

And Senate Bill 2967, sponsored by Sen. Terry Link (D-Waukegan), would exempt lifetime vehicle warranties from being considered a gift under the state's motor vehicle advertising regulations. The regulations currently state that free prizes, gifts or other incentives cannot be advertised in connection with a vehicle whose selling price is negotiated, unless the gift is paid for through a manufacturer's program or a dealer advertising association.

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In blasting NAFTA, Trump urges automakers to build more in US

President Donald Trump is pressing automakers to build more vehicles in the United States and on May 11 launched a fresh attack on the North American Free Trade Agreement that has benefited them, while the companies urged him to work with California to keep nationwide U.S. vehicle emissions standards.

CEOs or senior executives from 10 U.S. and foreign automakers met with Trump for about an hour at the White House as the Transportation Department considers loosening federal fuel efficiency and pollution standards implemented under Democratic former President Barack Obama.

Afterward, two major auto industry trade groups said in a joint statement that Trump expressed an "openness to a discussion with California on an expedited basis." California and 16 other states covering about 40 percent of the U.S. population this month sued to block the Trump administration's efforts to weaken the fuel efficiency requirements.

A U.S. Transportation Department draft proposal would freeze these requirements at 2020 levels through 2026, rather than allowing them to increase as previously planned. The Trump administration is expected to formally unveil the proposal later this month or in June.

The chief executives of General Motors, Ford and Fiat Chrysler, along with senior U.S. executives from Toyota, Volkswagen, Hyundai, Nissan, Honda, BMW and Daimler met with Trump, as did the heads of the two trade groups.

"We're really talking about environmental (controls), CAFE standards, and manufacturing of millions of more cars within the United States," Trump, known for his "America First" policies, said at the top of the meeting, referring to the Corporate Average Fuel Economy standards for cars and light trucks in the United States.

"We're importing a lot of cars, and we want a lot of those cars to be made in the United States," Trump added, specifically mentioning Michigan, Ohio, Pennsylvania, South Carolina and North Carolina.

Automakers want the White House and California to reach an agreement on maintaining national standards, fearing a prolonged legal battle could leave the companies facing two different sets of rules — at the state level and nationally — and extended uncertainty.

Much of the hour-long meeting focused on NAFTA and other trade issues, with Trump blasting the pact with Canada and Mexico.

"We're renegotiating it now. We'll see what happens," Trump said, adding that Mexico and Canada "don't like to lose the golden goose."

"But NAFTA has been a horrible, horrible disaster for this country, and we'll see if we can make it reasonable," the Republican president added.

Automakers have called NAFTA a success, allowing them to integrate production throughout North America and make production competitive with Asia and Europe. They have noted the increase in auto production over the past two decades with NAFTA in place, and have warned that changing it too much could prompt some companies to move production out of the United States.

Major automakers reiterated this month that they do not support freezing fuel efficiency requirements but said they want new flexibility and rule changes to address lower gasoline prices and the shift in U.S. consumer preferences to bigger, less fuel-efficient vehicles.

Fiat Chrysler Chief Executive Sergio Marchionne, whose company is shifting production of Ram heavy-duty pickup trucks from Mexico to Michigan in 2020, told Reuters before the meeting his company is "fully supportive" of Trump's efforts to revise the mileage rules and hoped for "an agreed way forward."

NAFTA changes proposed by Trump's administration would not require Fiat Chrysler to end production in Mexico but rather to "redirect" exports of Mexican-built vehicles to other global markets, Marchionne added.

Marchionne said he still hopes the administration will reach a deal with California to maintain nationwide standards and said Trump is an ideal negotiator to get an agreement.

Noting that automakers want a deal with California, U.S. Sen. Tom Carper, D-Delaware, said, "Our businessman and self-proclaimed 'dealmaker' president should be able to take yes for an answer and help us secure a win-win solution that is well within reach."

U.S. Trade Rep. Robert Lighthizer, Transportation Secretary Elaine Chao, White House economic adviser Larry Kudlow and Environmental Protection Agency chief Scott Pruitt also attended the meeting. Trump directed Chao and Pruitt to continue administration talks with California to see if a deal can be reached quickly, an auto industry source said.

Democrats and environmental advocates plan to challenge the administration's plans to weaken vehicle rules touted by the Obama administration as one of its biggest actions to combat climate change by reducing planet-warming emissions.

The Trump administration plans to argue that freezing the rules would lead to cheaper vehicles, boost sales and employment, and improve safety by prodding faster turnover of older vehicles.

Dealers must be certain regulatory compliance tops their to-do lists

For those who think changes at the Consumer Finance Protection Bureau will give dealers a little breathing room, think again.

States are stepping-up their scrutiny of financial services companies and dealers, and if the CFPB finds a violation of law, then make no mistake about it, the agency will do its job, said Shaun Petersen, senior vice president, legislative and government affairs at the National Independent Automobile Dealers Association.

"The acting director (Mick Mulvaney, who also is director of the Office of Management and Budget) has said: 'We're not going to push the envelope, not going to overstep boundaries or limits, creating things that aren't there. But if there are things that need to be addressed, we are going to address them,' " Petersen said.

"One other thing we've seen with the CFPB and the acting director is that he has come out and said 'state attorneys general, you need to take a bigger role, a lot of this you should be doing.' It's not just specific to dealers."

Patty Covington, a partner at Hudson Cook, agrees that state attorneys general have stepped-up their scrutiny of financial services, which includes dealers and "in New York and New Jersey, I've seen several enforcement actions against dealers."

More actions against dealers

New Jersey Attorney General Gurbir Grewal brought actions against dealers amid allegations that some vehicles' advertised prices were different from their actual prices. The actions and allegations involved vehicles that had add-on products installed on them, Covington said.

Brad Miller, director of legal and regulatory affairs at the National Automobile Dealers Association, agrees that dealers should take advertising compliance as seriously as does the Federal Trade Commission. He also has seen "literally dozens" of advertising enforcements brought by the FTC and other regulators.

The NADA recently issued an advertising compliance guide that highlights issues that raise red flags with the FTC, Miller said.

"Finance or lease advertisements that contain certain trigger terms such as monthly payment and APR must also include certain other additional disclosures required under federal rules," Miller said.

Also helpful to dealers is the NADA's Regulatory Maze, an annually updated list of major federal regulations, Miller said. The 12-page list for 2018 contains brief descriptions and guidelines of dozens of federal laws, such as Internal Revenue Service treatment of demonstration vehicles, employee drug testing and the Fair Credit Reporting Act. It also addresses hot button topics such as protecting consumers' personal information and recalls.

Regarding recalls

Regulatory Maze, under the National Highway Transportation Safety Administration recall regulation heading, notes that "new vehicles and parts held in inventory that are subject to safety recalls must be brought into compliance before delivery."

When it comes to used vehicles, some dealer representatives suggest that dealerships disclose recall information to their customers and consider including links in their used-vehicle advertising to http://safercar.gov, a website that allows anyone to search for open recalls.

Helpful to dealers is a new tool that allows them to search for open recalls on up to 10,000 vehicles at one time, at no charge. Available at www.freeautorecallsearch.org, the tool was created in partnership with the Alliance of Automobile Manufacturers, the Association of Global Automakers, and Carfax.

To protect consumers' data, the FTC Safeguards Rule states that "dealers must develop, implement and maintain — and regularly audit — a written security program to protect customers' information and must ensure that their service providers provide similar safeguards."

Eric Chase, a New Jersey attorney for dealers, said dealers need to have one or more cyber experts on hand who knows how to protect personal information — such as bank account information and Social Security numbers collected from customers and employees — from cyber crooks and high-tech hackers.

He said cyber issues are always "hot topics" at the National Association of Dealer Counsel conferences, which is composed mostly of attorneys that represent dealers and with which he is involved.

"This is a top issue for dealers, and they'd better be watching out for all the problems that can happen, because if they don't, it's at their peril," said Chase.

"We've seen instances where people go online and purchase cars, and they're all phony."

Taking a low-tech approach

Keeping consumers' personal information safe is a major compliance headache for dealers, but strong cybersecurity measures are only half the solution. A low-tech, common sense approach can help, experts agree.

Sometimes it's as simple as closing or locking a door or vetting third-party companies that have access to your property or data, said Max Zanan, president of Total Dealer Compliance, which is a company that provides in-store and online compliance audits for dealerships.

"I've seen F&I offices that don't have doors; I've seen F&I offices that have doors but not locks and keys," Zanan said.

"Let's put credit applications and driver's licenses into the (computer) system and limit access. If there is a company that comes in clean, there's no paper in the F&I office for them to see," he said.