>> Jim Chen: Okay, Good afternoon, everyone. I'm Jim Chen, and I'll be moderating our final panel of the afternoon -- "Which Practices, If Any, Are widespread, and What Are Potential Solutions?" Let me just first give a quick introduction of our panel. You'll find more detailed bios of each of our panelists in your folders. To my left, first, is Michael Benoit, who is a partner at Hudson Cook. And next to him is Mike Charapp, who is a partner at Charapp & Weiss. Next to Mike is Greg Grzeskiewicz, who's an assistant attorney general with the Illinois Office of Attorney General. Next to him is Chris Kukla, senior counsel for government affairs at the Center for Responsible Lending. Then we have Paul Metrey, who is chief regulatory counsel, financial services, privacy and tax, for the National Automobile Dealers Association. And, finally, we have John Van Alst, who is an attorney with the National Consumer Law Center. So, throughout our roundtables, we've heard about a wide variety of dealer practices, and I don't think anyone would disagree that, in every industry, there are gonna be some unscrupulous individuals that engage in illegal practices to take advantage of consumers. We talked about a lot that the last roundtable. But what I'd like to focus on this panel is not those individual bad apples, but to discuss any widespread practices in the auto industry that may raise consumer-protection concerns. In other words, other common practices in the industry that many dealers engage in but, nevertheless, may raise consumer-protection concerns. So, I'd like to start, first, with one practice that we've heard a lot about in previous roundtables and today. Some people call it dealer participation. Some people call it markups. And in a previous roundtable, it was explained to us that a markup or dealer participation is additional percentage points that a dealer may add to a bank or other indirect lender's buy rate. It's intended to compensate the dealer for assisting the consumer with obtaining financing. And, you know, when you add a buy rate and dealer participation together, that gets the interest rate that's presented to a consumer. Now, we also heard, in a previous roundtable, that about 70% of auto sales involve dealer-assisted financing. So, of that -- I'm gonna throw this open to anyone -- you know, how many of those transactions include markups or dealer-assisted participation? Anyone like to hazard a -- Chris?

>> Chris Kukla: I mean, I'll just -- I'll point it out to say that, you know, this is one of those cases where the data just isn't there. There's nobody really reporting the penetration rate of dealer

markup. So, I've seen some estimates that show it can be anywhere from 50% to 70% of deals that are made include what is traditionally known as dealer participation. But it's one of those areas where it's not being adequately reported, so it's really hard to discern. We do know that it does occur, though, in a significant number of transactions.

>> Jim Chen: Mike.

>> Mike Charapp: [Laughs] I'm in stereo now. Thank you. I do want to bring some conceptual things to this discussion, and maybe that can lead to more discussion. This concept of dealer participation, markup, et cetera -- what we're talking about here is pricing of the financing. The rate which is offered to the dealer is much like -- is the cost to the dealer. And so, we don't sit there, when Macy's sells a pair of pants and say, "Oh, there's markup for Macy's participation in the pants.” They sell at a price based on their cost, and that is similarly what is happening with indirect financing, or what you call dealer-assisted financing, which is -- there is a cost of the financing, and then the dealer has a price for the financing, which can vary on a wide variety of factors. And so, that's really conceptually what's going on. And frankly, I've seen no issue, no problem with the fact that a seller of a product, the seller of financing products or any other products or vehicles or whatever that may be, has a right to earn a profit as part of that transaction.

>> Jim Chen: Does anyone disagree that there may be some consumer-protection concerns with dealer participation? John?

>> John Van Alst: Yes. And so there are a few concerns that I have. You know, first and foremost -- And this was borne out by the litigation that we were involved in a new of years ago. What we see is that because the discretion is at the dealer level in these markups, we see a disparate impact on minorities. We see minorities paying more in dealer markups, and so that doesn't happen at Macy's when you're buying clothes or anything else like that. It's a different product. Also, there's real harm, because, you know, Center for Responsible Lending, Chris, have done some studies. There's a higher likelihood that somebody's gonna default with these markups, as well. Obviously, clearly, it increases the cost of the loan. And it's really not transparent to the consumer what's going on. You know, when you explain this to consumers, they just perceive it as patently

unfair that they're paying more than -- They understand the dealer is out there getting the best financing for them, when, in actuality, the dealer is getting the best financing for the dealer. And they don't know that that's what's happening. They think it's the entire opposite direction, and when this is explained to them, everybody just has this immediate reaction -- "That's not fair.”

>> Jim Chen: We'll go with Chris, then Paul, then Mike.

>> Chris Kukla: Yeah, I would say that there are several consumer-protection concerns that come in when the dealer markup is involved. I think it's worth thinking about this from a little bit broader perspective, though, because I think this is an instance where the dealer really wants to be the creditor until they kind of don't want to be the creditor. It's dealer more as broker than dealer as lender. So even though you have this system where you sign a retail installment sales contract, where the dealer is the initial creditor and then is selling this loan to a third party, they want to have this sort of protection that creditors have, which is that they give you a price. They tell you, "This is the rate that we're giving you. This is the rate that we have built in, what we believe, you know, are all the things that we should build into the rate, and that's it.” Those creditors do not advertise that we do business with dozens of lenders to get you approved or say, "We're, you know, going to go out there and find you a great deal.” Creditors don't generally do that. Banks don't generally say, "We're working with a dozens assignees to find you the best deal.” They say, "This is the deal that we've got, and we're gonna sell it based on how we're gonna do that.” And customers then think, "Okay, the bank's giving me their price. Now I need to go find out what another bank will give me.” When you have someone who's out there saying, or shopping your loan, the customer thinks what that means is, is that they're trying to find a good deal for you. Now, when the incentives are misaligned, when you have this system where, within that subset of loans that then the dealer finds, that the incentive really is to find the loan that gives the best deal to the dealer out of that subset of loans. Then your incentives aren't aligned. The customer is not getting the best deal for them. It's the best deal for the dealer. So the consumer-protection concerns come in because there is discretion in the price that you can charge. That same dealer, that same F&I manager can charge two different -- Two people with the same characteristics, the same, you know, the same kind of credit risk could get two totally different prices for the same product. The reason I say this "it's a creditor until we're not a creditor” is that they want to be able to build this into the

rate without even disclosing that. Well, he fact is, is that there's a very similar transaction in the mortgage markets -- table-funded transactions. It's where the broker is putting themselves on the line as the creditor, saying that you're getting a loan with us, with an agreement with a third-party purchaser, where they're gonna immediately sell that loan within a couple of days. So that broker's not gonna hang on to the paper. In the law, they don't treat those, the broker acting as broker and the broker acting as table funder any differently. They treat them the same. They have the same duties as a broker -- that you've got to have the best interest of the customer at heart. You know, your incentives have to be aligned. It's one of the reasons that we've had a lot of the action we've had, and it's one of the reasons that the Fed, when they looked at yields for premiums for mortgage brokers, the point was made at an earlier panel that testing showed that the disclosures were meaningless, that customers were totally confused by them. And so the argument was, "Well, then we just shouldn't disclose it at all. We should just keep it the way it is." Well, when the Fed looked at yields for premiums, they found the same thing in the mortgage transactions, same kind of thing, which were brokers were able to get more compensation based on increasing the rate or giving you worse terms. And what they found was -- we shouldn't allow you to do that. It wasn't don't disclose it. It wasn't just keep it the way it is, it's too confusing. It's too confusing, it's too meaningless for consumers to figure out what the best deal is, and if that's the case, then we need to change the way that the compensation system works.

>> Jim Chen: Paul.

>> Paul Metrey: Okay, several points to respond to there. First of all, John had mentioned that they've seen instances of disparate lending, and really, to the best of our knowledge, there is not data that establishes that there is disparate lending going on. In today's environment, there is no suggestion that that has occurred. Certainly, there will be a debate about data that existed in pre-rate-cap environments that were around 10 or 15 years ago. I don't think anyone will come forward with data now that will suggest that, and I know the commission has repeatedly, on all these issues and topics, called for current and reliable data. With regard to transparency, let's not just pooh-pooh this and say that, you know, it's not transparent. The consumer does not understand it. Let's analyze again exactly how this process went forward on transparency. This is not something the federal government has never looked at. It's not something that they've failed to consider. They

have carefully considered it, and they've done it over time. In 1977 -- And some of these were discussed before in earlier panels, but I think it bears repeating here. In 1977, the Federal Reserve Board was presented with a proposal that they disclose the existence and/or amount of dealer participation. They reviewed over 400 comments. They concluded that if you disclose the dealer participation, it is not the most relevant figure for shopping-comparison purposes for the consumer. The APR -- it's one element of a price. As was said earlier during these sessions, you have many elements of a price. You have a cost of funds. You obviously have a risk premium. You have loan-production cost, loan-servicing cost, and you have retail distribution cost. These are all elements. The disclosure of any one of them does not dictate the final rate. If you are going around and you are shopping for what is the best -- least expensive price for a gallon of gas, unleaded gas in your local community, I doubt many of you concern yourself with to what extent is the retailer earning more than the other retailer? You're probably looking at the final price and saying, "What is cheapest to me?" If there's one at $3.50 a gallon, as opposed to $3.60 a gallon, you're probably going with the $3.50 a gallon, without concerning yourself what the retail margin on that is. And the Federal Reserve Board, when they looked at this topic, concluded, for that reason, that if you have a disclosure of dealer participation, the only thing you do is you divert the consumer's attention away from the most relevant figure for shopping-comparison purposes. The research was also conducted, actually, by the FTC's Bureau of Economics in 2004 on the housing side. They came to a very similar conclusion. They said these are well-intentioned proposals, but when you look carefully at what it does, you actually get consumers actually selecting, in many instances, more expensive loans 'cause they focusing on the wrong factor. So this is something that's been carefully considered. And keep in mind, as well, everyone, every retailer has retail-distribution cost and gets a return on investment on those costs. Everyone has a retail margin. There are many players in the marketplace. It's not just auto dealers. You have, obviously, credit unions. You have banks. You have various sources. If there were to be any proposal for disclosure -- and, of course, this would be in the realm of the Federal Reserve Board, as they still retain authority over dealers under section 1029. But if there were to be a proposal and you wanted to disclose that to consumers, you would have to do that across the board. It's not that you have players in the market that just somehow do not have a retail margin. They all do, and if it were to be disclosed, it should be done across the board. But, again, the main point here is -- there has been testing on this. It has been analyzed. It's been determined it would not be helpful, and for that reason, it's not required today.

>> Jim Chen: Mike.

>> Mike Charapp: Thank you. To go back to this issue of discrimination, of course that's a problem and, of course, that's a violation of law. And, as a result, we heard that this information came up in the context of litigation, which it is where it should be. If there is discrimination going on, it's illegal, and there are means to put an end to that. But the concept that we're looking at -- I get the impression that we're looking at this where there's a shortage of information for consumers who are going in to buy the cars as to what finance rate may be. There's never been more information out there, and there's never been more access to it. In 2005 -- this is six years ago -- J.D. Power did a study which found that 67% of the people buying cars do some research on the Internet about that process. And you can't go to a car-buying site without seeing a payment calculator and payment information about payment so that you can get all the information about the vehicles there, pricing, finance, et cetera. There's a great deal of information out there, and last year, J.D. Power did the study again just for used-car buyers, only used-car buyers, came up with the same percentage. Two-thirds of people are doing some research before they're buying a car. There's never been more access to information out there, which takes us to the issue of this transparency. The fact of the matter is -- the buy rate is a rate that the dealers get. That's the wholesale rate to the dealer so that they can then resell that financing to the customer. If it's out there, if that buy rate is out there, that customer will find it on the Internet. The fact of the matter is -- we go under the assumption that that's the rate that's available publicly to the customer. It is not. That's the wholesale rate to the dealer. And if it is available out there, then it's certainly available and, these days, more available than ever on the Internet. And then finally, one last point -- again, in this panel -- Last panel, we had a comparison to the home, you know, cars and home buying, where, you know, home buying is a process that takes 30, 60 days, and somewhere along the line, somebody has a lawyer involved in that. It's a much different process. And we got the same issue here. We want to compare this to brokerage. This is not brokerage. These dealers that are selling these products, they're selling the products. They're selling the vehicles. They're selling the

financing. They're selling anything that goes with it. So it's a much different process here than that.

>> Jim Chen: I want to call on John next, but I also want to follow up on something that was said. And, John, maybe you would want to respond to my question and in addition to whatever else you want to say. But if there's this notion out there that simply disclosing the existence of a markup is confusing to consumers, is there anything else that can be done to help protect consumers?

>> John Van Alst: That works out perfect. That's exactly what I was gonna talk about. Anyway, I was gonna say that I actually agree with Paul that disclosure isn't gonna effectively address this issue. As Chris pointed out, what the Fed did when they look at the similar issue, analogous issue in the mortgage context, whether the broker is table-funding or getting finance somewhere else, is outright prohibit this sort of compensation. Michael pointed out dealers deserve some sort of compensation for this work they're doing to basically sell the note that they wrote to go out and assign it. And if they are, I think we've got good models. You know, I think we could look at what happens when there's 0% financing that manufacturers offer, all sorts of other ways. What we have to do, though, is remove the incentive the dealers have to do something that's not in the consumer's best interest. The current model bases the dealer compensation -- If that's what we want to call it or whatever the money they're gonna make on this thing by putting the consumer in a worse position. And that's not what we want to encourage. So if we want to have rules in the marketplace that try to make sure that these transactions are handled fairly, we want to make sure that there's some sort of compensation for the dealer, if there has to be so, that's not involved in making the deal worse for the consumers.

>> Jim Chen: Okay, I think Michael was quickest on the buzzer next, and then Chris, then Paul.

>> Michael Benoit: I didn't know we were playing "Jeopardy!" I just want to dispute the notion that a retailer is, in any way, obligated to act in his customer's best interest. A retailer is obligated to -- A retailer's in business to make money. Does he have incentive, economic incentive, to act in his customer's best interest? Absolutely. Does he have legal incentive not to do things that are going to harm his customer? Absolutely. But this motion that the dealer, who is selling the car,

who is selling the financing, who is selling servicing, who's selling a relationship -- And, remember, this is one kind of retail environment where the dealer wants this customer for life. They want somebody who's gonna be coming back into them, year after year. I think I saw statistics somewhere that, on the average, the average person buys 11 cars in their lifetime. That's a lot of cars. And they have brothers and sisters and mothers and fathers and nieces and nephews who will come and buy cars, as well. But the idea that we are selling them something that is harming them, when we don't have the data to support that -- the dealer compensation, as harming the customer. When we don't have data to compare it against -- credit-union rates, against bank rates, against other folks who put out retail rates -- when we don't have that data, I don't think that we can just sit here and say that this particular kind of compensation is, per se, not in the consumer's best interest. And I think that's where we need to focus is on getting some real data.

>> Jim Chen: I think Chris was next, then Paul.

>> Chris Kukla: I think, first, I would say -- I think we've got it -- Lending is not a commodity. We have to -- Lending is not the same as other retail products for a big reason, and that is that we don't allow a retailer to put out stuff and say, "You can charge different people whatever you want." So, if I walk into Macy's and I want to buy jeans, that price is gonna be there. I don't have to go in. I don't have to go up to the clerk and have them dig into my personal history to find out what it's gonna cost me to buy a pair of jeans. I can look at the price and I can walk out. I can walk into many stores and I can walk out. And Paul's example about the gas, it would be more like if I filled up my tank, and then they told me how much it was gonna be. It's different. Lending is different. Lending uses risk-based pricing. We allow people to use risk-based pricing, and the reason we do that is simply this -- we know that then, it allows you to individually price for the risk that that person provides. Lending is different. Lending is a promise to repay money. So we know that it brings with it some different challenges. So what we've done is that we've created a system where we allow people, we allow lenders to decide what interest rate they're gonna charge, based on an individual risk. With that comes, I think, some great responsibility. It says you need to price for risk to the extent that you're actually pricing for risk and not pricing for opportunity. That's a battle that we've been fighting in many different lending spheres for a while. It's fine when you've got somebody who's got adequate ability to negotiate price across different lenders. When you have

somebody who is in a vulnerable situation, you don't. And so the reason that we give more protections in lending than we do in other situations is because there's no way for the customer to know what the price of that product is going to be until they actually go and apply for it, until they actually give all that personal information, until they do something that's incredibly personal, incredibly takes time to do. Then they can find out what the price is. In the car-buying transaction, when do you find out what the price of the financing is? After you've already talked about the first part of the deal, after you've talked about buying the car. So you've already traveled down this road and then you go in. If I walked into a dealership today and said, "What would I qualify for?" He would say, "Well, what car do you want to by? What product do you want? We have to go through a whole bunch of variables. We have to go down a whole road to do that." If you have discretionary pricing in the system, if you have this ability for the dealer is this middle person -- and this is where it gets tricky, 'cause it's, you know, that the creditor accept-- "You know, we're not a broker, but we are, you know?" It's, "We're not a broker, but we're just a middle man. You get to blame the lender if things don't go well. We get to, you know, blame somebody else, but we're the creditor in this regard, because we get to keep the price all together." When you have discretionary pricing built into the system, you have this ability of somebody being able to charge two very similar people, but for whatever reason, they're getting charged two very different prices for the same service, for the same thing. And that's a problem. It's no different than if you charged me 2 bucks for a gallon of milk and you charged the lady behind me $4 for the gallon of milk. There's a certain principle on fairness to it. Why do I get to pay $2, and she gets to pay $4? It's the same thing here. And I think we have to be really careful. And that's why we're concerned about this, because we've seen it in this other market. We've seen it in the mortgage market. We saw what it does. It distorts incentives, it distorts marketplaces, and so for that reason, we think that it's important to look at this. And given the fact that the Fed looked at it 30 years ago, I think it's, you know, time to look at again.

>> Jim Chen: We'll go to Paul and then to Greg.

>> Paul Metrey: Yeah, just to clarify. The point about the gas station went to the issue of the disclosure of the retail margin. It did not go to the issue of discretion. I think Chris dealt with the latter, whereas I was referring to the former. With regard to discretion, let's talk about it for a

moment. I do not think this is an issue dealers need to retreat from at all. I think this is something that is enormously beneficial to consumers, and I think it's played out in the market every single day. How many times do you see -- and, undoubtedly, this applies to many of us -- a situation where you're interested in purchasing a vehicle, you go to a direct-lending source or perhaps several, you get the most competitive rate you can find, you go to the dealership, and they are able to beat it. Why are they able to beat it? Because they have discretion to lower their price to give you something that's more competitive than the most competitive offer you can get from any other source. That is not a consumer-unfriendly model. Most people would define a cheaper cost of credit to consumers as being consumer friendly. This is something where discretion can save consumers collectively a ton of money because it puts the dealer in the position to offer the consumer something that is less expensive they can get from any other source. It is truly a win-win. It's good for the consumer for that reason, and for the dealership, they can start to foster this customer-for-life concept, where they hopefully can bring in the consumer to service their vehicle, for future vehicle purchases, for their family, friends to come to, et cetera, et cetera. And it's something they're able to do because they have discretion.

>> Jim Chen: Greg, you're next. And, also, I'd be interested in hearing from, since you're a representative of the State Attorney General's Office, whether you know how states have treated dealer participation.

>> Greg Grzeskiewicz: Thank you. This issue is familiar to my office and State of Illinois. We looked at dealer markups, I want to say, back in 2004. Most legislation did not pass. So many of the points being made today, I'm very familiar with. And I'll just tell you what the State of Illinois did when we proposed our bill, which, again, was not successful. We looked at it as -- You know, when I was discussing this with car dealers in Illinois, we looked at it as if this is the best rate that you can offer to a consumer -- And Truth in Lending Act requires us to, you know, have an efficient marketplace. We told the dealers in Illinois, which I understand isn't, you know, what everyone here would agree with, would be just to disclose the buy rate, disclose the buy rate, disclose the contract rate. And what we told the dealers was, is that would allow our consumers in Illinois to shop the marketplace so that they're not wondering, they're not coming to the car dealership last to see if they can beat the rate. They can actually go and shop the rate, 'cause that's

what Truth in Lending, you know, when I was passed, you know, that was the vision of the Truth in Lending Act -- that consumers could shop their credit. So, that's the angle we took. What are other states doing? I believe Louisiana, right now, still has a law on the books that has caps. And the State of Illinois did consider caps in our legislation. I believe it's -- I may be a little bit off on this, but I think it 2% on up to five-year loans, and then maybe 3% on five and above. And I could have that backwards, but -- And so, Louisiana's one state that has caps out there, and then I believe California also has some caps in place. And I believe, they're -- I think it's 2% and maybe 1.75% -- or somewhere around 1.5%, something like that. So that's how other states have looked at it. I'm not aware of any other states that have laws on markups. The State of Illinois had a lot of data, back in 2004, on markups. I think the NCLC litigation affected some of the business practices that were being performed in our marketplace. Unfortunately, some of those settlement agreements had some set provisions, so some of the enforcement or the ability to have those caps enforced by the court has lapsed. But that's widely the states have done in this area.

>> Jim Chen: Mike.

>> Mike Charapp: Thank you. I did want to speak to this area of discretion, because there seems to be some idea that discretion is used based on who the customer is. That's, in fact, not the case. In fact, generally, much of what happens with the difference in vehicle pricing or the difference in various aspects of the deal have to do with many other factors. Examples. A customer who goes in to buy the black Mustang convertible is going to pay a higher percentage of the amount over the cost of that than will a customer who goes in to buy an F-150 pickup truck. Why? Because you have much more limited supply of that black convertible than you have for your 50 F-150s that are on the lot. And so that will affect that. It'll be affected by the time of the month. At the end of the month, dealers are looking to get their month. They may be making deals that may have to do with what the manufacturer incentive programs are. A Toyota dealer may have to sell 30 Camrys in two weeks to reach an incentive program from the franchisor. And so there are a broad variety of things that affect pricing of all the products that are involved here. And, in fact, that includes the financing. If dealers need to get cars out the door, there may be room, much more room to negotiate on price of the vehicle and much more room to negotiate on the price of the financing, because they want to get those cars out. They have incentives to do it of one form or another, and

there's too many to list. But the fact of the matter is -- as Paul said, that does go to the benefit of the consumer, because the consumers are looking for their best deal. They want to go in and they want to know, "What deal can I get?" And it's not just that they're walking into one dealer and doing that. They are researching that. They're going to the Internet. They're calling. They're reading the newspaper. They're bringing in the sources of information. And they have the ability to shop, now more than they ever had, on prices of vehicles, prices of financing, and a variety of other circumstances of the deal. And so, now more than ever, there's resources out there for consumers. And, now more than ever, consumers are using those resources.

>> Jim Chen: Paul was next. I'll let him make his points. But I think that we would, you know, certainly like to hear -- You know, Greg just described certain proposed ways to address dealer financing that states have proposed, and whether, you know, you have any opinion how that would affect industry.

>> Paul Metrey: Well, let's just be clear. It's far more than California and Louisiana that have caps that are present on dealer participation. It's virtually the entire industry. Finance sources all across the board have caps in place. There was some suggestion before that when the disparate-impact litigation of many years ago, when the settlement agreements expired, all the sudden, the caps were gonna go away. They have not. In fact, many of the sources that have caps in place were never parties to that litigation. So the notion that somehow there's just a couple pockets of caps or they're really not present. They are nearly ubiquitous. They are present in the marketplace. Jim, if I may just qualify one thing with regard to the buy rate. And I want to remind everyone what was said at earlier panels from several of the finance source representatives that were present, and that is that as long as there is a notion here that the consumer can qualify for the buy rate, we are all operating under a false premise. The fact is -- if the finance sources had to erect a retail distribution network to get financing into the hands of the consumers -- and they would be the first to tell you this -- they would have to charge more to the customer than they charge to the dealer to buy that paper. That is why the buy rate is not a retail rate. They would have to do that. As has been pointed out before, can it be done on a one-off basis? Can it be done in a limited number of circumstances? Yes. But the fact of the matter is -- on a sustained basis, you cannot sell at retail what you have at wholesale.

>> Jim Chen: Chris was next.

>> Chris Kukla: Just a couple of points on this. One is -- Paul suggested that the dealer reserve is always a win-win. In fact, I was reading a column from an F&I manager who frequently contributes to "F&I Magazine," who said, twice in the same column, "We know that dealer reserve only benefits the lender and dealer, that it doesn't benefit the consumer." He made a careful point, and I think it's an important one. He said the offer of financing is important to consumers and is a benefit to the consumer. The actual practice of dealer participation generally is not. And I think the reason's pretty clear, is that you talk about the cases where someone comes in and that you're able to beat the deal. Great. There's also a lot of people who come in, and they haven't gone and shopped around financing. And if they haven't brought in different financing, they might be paying more. It's up to the dealer, and there's no way for the consumer to know that. And so, when we do talk about the idea of, well, you know, can we prove disparate impact? And we did it in litigation. Well, the only way to get that data is to sue. There is no way for anybody to know exactly what the markup is. The only way to do it is to file a lawsuit. If we want to just keep filing lawsuits to know what's going on in the industry, great. I don't think that's what anybody wants. You know, what we've proposed is simply this. Divorce dealer compensation from the interest rate. No one's saying that dealers shouldn't get compensated. I doubt, fully doubt, that if dealer reserve went away tomorrow that dealers would stop doing financing. I think they would find a different way to get compensated. But moving away from that discretionary-pricing model so that the interest rate means what it is, which is what the risk of that person, you know, presents, and then the compensation to the dealer for being the person who is interfacing with the different people who might be buying that paper, and that's great. That's the same way that it works in the mortgage market now that it's divorced from the interest rate. The mortgage market, you know, is slower, but I wouldn't say that, you know, everybody just said, "Well, now we're just not gonna offer mortgages, because we can't charge the interest rate anymore." That's the way it works. It's working. So, that's what our proposal would be. And no one is saying that, you know, "I think this whole idea that the financing system would suddenly shut down if the compensation system were different," I just don't think that's true.

>> Jim Chen: John.

>> John Van Alst: I'll be brief, because I know we have so many other widespread practices to address, as well. But just wanted to point out that, yes, in fact, all the settlements have expired from the litigation that we were involved in. And, as Chris pointed out, you know -- Well, I think others have talked about it, too. With arbitration, the state of arbitration today, I don't think we'll see that type of litigation again. I don't think we would have been able to maybe necessarily effectively do what we did then today. And so it becomes even more important that federal regulators make sure that consumers are protected in this area. It's not easy. It's not easy to understand what's going on, especially the impact it has on minorities, because there's no way to know, from looking at the loan documents, who these loans are going to. We had to go to incredibly great lengths to go back and reverse-engineer, looking through dealer -- Excuse me, driver's licenses that indicate race, to try to figure out what race people were and what sort of market they were getting. And one other thing -- that does raise another point that Paul pointed out, that, you know, there are some assignees that have caps on markups, and that's certainly true. And we see an ebb and flow, the same as we do in all sorts of other credit situations, credit markets as to the powers of the various parties. You know, the assignees are not very happy about dealer reserve, dealer markup, kickbacks, whatever you call them, either. It's something that increases the likelihood that this loan's gonna default without really increasing profit so much for the lender. So they'd certainly, you know, like to see those loans get paid off in the long term. But they're struggling, too, because they have to compete for dealer business. And right now, the model that we've got, the way that they do that, is by offering the dealer a chance to make more money by marking the consumer up more. And, as Chris pointed out, what we've got to do is try to move to a system where that compensation isn't tied and necessarily putting the consumer in a worse position.

>> Jim Chen: Okay, I mean, this is an important topic, so I don't mind, you know, spending some time on it. But let's go to Greg and Mike and then Paul, and then we'll move on to the next topic.

>> Greg Grzeskiewicz: I'll try to make it as short as possible. Just to clarify again, I believe there's only two states that have statutes that actually cap. So I think John just spoke about, but so, some finance companies have their own self-imposed rate caps. But my understanding is they can change. So I believe there's only two states that have statutes out there. Again, in Illinois, we

looked at it as trying to have an efficient marketplace. And so, I've heard some comments that, you know, the buy rate's not a retail rate. I can tell you, by looking at the deals in Illinois, it is often the buy rate is the retail rate. I've deposed finance managers. I've talked to them informally and asked them, "Why would you mark up the rate?" And, again, you know, there's a financial component here. I think that's the big picture here. Some of our finance managers are paid through F&I and income. So sometimes they'll mark up the rates simply to make their commission. So, again, in Illinois, we're looking at it as, you know, trying to -- We took a position, unlike the other states of putting caps, just disclose the buy rate with the APR. And, unfortunately, that was not successful. The bill was defeated.

>> Jim Chen: Mike.

>> Mike Charapp: A couple points. On the issue of caps, let's keep in mind there are not just hard caps, and by hard caps, I mean statutory caps and caps imposed by the finance sources. Those are hard caps. There are also soft caps and, soft caps are what can the customer -- What will the finance source approve for the customer? More and more these days, the finance sources are setting payment amounts, and within that, there are tremendous limitations on what can be charged, what can be sold in the deal, what can be charged in the deal. So there are many types of caps that are affecting the economics of this industry. More importantly, I heard the comment about the fact that the finance system works for lenders and dealers, but not for customers. Yeah, I guess so. It would be in the benefit of every customer if they get 0% financing. So to the extent that the lenders are charging interest, yeah, that is to the benefit of the lender, not to the benefit of the consumer, 'cause the consumer would be much better off getting 0% financing, except for one thing -- commerce stops. Nobody lends money for 0%. And so, the fact of the matter is -- we got to be very concerned about the commerce that's going on here. And so, that brings us to the issue here of divorcing. I've heard, several times now, divorcing the dealer participation from the rate. And I guess we're talking about some sort of flat compensation per. But I will say to you -- I think that's going to have an impact on cost of credit to consumers when there's less importance for the dealer to fight to get the customer into a lower buy rate, where it doesn't matter that much 'cause the dealer employee will make $75 or $100 or $150, regardless of whether they get them into a category with the lender that gets him at an 8% buy rate, that the dealer has some participation, versus a 12% buy

rate. Where that goes away, there's gonna be an impact on the credit. I don't know what that is. I think it's going to be a bad situation for customer credit. I think it will increase cost for consumers. This organization -- by "this organization” -- the FTC has Bureau of Economics. In my opinion, somebody sure better study that before going that way, 'cause I think it will have a negative impact on cost of credit for consumers, not a positive impact on cost of car credit for consumers.

>> Jim Chen: All right. And Paul gets the last word on this point.

>> Paul Metrey: You know, we hear these terms thrown out, and we hear them a lot in some of the publications that are thrown out there, you know, nefarious terms like kickback and so forth. There's no kickback going on. The finance source is not getting any profit split of the dealer participation with the dealer. The finance source typically will get a portion of the payment to provide them compensation for the risk of loss they're assuming after the initial stage of the contract. That's not a profit split. That is just not going on. So these terms that are used are not reflective of what's happening in the marketplace today in 2011. Also, I think there's been some suggestion that this competition in the negotiability might not help out subprime customers, that they might be in a particularly unique predicament, and there might be more exposure there. So let me share a couple thoughts on that. First of all, keep in mind, as we heard from earlier panelists, both in San Antonio and Detroit, there is a robust market for subprime. A lot of times, it's painted that there's only one possible option and so forth, but there is a robust market that will compete for that, also. We were able to get some data points from J.D. Power and Associates that we think are particularly pertinent to this issue of dealer compensation in the subprime space. Now, if you look at dealer participation that was earned on "D” credit, in 2010, you have a situation where over 99% of the contracts involve dealer participation of less than 3%. Over 95% of the contracts involve dealer participation of less than 2.5%. Now, you look at caps that are out there. This is not drastically different from them. In fact, if you compare dealer participation earned on "D” paper, at subprime, versus dealer participation earned on all paper, there is only, on new vehicles, a 17-basis-point spread. And on new vehicles, there is only a 10-basis-point spread. Now, I will tell you -- And I know we do not have time to get back into the CRL report. The CRL report held out the average over at 5%. And, again, the data point that we received, when we asked about it from J.D. Power and Associates, was that 99%-plus of the subprime deals involved less than 3% dealer

participation, indeed, most of them, less than 2.5%. So, when you look at it, again, a lot of things that are being thrown out there -- terms such as kickback, excessive dealer participation and subprime, and because there's excessive dealer participation in subprime, it's triggering defaults, the facts and figures just are not there. It is not supported by credible data in the marketplace. The other thing I would point out is that when you look overall the rates, one other data point we're able to get is that if you look at Federal Reserve Board data -- And this is from 2010. When they looked at 48-month loans -- and this is new -- all credit tiers, they had, for all banks, a rate of 6.21%. And when you look at what J.D. Power has provided us with indirect, it was 4.56%. 6.21% versus 4.56%. There is not data to back up these claims that, somehow, there is some type of abuse or a problem in this area. It is very competitive and it's not even a problem at the subprime level when you look at these type of data points. You do not have 5.04% dealer participation being routinely charged. It's just not supported.

>> Jim Chen: Okay.

>> Chris Kukla: I'm sorry. They did raise the -- The report that we did --

>> Jim Chen: Okay, Chris, I'll give you -- Just answer briefly.

>> Chris Kukla: We took the data from ABS reports that are publicly available. So that data is out there. Anybody's willing to look at it. I would like to ask Paul -- is that J.D. Power data publicly available? Can I go look at that?

>> Paul Metrey: You can request it.

>> Chris Kukla: I did, actually. I offered to pay for it, and they said no. So, y'all can look at it, but apparently no one else in the public can.

>> Paul Metrey: Just one other point, since the CRL point was raised. I think we --

>> Jim Chen: Paul, if we could move forward. I'm sorry. I mean --

>> Paul Metrey: Okay, okay.

>> Jim Chen: All right. The last panel, we had spoken a lot about what some people call yo-yo financing. And, you know, the panelists seemed to -- Or some panelists tried hard to make a distinction between a yo-yo-finance problem and a spot delivery. So, here, again, since I want to talk about widespread practice, not individual bad apples. The first question -- how widespread is spot delivery? Michael?

>> Michael Benoit: I think spot delivery is fairly prevalent, and I think it's fairly successful most of the time. I think -- I don't remember who it was. Maybe it was Ian on the last panel, saying, you know, "I don't -- I see nothing but spot-delivery cases gone wrong." Well, I'm not surprised. If all Greg is seeing is spot-delivery cases gone wrong, I'm not surprised. If that's all Chris is seeing or John is seeing, I'm not surprised, because most of the people who engage in a spot-delivery transaction are perfectly happy with it, and they go home with their car. Every car I have purchased on my life has been spot delivery. It's worked out fine. I think it's prevalent, yes, and I think the distinction that was made before is an excellent distinction and it's a very important distinction. Yo-yo financing is a very, very bad practice, and I don't think there's one dealer in the country who would stand up to support it. It is a very, very bad practice, but it is a subset in -- and I believe, a small subset -- of spot deliveries as a whole. And I think the economic incentives that Andy talked about on the last panel that spot deliveries provide for the marketplace for dealers, for consumers, certainly outweigh the issues with yo-yo financing, for which there are existing remedies. Thank you.

>> Jim Chen: Greg was next.

>> Greg Grzeskiewicz: Sure. Just to echo some of the comments. Spot delivery is prevalent. I think it is a concern. In Illinois, we regulate. We have a statute that deals with spot delivery, so I guess you would say that we acknowledge it exists in Illinois. And our statute, unlike some other states that ban practice, we don't ban the practice. But what our statute says -- and it's somewhat common in other states -- is that if you spot-deliver a car, you must return the down payment or --

We use the word channel, not trade-in. So, some states ban the practice. Some have different, you know -- Some have certain dates on when they can actually -- How long the car can be spotted for. We don't have that in Illinois. But as far as enforcement goes, I have to say that echoing some of the comments made on prior panel and this panel, it's a big part of my practice. That's all. I see a lot of it. Just this week, I had just got another case. So, and I only mention that because a lot of times, it's not -- You know, you've heard me talk in the past about good dealers and bad dealers. Sometimes it's a good dealer that our office has had a relationship with or they've been good pillars in the community. And then I want to talk to principals and I'll ask, "What's going on?" It’s because a salesperson -- you know, they say it's a rogue salesperson or something like that. So we have a statute in Illinois, and the point I want to make is -- although it's there and it deals must be unwound and everything must be returned back to square one, it's, unfortunately, consistently, in my practice -- Again, I acknowledge I see what I see. It's consistently violated. So it's something that we're constantly enforcing, and I assume that, you know, I'll continue to enforce it.

>> Jim Chen: Mike.

>> Mike Charapp: I think we have to definite the term spot delivery, because in prior panel, the definition was that it was a delivery before a finance approval for the customer. In fact, that's not the case. Finance approval for the customer does not mean that the contracts has been -- The assignment of the contract's been accepted by the finance source. There are things that can go wrong and do go wrong between acceptance and the actual funding of the contract by the finance source. And some of those may be an issue with the customer. There may have been some misstatement about time on job, amount earned, those sorts of things that when the finance source gave the approval, it was based on certain information that may not pan out. There may be a change in circumstance. The customer may be working one day, and by the time the approval's given, he's still working. By the time it gets to the finance source, they call to verify information. It turns out the customer lost his or her job. And so there's a lot of things that go on in that circumstance. And so from my standpoint, spot delivery is really delivery of the vehicle prior to being funded for the purchase, fully funded for the purchase. Now, when I started in the car business at too many years ago, in my father's dealership, we didn't spot-deliver a lot. We had to be fully funded. We also didn't sell a lot. And the course of commerce has gotten to the point where

this is an important function of commerce. And so, again, we've got to be very careful what we're doing in this regard in terms of commerce. And the issue that has come up in terms of returning the trade, returning the down payment, yeah, I would say that those things wrong. Under state, under common law, if one is to rescind a contract, one's got to go back to the status quo. That means the customer gets put back in their position. They get back the down payment. Get back the trade. That means the dealer's put back in the dealer's position. That means the car goes back. There are -- There may be situations where dealers have tried some contractual changes to affect that. In my opinion, those aren't terribly effective. There are unfair and deceptive practice laws in most states that can impact on that. So, there are already many things going on in here that we've got to be careful about how we are defining our terms and what steps we're taking and what the impact on commerce will be by the steps that we do take.

>> Jim Chen: I think John was next.

>> John Van Alst: I wanted to point out a few things, especially given that this panel is looking at widespread practices. To me, while it's incredibly harmful and it's significant impact on the consumer who gets called back in a yo-yo sale, when we look at broader, widespread harm of what we really see is the harm that Tom mentioned earlier and all attempts at conditional retail installment sales contracts, which effectively render the Truth in Lending disclosures meaningless. You know, the real purpose there is that you can take home this information about what credit's going to cost you and comparison-shop. If the lender is the dealer, if they are gonna sort of decide later on whether, in fact, they're gonna make you this loan, it really renders all of those meaningless, and you can't go out and comparison-shop. It really harms the ability to have a free and transparent and vibrant market. You know, it's interesting to me that Mike pointed out that when his family business didn't do conditional sales, they didn't make a lot of sales, and that's really a shame. And I think it's not just consumers that are harmed. I think it's all other dealers that, like we talked about earlier, mean it when they put the paper on the table that that's the deal. And if you've got a dealer down the street who's gonna go out and sign a retail installment sales contract with all sorts of people because they're throwing in language that, "We might pull this back later on," that obviously hurts not only the consumers who get yo-yoed, it hurts the consumers who are

trying to comparison-shop, even though they may never get called back, and it hurts other dealers who are trying to do things honestly.

>> Jim Chen: Chris, then Greg.

>> Chris Kukla: I just want to absolutely echo what John said. And, you know, the fact is, is that, you know, the spot delivery, you know, is what allows the yo-yo sale to occur. So you wouldn't have the yo-yo if you didn't have someone going out with financing that's not final. You know, a couple points remain on earlier panels. One -- I think it was Tom Hudson said that, in some cases, you know, the dealer is reasonably confident that the deal's gonna work out. So Even if you have -- And I think this goes to what is really a meaningful disclosure, is if you're handed this disclosure that says, "This is a conditional deal," but this dealer is telling you, "Well, I've been in this business for a long time, and, you know, I'm pretty darn sure we're gonna be able to get this done, so don't worry about it." It's a meaningless disclosure, because part of the thing is that, you know, you've got, maybe wrongfully, but you're trusting that dealer. You're trusting that person that's got experience across the table that does hundreds, if not thousands, of these deals a month, when you might do a handful in your lifetime, that, you know, they know what's going to happen in the transaction. And I think the second point that -- And I don't remember who said it, but they said, you know, when dealers do the yo-yo and they come back and they recontract, that it's often that the new contract is at worse terms for the dealer than the old one. Well, the whole point of the yo-yo is that the deal's not gonna work for the dealer, so of course it's going to be a better deal for the dealer, because it's gonna be whatever it is that they want it to be. And, you know, like Ian Lyngklip said, this is a phenomenon that doesn't happen in other common consumer transactions. You don't have this ability for the retailer to come back and say, "You know, I know we sold you this TV at $500, but we've decided that, well, you know, we wish we made more money on this, so here's what we're gonna do. You give us $200 or we're gonna call the cops and tell them that you stole our TV." We wouldn't allow that. We don't allow that. But, for whatever reason, in this marketplace, we allow this system to occur, and, frankly, we just don't think it's appropriate.

>> Jim Chen: Greg.

>> Greg Grzeskiewicz: Sure. I forgot, when I overspoke on spot delivery, I mentioned that I enforce a lot. I'd like to just, you know, echo some of the comments on the last panel on what the FTC can do. And not to downplay Illinois' law, but don't follow Illinois' law, because our statute's like a lot of other statutes, where we require return of the down payment and the trade-in. So if that's the case, why do we have an enforcement problem? We have an enforcement problem, because, quite frankly, the dealers just don't follow that statute as it's written, and consumers don't know that they have a right to unwind the deal under our statute. So, we can enforce all we want. And the question that I always have is -- how many consumers -- You know, again, and I have to acknowledge that I see what I see. I don't see the other deals that are fine. But the transactions that come into my office, I always wonder, "What about the consumer that just signed the contract that didn't know to complain to our office, that didn't know to go to an attorney and bring a consumer-fraud action in Illinois?" So I think what's important, and I think my colleague, Bill Brauch mentioned, is that if there's gonna be any movement by the FTC, it's that there has to be some kind of, at a minimum, a disclosure to the consumer that you have a right -- and the dealer acknowledges it -- to unwind the deal. I mean, every case I have, you know, the consumer always asks, "Well, I'll just return my car." It's always, "Oh, I sold the trade-in. You've already driven the car for two weeks. You put mileage on it. You've damaged it. Now it's not a new car anymore. It's a used car. "It's driven around. The consumer thinks, "Okay, that seems somewhat, you know, reasonable, so I'm just gonna sign the new contract."

>> Jim Chen: Okay, I want to go to Mike next, but I also want to, you know, let you make your comments but also throw open to the panel -- and Paul will be after that -- kind of building on what Chris and Greg said. There seems to be this -- You know, some contracts have these conditional clauses that, you know, the seller has the right to cancel if they can't assign the contract. But do consumers understand these clauses? And if not, is there something else that can be done to improve their -- Understand their comprehension of these additional-sales clauses? Go ahead, Mike.

>> Mike Charapp: Let me take up two points, and then I'll respond to that. Point number one is -- this concept I keep hearing, and I guess Ian was the proponent of it, that dealers are going and having arrest warrants issued for customers. As I look around the room, I see a couple plaintiffs'

attorneys, of my knowledge. They love to get those cases. These people are taking these cars with the right to drive them. You can't get an arrest warrant sworn out, and if you do that, there's a lot of plaintiff's attorneys that like to get that case. So that doesn't happen. If it's happening, it's happening by the scofflaws of the business, where -- And there are licensing limitations in the states. There are things that can be done in those regards. The second point I want to bring up, and just from someone who's been in the business and represented dealers a long time. And I want to echo Andy's point that -- with which Chris took some issue, which is when these deals come back, they are invariably worse for the dealer. Why? Because there are practical limitations on what can be done when the deal comes back. There's -- There's an assumption that people will -- will just be -- feel they have the need to pay whatever they need to pay, because the dealers brought them back. Really, where is that money coming from? There are practical limitations on that. The reason these deals don't get bought is because there is generally a credit issue with the customer where the customer credit is going up, where the down payment requirement has gone up, where there are -- there are changes on the approval, and so, as a result of that, when you're dealing with customers like this, there are not a lot of -- there's not a lot of time to be done with that. And now I'm getting the red card, so I'll finish up with the final point that you brought up, which is the conditional clauses, and I'll just echo the point that Tom Hudson made in the last panel. The more difficult you make the clauses to understand, the more likely it is they'll be found unfair or unconscionable under state law. It is to everybody's best interest for the people going out to know what the circumstances are, and the better you can make the language, the better off you are. Now, is the language good? Not always. I mean, we as lawyers who write them aren't perfect, but, frankly, it is in the interest of the industry for customers to understand their rights, not just because they won't be enforced if they're not, but also getting back to the circumstances, dealers, especially franchised dealers, are judged by how they satisfy their customers. If they don't satisfy their customers, there are major problems for them, not only in terms of continuing business, but in terms of their franchiser relationships and even state-licensing agencies if the problems are severe enough.

>> Jim Chen: Paul, you put down your card, so you don't -- You don't have to jump in if you don't want to.

>> Paul Metrey: No, I'll be very brief, 'cause obviously there's been a lot of discussion about this. Of course, you know, any time one talks about any type of remedy or other actions, I think we got to keep the perspective here and not have a sledgehammer to swat a gnat. I mean, you have a situation where last year you were looking at approximately 30 million transactions from new and independent dealers. Obviously a very considerable number of those were financed through dealerships. Overwhelmingly these involved routine spot delivery situations, and overwhelmingly there are not issues that stem from them. The issues that do arise are much more confined, and so any time we have a discussion like that, we need to make sure anything that's discussed addresses that narrow type of fraudulent activity that was described by the FTC in its March notice announcing the roundtables when it discussed the distinction between a yo-yo sale and a routine spot delivery.

>> Jim Chen: Okay, I think John was next.

>> John Van Alst: Sure, and just real briefly I'll say that I think it's important once again that the harm isn't just when there's the yo-yo -- the traditional yo-yo. It's the entire sort of attempt at conditional sales. There are a lot of other ways people could structure this. They could do a bailment and then get the customer to come back in. But when you're signing that completed retail installment sales contract, it's obviously gonna mislead the consumer to at the same time try to sign some other document that, no, this isn't a completed retail installment sales contract. And your creditor doesn't really quite know yet whether they are. Also, I know we're running out of time, and I think there are other widespread practices, too, you know. We haven't touched at all on add-ons. You know, I think it's interesting to me there's this same issue about sort of discretion at the dealer level and the impact we see on consumers and millions and billions of dollars. I was reading F&I just the other day. There was a company called Safe-Guard. I'm not gonna pick on them, but they were advertising, saying, you know, "We're the number-one F&I product provider, the best in income development and $600 million paid in claims to consumers, and then $5 billion in profits for our clients." So, clearly, they consider their clients to be the dealers, and if you compare that, the pay-out rate on this is abysmal. I think there's a lot of practices that are completely widespread that we need to look at in addition to markups and conditional sales.

>> Jim Chen: I did want to get to add-ons but we can let Chris and Greg kind of talk quickly on this. We have a little bit more time, because this countdown was for -- leave some room for questions. But go ahead, Chris.

>> Chris Kukla: It's an intimidating countdown. [Chuckles] Shut up. [Laughter] I would -- You know, I would say, you know, Mike pointed out the whole idea of, you know, that the plaintiff's attorneys love when they get the case where they swear out the arrest warrant. Well, the fact is they don't have to swear out the warrant. They have the threat. I mean, it's the threat that matters. It's the -- You know, whether or not it actually exists, it's how does -- What happens to the customer in that deal. And I'll just -- I know, you know, we want to talk about data, but I think it gets lost in here. I want to share one story of a person that I talked to. She's 19 years old. She went to go buy a car the first time, decided not to talk to her mom 'cause she wanted to show her mom that she could handle this. She goes out to buy the car. She goes to a car dealer. And the dealer offered her -- you know, sold her a car at 11% spot delivery. She drove the car home. She got a call two weeks later -- two weeks later -- that said, "You need to come back in. We're having trouble with your financing.” She now decides to call mom, says, "You know, this doesn't sound right. I know I should have come to you before, but, Mom I want your help.” Mom goes with her to the dealership. They drive in, and she says that -- the person says, "Well, yeah, we couldn't make the financing work at 11%. We're sorry.” Slides a new contract across and said, "If you want to buy this car, it's gonna be 19.” Okay? That definitely wasn't a -- You know, I'm not sure how that was a worse deal for the dealer, but apparently it is. She said, "I want out of the deal. I don't want to do this.” And they said no. She said, "I want my trade-in back.” They said, "We're sorry. You sold it.” Now, mom went around the back of the lot. Somehow they let her walk around. She walked around and lo and behold, there was the trade-- her daughter's old car, sitting in the lot. So she came back in and said, "If that car is not in front of this dealership in five seconds, I'm calling the cops.” And lo and behold, that vehicle showed up in front of the dealership, coming in on two wheels to let her out of the deal. Now, if she hadn't called mom, what would, probably would have happened? She probably would have signed that 19% deal. You know, why? I mean, because we have this system that allows this to happen. And would she have complained? Maybe not. She probably wouldn't have called the attorney general's office. Why? 'Cause when this happens to people, they feel stupid. They feel like they got taken. And the last thing they want to do is go tell

somebody, "You know what? I was an idiot." It was the same thing of the notion that, you know, 58% of people say that they know, they understand the transaction. I don't know many people who like to say, "You know what? I just don't know what the hell I'm talking about." Most of the time, you get that question, you think -- everybody thinks they're smarter than they are. It's like Lake Wobegon. All our children are above average. We're not. So, you know, this notion that, you know, it's okay because we're disclosing it to the consumer, we're making it -- you know, we're doing all these things right, except it doesn't matter at the end of the day when that customer is sitting in that room and there's someone telling them that it if they don't sign this deal, they don't get the car. It especially matters. It doesn't matter, you know, in my instance, where I'm a two-car family and I know I can drive my wife's car around. It matters a hell of a lot to that single mom with two kids who needs this car to get to her job. It matters a hell of a lot to her. And it doesn't matter if she's got a disclosure sitting there that says you have the right to unwind this deal when the person across table is telling them, "Unless you sign this contract, you're not leaving with a car."

>> Jim Chen: Greg, if you could quickly --

>> Greg Grzeskiewicz: Yes. Real quick. Just to weigh in from the state's perspective and Illinois's perspective on whether a yo-yo transaction has a better -- better contract terms for the consumers or for the dealer -- From Illinois's perspective and I think some other states, it's occurred both ways. There's definitely been situations where the contract terms have been not more favorable for the consumer, no doubt about that. And I have seen situations where the second contract has -- Does have better terms, so, just 'cause there's been a lot of discussion today about that's always better for the dealership, you know, I know Illinois and other states have definitely seen the opposite, where it's been less favorable contract terms for the consumer.

>> Jim Chen: Mike, I'll give you the last word on this, but there was another question I really did want to get to, and maybe you would be willing to speak to this, as well, and it was on spot delivery. It seems like the longer it takes for a dealer to sign the contract, the more problems that can arise. So what's a reasonable amount of time for a dealer to sign a contract?

>> Mike Charapp: I will answer that question, and I appreciate that. The -- I did want to answer the question about -- That Chris raised about how he couldn't understand how 19% is worse for the dealer than 11%, and I'll explain how, and what happens -- Generally, when that happens -- in fact almost all case -- is that the customer application is called in, and the dealer's unable to find financing at that -- whatever buy rate that was. Perhaps it's a 9% buy rate and sold at 11 and the dealer is able to hold two points. What happens is that the finance source comes back and says, "We're not gonna give you that buy rate. This customer doesn't marry that. We're gonna give you the 19% buy rate," and you're gonna say to me, "Well, why didn't they just add their two points above that?" Because the fact of the matter is, there probably either wasn't money from the customer to do that or more importantly the finance company wouldn't allow it, because they say to you, "We'll buy it at 19%, and, oh, by the way, they can't pay more than $425 a month." That's your cap. That's where I've talked about the soft cap before. That's where that comes in. And so, that's where it's worse for the dealer, because they now haven't made the money they expected to make or they may have had to pay -- they may have had to do a variety of other things -- lower the price of car to get the customer in within that payment amount, take some product prices down to do that, take some products out to do that. There's a lot of things that are done to try and meet those caps. That's why the deals are invariably worse for the dealer when they come back. So, that takes me to your concept of how long it takes, and the problem is, it's not a one-size-fits-all process. Today, many, many -- I'd say many, many customers have credit scores and information that's easily -- that can be verified easily, or the credit is good enough that information verification doesn't take place, where the approval can come rather quickly electronically, followed by the contract being assigned, and that can take place in three to five days. But the problem -- many of these problems we're talking about happen with consumers who are D-level consumers, subprime level consumers, 620 and below beacon-score consumers, and for those consumers, the process of getting an approval and a funding is much more complicated because it's not just an issue with the finance source of, "Okay, we'll take that for granted, given the credit that's there." They're now saying, "We want verification of income. We want verification of time on the job. We want verification that they live where they said they live." So that means -- verification of income -- "We need a paystub." Verification of time on the job -- "We need a letter from the employer." Verification of place of residence -- "We need a utility bill." And so, what happens is, this process is going back and forth as a negotiation between the dealer and the finance source, who's then going

back to the customer and saying, "I need this. I need that. I need this." This is where a lot of the friction's coming. And that's why these things are spread out over time. And so I can't say to you that there's a fixed time because, for the vast majority of deals, they're going to go very quickly -- three days, five days -- whatever it takes. But for the deals where these folks on the panel are seeing the problems, those are the result of this process, which is a continual negotiation between the dealer and the finance company. And the finance company's saying, "Get us more." Going to the customer and saying, "We need this from you. We need that from you." These can take a substantial amount of time.

>> Jim Chen: All right, Chris, if you want to weigh in on the last point, I'll give you the last word.

>> Chris Kukla: Yeah. Well, actually, just -- it's a quick thing, and I feel silly that I didn't mention this, Mike. And the person that I talked to -- I missed one very important point, which was that she got out of the deal, went to her credit union, and got qualified at 6%.

>> Mike Charapp: Where she had a relationship.

>> Jim Chen: Did anyone want to make a last point...

>> Mike Charapp: Why not start there?

>> Jim Chen: ...on the last thing I asked Mike about? Greg?

>> Greg Grzeskiewicz: Yeah. I would say I think Washington has a three-day statute on a conditional sale, so, some -- you know, some -- I would say we're between -- that might be a starting point -- three days.

>> Jim Chen: Okay, I didn't want to leave -- Unfortunately, of course, you know, there's far more to cover than we could in any one roundtable. But that's why we are -- our Web page does still accept comments. We'll have open public comments until at least the end of January, so we would

love to hear anything else. But if we could have time -- I think it's important, you know, to get one or two questions from the audience...if there are any.

>> Male Speaker: The typical case that comes in my office at Camp Lejeune is the consumer comes in and says, "The dealer lied to me." And, of course, the dealer says, 'No I didn't. I didn't misrepresent anything." And so you don't have, factually, that strong of a case. And given that and additional barriers to litigation -- "I have to hire an attorney. I have to hang around long enough for the litigation. Is the cost of litigation and time and money and aggravation worth the, you know, doing this, as opposed to the loss that I'm taking?" We -- What really is the effectiveness? I would like to have people commenting on, what is the effectiveness? Is court and all the UDAP Statutes, given these barriers to litigation, really an effective remedy? And for the regulators, how would you think about acting like "Dateline" does and taking undercover folks to dealerships and pretending they're car buyers and catching them in the act or not?

>> Jim Chen: Anyone want to speak to that point?

>> Mike Charapp: I will say one thing, which is, "They lied to me," is already a violation of Section 5 of the FTC Act -- Unfair and Deceptive Act or Practice, and so it's already illegal. The issue I think he's talking about is enforcement, and then I'll defer to the regulators on that.

>> Greg Grzeskiewicz: In a situation like that, we, you know, hopefully, would have more than one consumer complaint, and then, you know, we would bring an action. But you make valid points. It's -- You know, from -- for a case that's a "he said/she said." It's a fact dispute, and, in my jurisdiction, like a lot of jurisdictions, I'm looking at, you know, a year of motion practice, maybe a year and a half of motion practice, and then another year to go to trial.

>> Jim Chen: I don't want to be blamed for anyone missing any flights, so I think we'll have to move to our last speaker -- our closing remarks. [Applause] Thank you to the panel.

>> Reilly Dolan: Good afternoon. I am Reilly Dolan. I'm the acting associate director for the FTC's Division of Financial Practices. As I was preparing my remarks, somebody told me that I should follow Lou Gehrig's model. Since I don't be so presumptuous as to assume I'm the luckiest

man in the world and I don't have the cool, echo sound effects, I think what they really meant is keep it short. Shortly after the enactment of Dodd-Frank, while this car was still in the driveway, I was one of the ones that was out there, telling everybody we're in listening mode. And continuing the metaphor, we've now driven many thousands of miles down the road. We've discussed a variety of topics in connection with the sale, the financing, and the leasing of automobiles. And as Chuck noted this morning in his opening remarks, and I think was quite evident from the panels and the discussions we had on the panels today, we -- our traveling partners have been diverse -- dealer representatives, lenders' representatives, lessor representatives, regulators, consumer advocates, others, and the viewpoints have been very diverse. Some issues, there's been common ground -- some others, not so much. As Tom Hudson put it, on some issues, we have people on Venus -- we have people on Mars. But I think, because of that, we've had a very thorough discussion of the costs and benefits of the practices that have been discussed. The FTC greatly appreciates all the viewpoints and the information that have been brought forth during these roundtables, and we'll hopefully continue to receive comments, as Jim noted. And we expect the dialogue to continue as we digest everything and develop next steps. There have been media reports that were aired during rule-making. No decisions have been made one way or another, so, you know, don't overreact one way or the other to the media reports. We are taking all the information in that we've gotten. We are looking at whatever data we can get. And I will continue to say, please give us hard facts and data. That's more persuasive than anecdotes. And you know, then we will take the appropriate next steps after we've had the chance to digest everything. I thank all of you for coming and staying here for the entire day. I thank those of you who have made it to more than one of these and have attended either the one in Detroit and/or the one in San Antonio. And to close, I'd like to thank everyone who helped produce today's event, including the moderators, Jim Chen, Carole Reynolds, Robin Thurston, Tom Kane, and Lesley Fair; the panelists that are too many to name, but they are in your bios, so you can look at them; the paralegals who helped us, including Erin Feehan-Nelson, Patrick Eagan-Van Meter, Joseph Kennedy, Emma Johnston, and Laura Brandon; the consumer and business education and press help that we received, including T.J. Peeler, Wayne Abramovich, Chris Hundycz, Carrie Gelula, Cheryl Hackley, and Gail Kingsland -- and I apologize if I butchered anybody's name -- as well as the event logistics here in this FTC Conference Center, including Carrie McLaughlin, Tyrone Snoddy, and Bruce Jennings. Again, thank you very much for coming, and thank you for entering into this dialogue with us. [Applause]