Deal or No Deal:
How Yo-Yo Scams Rig the Game against Car Buyers

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CENTER FOR RESPONSIBLE LENDING

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INTRODUCTION

Throughout 2011, the Federal Trade Commission (FTC) convened a series of roundtables to explore abusive practices in the auto lending market. One abuse that received particular attention was the “yo-yo scam". The yo-yo scam occurs when a car buyer who finances the car through the dealer believes that the financing is final or is as good as final. The dealer lures the consumer back to the dealership, claims the financing is not final, and pressures the consumer to sign a new financing contract with a higher interest rate or other less favorable terms.

The purpose of this paper is to provide data on the prevalence of yo-yo scams, insight into how yo-yo scams are perpetrated, and identify which consumers are most likely to be targeted. We surveyed five professional organizations whose membership works directly with consumers regarding auto finance-related issues. The survey collected responses from 32 people who reported serving over 2,100 clients with auto finance-related issues during the 12 months prior to taking the survey. Respondents reported that 590 of their clients dealing with auto finance problems (27.2%) experienced a yo-yo scam. These responses led to the following findings:

Finding 1: Survey respondents reported that, in their experience, car dealers commonly target consumers with poor or no credit standing for yo-yo scams.

Finding 2: Respondents observed that over half of the consumers they served who had experienced a yo-yo scam had trouble reclaiming their down payment or trade-in vehicle, or had the dealer threaten legal action against them if the car was not returned.

Finding 3: Respondents reported that a majority of the consumers involved in a yo-yo scam ended up signing a second financing contract for the same car, and at a higher interest rate.

BACKGROUND

A yo-yo scam occurs when a consumer is led to believe, through acts or omissions by a car dealer providing financing, that the loan financing is final when in fact the dealer has not finalized the financing at all.[1] The dealer can cancel the agreed-upon deal if it decides that none of the offers to purchase the loan contract by third-party purchasers are acceptable. Yo-yo scams are possible because of the pervasive practice of conditioning finance contracts on the dealer’s decision to accept, or reject, purchase offers from third parties.

The dealer wants to make the consumer believe the deal is final so that the consumer does not consider purchasing a different car elsewhere.

Conditional sales agreements, spot deliveries and yo-yo scams are three different transactions.

Yo-yo scams occur because of the prevalence of "spot delivery" deals. A spot delivery occurs when the dealer allows the customer to drive off the lot with the car—"on the spot"—while the deal is not technically final.[2] In some instances, the dealer and the buyer enter into a conditional sales agreement.

In a conditional sales agreement, there is an action that the consumer must take to complete the sale, such as arranging financing to purchase car from a source other than the dealer. In some states, the dealer is required to keep the car on its insurance policy and provide use of dealer license plates until the deal is completed and title is transferred to the buyer.[3] In the conditional sales agreement, the buyer knows that he or she is expected to secure financing elsewhere.

However, in dealer financing transactions dealers are overwhelmingly conditioning finance deals upon the dealer's decision whether to sell the finance contract to a third-party lender. In essence, the dealer has days, weeks or even months to decide whether it likes the deal it made with the consumer. If not, the dealer asserts the right to cancel the deal if the dealer decides that none of the offers to purchase the financing contract are acceptable. Most consumers either believe that the deal is final or that the deal is as good as final. Dealers use spot delivery agreements to remove the consumer from the marketplace—the consumer will stop shopping.

In the yo-yo scam, the dealer allows the customer to leave the lot on a spot delivery but pulls the consumer back to the dealer like a yo-yo on a string. The consumer is then pressured to sign a new finance contract with worse terms for the consumer. It is the use of the spot delivery that allows for the yo-yo scam to occur. Spot deliveries are so pervasive that nearly every finance transaction with the dealer is a potential yo-yo scam.

How Conditioned Deals Work

Spot Deliveries

Dealer allows car buyer to drive off the lot with the car "on the spot" when the sale and financing are technically not yet final.

Conditional Sales Agreement

The final sale of the vehicle requires car buyer to secure financing outside of the dealership or pay cash.

Yo-Yo Scams

Dealer leads car buyer to believe the sale and financing of the vehicle are final, then later calls the buyer back into the dealership to sign a worse deal.

When making a spot delivery, the dealer knows there is a chance that the original financing offer may not be available. This creates several reasons that the dealer would yo-yo their customer. For instance, the third-party purchaser may send an offer with stipulations or conditions (i.e. requiring more financial information, a co-signer or larger down payment from the consumer). In this situation, rather than take the risk that the consumer may shop elsewhere, the dealer sends the consumer home with the car, leaving the conditions unmet until they can hopefully find another offer without such conditions.

Additionally, the dealer may not have an immediate offer from a third party to purchase the contract, but sends the consumer home hoping they can quickly find a buyer. Perhaps the dealer knows it cannot deliver on the financing agreement, but does not want to lose the consumer. In many cases, the dealer does have purchase offers available, but is dissatisfied with the terms all third parties have offered.

The dealer can offer the consumer any interest rate, even low teaser rates they knowingly may not be willing or able to honor.

Whatever the reason for entering into this type of transaction, the goal is the same. The dealer wants to make the consumer believe the deal is final so that the consumer does not consider purchasing a different car elsewhere.

In a typical yo-yo transaction, the dealer cancels the original deal after a few days and forces the consumer to return to the dealership with the newly purchased car. The dealer presents a new deal with a higher interest rate or larger down payment required to keep the car. Frequently, the dealer states that "the lender" has changed its mind and will not finance the loan at the rate or with other terms promised.

When a dealer can unilaterally cancel a transaction, the dealer can offer the consumer any interest rate, even low teaser rates they knowingly may not be willing or able to honor, and do so without any significant risk. Any risk in a yo-yo transaction is instead borne by the consumer, which creates leverage for the dealer to force the consumer into more expensive loan.

To further increase the dealer's advantage over consumers, the dealer may refuse to return the consumer's trade-in vehicle[4] or the consumer's down payment.[5] The dealer may also threaten to charge the consumer fees for mileage put on the car, wear and tear, or other items. In some cases, the dealer may threaten to call law enforcement on charges of auto theft if the consumer does not return the vehicle immediately. Under the mounting pressure of the situation, many consumers agree to the new loan terms.

DATA AND METHODOLOGY

To provide more clarity on the prevalence and practice of yo-yo scams, we conducted an online survey of individuals who work directly with consumers with auto finance-related complaints and/or legal issues. These professionals counsel, advise, or legally represent consumers in automobile transactions. We solicited individual respondents from five organizations that have a professional membership with experience regarding yo-yo scams, how they operate, and their impact on car buyers:

1. National Consumer Law Center
2. National Association for Consumer Advocates
3. North American Consumer Protection Investigators
4. National Odometer and Title Fraud Enforcement Association
5. U.S. Navy Judge Advocate General Corps

We collected 32 survey responses in August 2011. Survey respondents collectively reported serving over 2,100 clients with auto-finance related issues within 12 months of taking the survey, with 590 of those clients (27.2%) being in a yo-yo scam. We designed the survey instrument (see Appendix 1) to investigate the scope and mechanics of the yo-yo practice, demographics of consumers who to experience it, and potential outcomes. This survey is a complement to an earlier survey we sponsored in 2009 where we surveyed consumers directly regarding their car buying experiences.[6]

FINDINGS

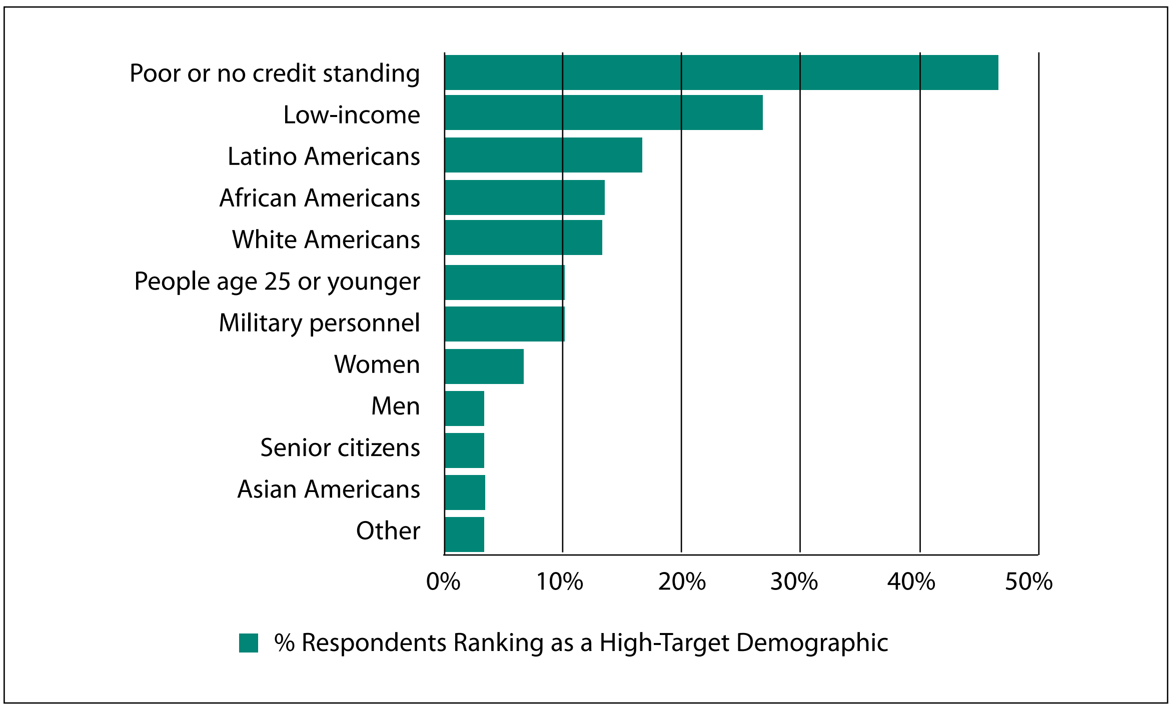
Finding 1: Survey respondents reported that, in their experience, car dealers commonly target consumers with poor or no credit standing for yo-yo scams.

Consumers with poor credit standing and low incomes have fewer options for automobile financing.[7] With fewer credit offers to compare, subprime customers are limited in their ability to negotiate for better financing rates and terms. As the National Automobile Dealers Association noted in comments submitted to the FTC, "When dealers are able to secure financing for [underbanked] consumers, it is often their sole means of securing the transportation they require for employment and other family and household needs."[8]

As with other forms of credit, consumers with poor credit or low income have less ability to walk away or shop around for a better deal than other customers,[9] making yo-yo scams much more problematic. Low-income consumers may also rely on a single car for family transportation. With fewer options for credit and transportation, financially vulnerable populations are more at risk of being pressured into signing more expensive financing brought on by yo-yo scams.

We asked respondents to rank the top five demographic characteristics of consumers whom they observe getting caught in a yo-yo scam. Figure 1 shows the percent of each demographic characteristic that received the highest score possible from respondents.

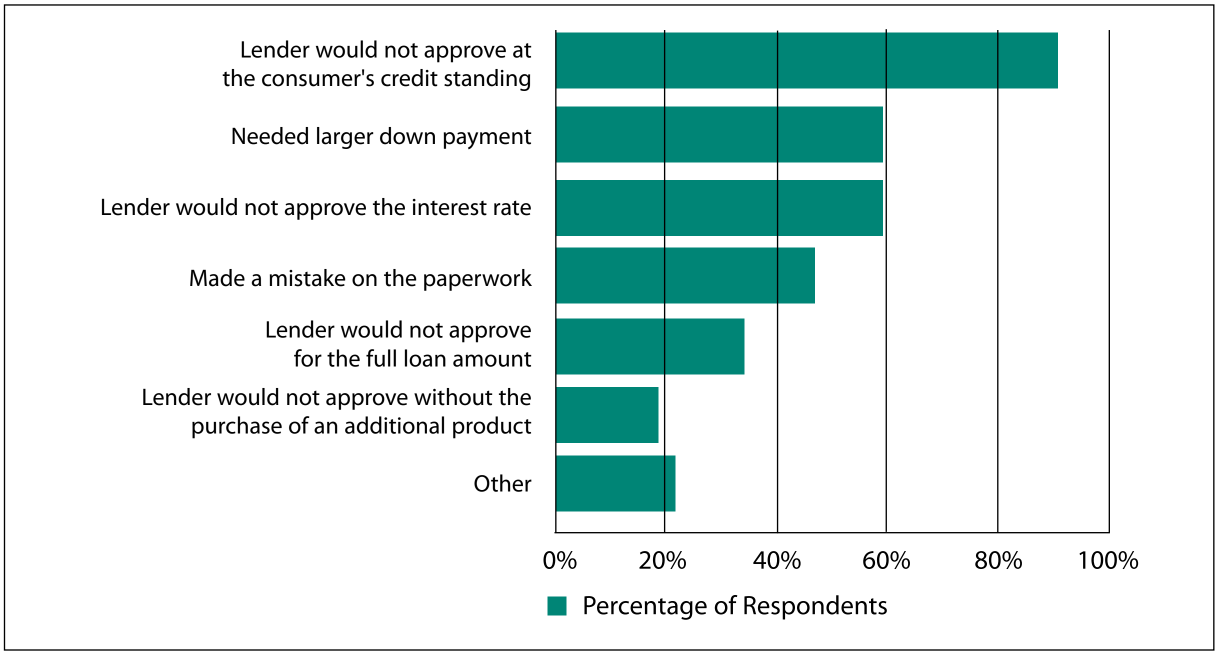
Figure 1: Demographics of Consumers Experiencing Yo-Yo Scams



These findings correspond with previous CRL research showing the prevalence of yo-yo scams with certain populations. Consumer survey data showed the overall incidence of yo-yos was at 4.5% of a total population of those financing through a dealership. That percentage increases for people with below-average credit (11%) and households making less than $25,000 (25%).[10]

Figure 2 illustrates what respondents reported as the most prevalent reasons dealers gave to get customers to return their vehicles to the dealership.

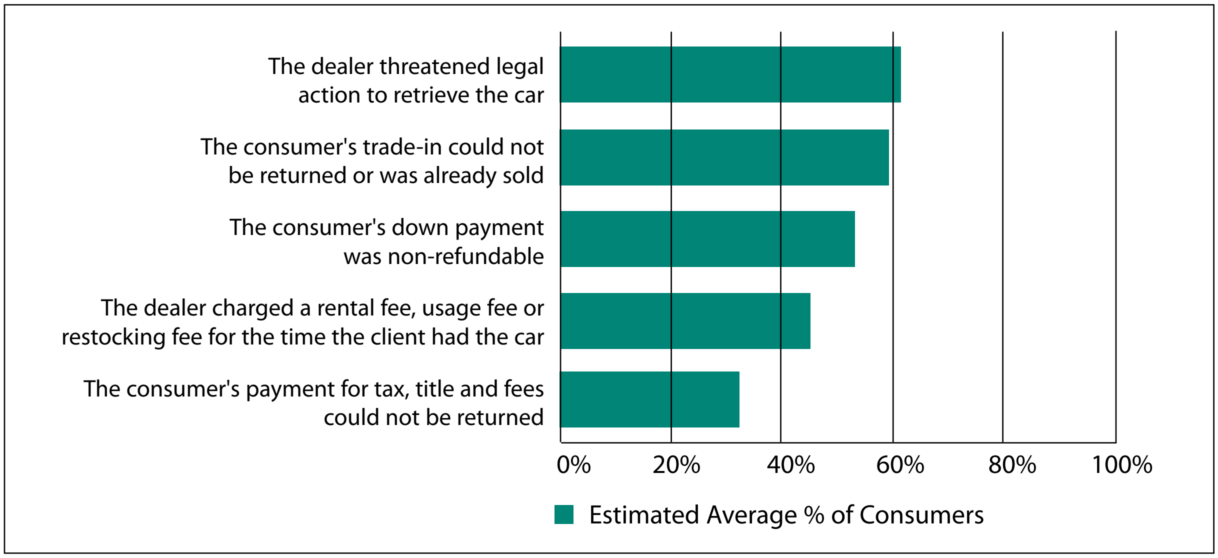
Figure 2: Top Reasons Dealers Cited for Yo-Yo Scams[11]



Finding 2: Respondents observed that over half of the consumers they served who had experienced a yo-yo scam had trouble reclaiming their down payment or trade-in vehicle, or had the dealer threaten legal action against them if the car was not returned.

A dealer's refusal to return the trade-in vehicle or down payment pressures the consumer to agree to a more expensive loan. The threat of legal action or involvement of law enforcement adds even more leverage for the dealer. Figure 3 displays estimations for the prevalence of different high-pressure tactics in yo-yo scams. Percentages here represent the portion of consumers out of those involved in a yo-yo scam.

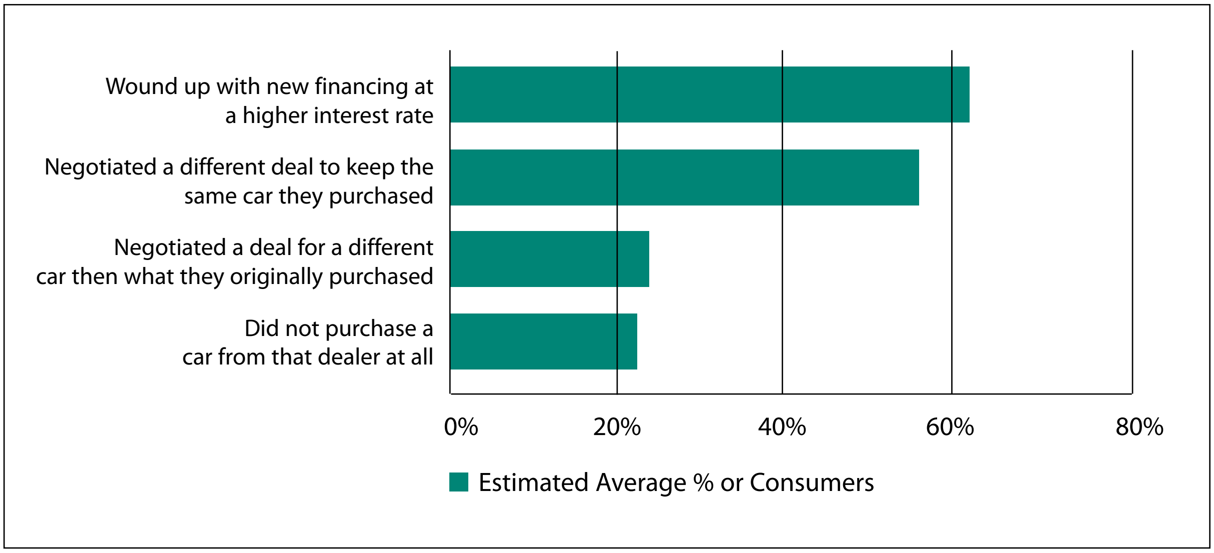
Figure 3: Consumers Experiencing High-Pressure Tactics in Yo-Yo Scams



Finding 3: Respondents reported that a majority of the consumers involved in a yo-yo scam ended up signing a second financing contract for the same car, and at a higher interest rate.

The yo-yo scam drives consumers to pay more in financing than what was originally promised to the consumer. A previous survey, also sponsored by the Center for Responsible Lending, revealed that consumers who signed a new contract because of a yo-yo scam were steered into loans with interest rates five percentage points higher than their similarly situated counterparts, even after controlling for the consumer's credit risk.[12] Additionally, a separate survey of attorneys conducted by the National Consumer Law Center reported that 79% of attorneys did not believe the spot delivery practice had any benefit for the consumer.[13] As Figure 4 shows, respondents in our survey estimated that most yo-yo scams push the consumer into more expensive financing, usually to retain the same car they had just purchased.

Figure 4: Outcomes of Yo-Yo Scams



DISCUSSION

Yo-yo scams are an unfair and deceptive practice. However, the FTC has rule-making authority to regulate yo-yo scams. As one consumer attorney stated during the FTC roundtables, "In no other area of our commerce can someone sign on the dotted line, deliver the product, and then cancel the transaction and insist on the product being returned because the final credit transaction did not produce the hoped-for income."[14] Thus, spot delivery agreements should be banned whenever the condition to complete the deal is at the sole discretion of the dealer. The dealer should not be able to use this method to create an unfair bargaining advantage over the consumer. Further, the yo-yo is a practice that distorts free competition, as a consumer cannot effectively shop the marketplace unless the consumer can trust that the financing offer is a firm and real agreement.

"In no other area of our commerce can someone sign on the dotted line, deliver the product, and then cancel the transaction and insist on the product being returned because the final credit transaction did not produce the hoped-for income."

Ian Lyngklip, Consumer Attorney
FTC Roundtable, 11/17/2011

Conditioning credit agreement consummation on the dealer's sale of the contract places the burden of risk on the consumer, instead of on the dealer where it properly belongs. A dealer engages in more auto financing transactions in a week than the average consumer will in a lifetime. The dealer also has the experience and wherewithal to know what potential third party purchasers will require, whereas the customer has no idea.

The dealer should take the time to meet the conditions and stipulations of potential purchasers, and to verify that the borrower's information is correct. Advancements in information technology help to facilitate this process by allowing dealers to access information and communicate with lenders quickly. As one dealership finance manager stated, "These days there's simply no legitimate reason for a dealership to allow a customer to drive away without approved financing. Even at night and on weekends, automated systems can provide credit approvals for most consumers. Surprise rejections? I can't imagine it 45 minutes later, much less days later."[15]

Dealers should not be allowed to penalize consumers with more expensive loans because of the dealer's haste or miscalculation. Additionally, protecting consumers will level the playing field by allowing responsible dealers that ensure financing is complete at the end of every sale to compete more effectively in the marketplace.

The Michigan Department of Commerce found that the practice of conditioning retail installment sales contracts upon the future assignment of the finance contract violates the Michigan Motor Vehicle Sales Act.[16] The logic outlined in that letter is clear and should apply universally. If the consumer leaves the lot with the car and a completed and signed retail installment sales contract, then the dealer, who is the creditor on the contract, should have to guarantee the terms of that contract.

APPENDIX 1: ONLINE SURVEY INSTRUMENT AND DATA SUMMARY

1. In your estimation, how many auto finance related complaints have you observed in the past year?

	Number of complaints
Min	2
Max	890
Mean	68
Median	28
Std Deviation	156
Sum Total	2,172

N = 32 respondents

2. In the past year, how many consumers would you estimate were asked to return to the dealership in order to sign a new financing agreement?

	Number of consumers returning to dealership
Min	1
Max	75
Mean	19
Median	15
Std Deviation	18
Sum Total	590

N = 31 respondents

3. Of the various demographics below, please rank the top five types of consumers that are most likely to see a yo-yo deal in your opinion. (Ranking 1 through 5, with 5 being the MOST likely.)

- Men
- Women
- White Americans
- African-Americans
- Latino Americans
- Asian Americans
- Military personnel
- People age 25 or younger
- Senior citizens
- People with low income
- People with poor or no credit standing
- Other

Borrower Demographic	Respondents giving a 5 ranking	Respondents ranking in top 5	Cumulative Ranking Total	Mean	Median
Men	1	6	15	2.5	2.0
Women	2	16	48	3.0	3.0
White Americans	4	7	21	3.0	3.0
African-Americans	4	24	74	3.1	3.0
Latino Americans	5	15	47	3.1	3.0
Asian Americans	1	4	13	3.3	3.0
Military personnel	3	13	40	3.1	3.0
People age 25 or younger	3	19	56	2.9	3.0
Senior citizens	1	10	27	2.7	2.5
People with low income	8	28	96	3.4	4.0
People with poor or no credit standing	14	27	107	4.0	5.0
Other	1	2	8	4.0	4.0

N=30 respondents

4. What reasons have you observed dealers give to explain the need for returning the car? (Check all that apply)

- Lender would not approve at the consumer's credit standing
- Lender would not approve for the full loan amount
- Lender would not approve the interest rate
- Lender would not approve without the purchase of an additional product
- Needed more of a down payment
- Made a mistake on the paperwork
- Other (please specify)

Reason for Yo-Yo	Number of Respondents
Lender would not approve at the consumer's credit standing	29
Lender would not approve for the full loan amount	11
Lender would not approve the interest rate	19
Lender would not approve without the purchase of an additional product	6
Needed more of a down payment	19
Made a mistake on the paperwork	15
Other (please specify)	7

N=32 respondents

Note that 4 of the respondents selecting "other" specified that the borrower was asked to provide a cosigner.

5. Of those people experiencing a yo-yo, in what percentage would you estimate either you or the consumer observing a spot delivery disclosure present with the sales contract?

	Percentage of Consumers
Min	0%
Max	100%
Mean	62.3%
Median	80.0%
Std Deviation	36.3%

N = 31 respondents

6. Of those people experiencing a yo-yo, in what percentage would you estimate the dealer reportedly saying to the client:

- The consumer's trade-in could not be returned or was already sold
- The consumer's down payment was nonrefundable
- The consumer's payment for tax, title and fees could not be returned

	N	Min	Max	Mean	Median	Std Deviation
The consumer's trade-in could not be returned or was already sold	31	0%	100%	59.3%	50%	30.8%
The consumer's down payment was nonrefundable	29	0%	100%	53.6%	50%	32.7%
The consumer's payment for tax, title and fees could not be returned	29	0%	100%	32.7%	20%	35.3%

7. Of those clients experiencing a yo-yo, in what percentage would you estimate seeing cases where:

- The dealer threatened legal action to retrieve the car?
- The dealer charged a rental fee, usage fee, or restocking fee for the time the client had the car?

	N	Min	Max	Mean	Median	Std Deviation
The dealer threatened legal action to retrieve the car	31	5%	100%	61.9%	60%	28%
The dealer charged a rental fee, usage fee, or restocking fee for the time the client had the car	30	0%	100%	45.7%	42.5%	38.1%

8. Of those consumers returning to renegotiate their loan terms, in what percentage would you estimate:

- Negotiated a different deal to keep the same car they purchased.
- Negotiated a deal for a different car than what they originally purchased.
- Wound up with new financing at a higher interest rate
- Wound up not purchasing any car from that dealer at all

	N	Min	Max	Mean	Median	Std Deviation
Negotiated a different deal to keep the same car they purchased	28	0%	90%	56.1%	62.5%	26.8%
Negotiated a deal for a different car than what they originally purchased	30	0%	75%	23.8%	20%	19.8%
Wound up with new financing at a higher interest rate	27	5%	100%	62%	75%	28.7%
Wound up not purchasing any car from that dealer at all	29	0%	90%	22.5%	10%	24.4%

9. Is there any additional information you would like to provide concerning auto finance related complaints and yo-yo deals? (Open-ended question)

- "Yo-yo cases are all that I do. It is always illegal, period. Consumers do not 'renegotiate' a second contract, it is always a take it or leave it demand by the dealer. When a consumer signs a second contract that is more costly, it is theft by the dealer; it is 'bait and switch'."
- "Mandatory arbitration clauses now make these cases very difficult, if not impossible, to be financially feasible to accept anymore. It is amazing how often yo-yo's happen."
- "Sometimes dealer will call the buyer back in and require they bring a cosigner with them in order to make the deal work."
- "Dealer never seems to tell consumer what is clear on the contract, that IT is financing consumer and the "failure to find financing" is in fact a "failure to find someone to assign the contract to" IF that failure exists at all. All too often on one end or the other of the deal the dealer includes extras like service contracts or gap insurance that consumer is unaware of OR requires those extras for a "lower" interest rate."
- "The ones I've seen seem to focus on getting additional signatories or higher down payment."
- "In Maryland, the MVA has informed dealers they may not use a "Spot Delivery" conditional finance addendum but nearly all dealers continue to use them. The MVA does not perceive yo-yo or spot deliveries to be a significant problem but this appears to be due to the fact that the agency does not reach out to consumers in a meaningful way to let them know their rights or to let consumers know that the agency accepts complaints against car dealers."
- "I am now seeing arbitration clauses which purport to survive rescission of the deal."
- "My clients are so low income, that it's rare at all to see car cases. So many times, they don't try to renegotiate at all—they just sign whatever they are presented with."

APPENDIX 2: EXAMPLES OF SPOT DELIVERY DISCLOSURE AGREEMENTS

Spot delivery disclosures are included as addendums in auto loan applications in order to allow the dealer to repossess the vehicle in the event they cannot assign the loan to an outside lender. Survey respondents estimated spot delivery disclosures to be evident in the majority of auto loan contracts, with a median estimate of 80%. While the level of disclosure differs among dealers, the language is usually designed to protect the dealer and provide a means to force the return of the vehicle. The disclosure language inconsistently explains, if at all, what happens to the consumer's trade-in and down payment, or what fees the consumer is liable for. Note that spot delivery disclosures go by many different names, including bailment agreements, rescission agreements, special delivery agreements, supplemental agreements, and conditional sales agreements.

The following examples of spot delivery disclosures are sourced from a National Consumer Law Center online presentation[1] where the attorneys presenting obtained actual loan documents from the clients they were serving. Use of the documents in our report was given under the permission of the presenters.

[1] Thomas D. Domonoske, Andrew Ault, John Van Alst, Yo-Yo Sales: Understanding car dealers' attempts to create conditional car sales, National Consumer Law Center, May 12, 2011. (http://www.nclc.org/images/pdf/conferences_and_webinars/auto_webinars/presentations/yo_yo_webinar_final_all_documents.pdf)

MIKE PALLONE

CHEVROLET NISSAN DAEWOO

"Driven"

SPECIAL DELIVERY AGREEMENT

This Special Delivery Agreement is incorporated into the Retail Installment Sale Contract (the Contract) dated this date between Mike Pallone as Seller and [redacted], as Buyer, for purchase of a 1999 ASTRO VANS under the following conditions:

1. Buyer acknowledges and represents that he/she possesses a valid driver's license, current motor vehicle liability insurance and assumes risk of loss of the vehicle while in his/her possession. Buyer understands that all financing decisions are made by a financing source not affiliated with Dealer and said source is the credit reporting agency in accordance with the Fair Credit Reporting Act. Seller will attempt to sell the contract on terms satisfactory to the Seller. If the Seller is successful in so doing, the contract (and all other documents executed by Buyer) shall be deemed delivered and fully binding.

2. If Seller does not receive approval from a lending source for the Contract on terms acceptable to Dealer, Buyer agrees that upon notice from Seller, Buyer shall return the vehicle in good condition without excess mileage and the sales transaction may be rescinded. Seller retains a priority security interest in the vehicle and upon Buyer's failure to return the vehicle. Seller shall be entitled to all remedies provided by Title 8.2 of the code of Virginia, 1950, as amended, and all other statutory and common law remedies including, but not limited to, the right to self-help, repossession, collection/repossession costs, reasonable interest and reasonable attorney's fees.

3. Buyer agrees that if a financing source other than the one originally contemplated agrees to purchase the contract on the same terms and conditions as the original lending source, Buyer will execute a replacement Contract and related documents on the same terms and conditions as the original Contract.

4. Buyer acknowledges receipt, in good condition, of the vehicle described in the attached Contract.

5. Any notice from Seller to Buyer shall be deemed given when deposited in the United States mail, postage prepaid, addressed to Buyer at the address shown in the attached Contract.

Date: ______________________ [redacted]

Buyer

06/10/2000

____

Buyer

AutoNation USA

RESCISSION AGREEMENT

IN CONSIDERATION of having induced SELLER to sell or lease to BUYER the motor vehicle which is the subject of that BUYER'S ORDER or CONSUMER/COMMERCIAL LEASE AGREEMENT executed by the parties on the 7th day of JULY 19 99 on that 1997 (year) RANGER (model) and 1FTCR15X6VTA08799 (vin) (hereinafter referred to as "MOTOR VEHICLE") and for other good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, it is agree that:

1. SELLER and BUYER agree that SELLER may rescind the BUYER'S ORDER or CONSUMER/COMMERCIAL LEASE AGREEMENT should any of the following events occur:
   a. In the event that the financial institution to which SELLER applies for financing refuses and/or fails to accept SELLER'S assignment of BUYER'S RETAIL INSTALLMENT CONTRACT and/or SELLER has good cause to believe that said assignment will be rejected by said financial institution;
   b. In the event that the CONSUMER/COMMERCIAL LEASE AGREEMENT is rejected by the Lessor and/or Lessor refuses and/or fails for any reason to accept SELLER'S assignment of BUYER'S CONSUMER COMMERCIAL LEASE AGREEMENT and/or SELLER has good cause to believe that said assignment will be rejected by Lessor,
   c. In the event that the SELLER or its agents deem that the BUYER has furnished materially inaccurate or false information either verbal or written including, but not limited to, false statements made in connection with the maintenance of automobile insurance as required by Florida Statutes, Chapter 324, false statements made as to BUYER'S being licensed to operate the MOTOR VEHICLE and/or false statements by BUYER as to the name of the person who will retain beneficial interest in the MOTOR VEHICLE.
2. Should SELLER elect to rescind the BUYER'S ORDER or CONSUMER/COMMERCIAL LEASE AGREEMENT then BUYER shall be immediately obligated, upon demand, to return to SELLER the MOTOR VEHICLE (in the same condition that it was delivered to the BUYER, normal wear and tear excepted), and BUYER shall thereupon be obligated to pay to the SELLER all costs, losses, expenses or damage arising out of BUYER'S possession of the MOTOR VEHICLE including, but not limited to, all costs and reasonable attorney's fees which SELLER may incur to recover the MOTOR VEHICLE from the BUYER.
3. Should SELLER elect to rescind the BUYER'S ORDER or CONSUMER/COMMERCIAL LEASE AGREEMENT, SELLER shall be obligated to return all consideration paid to it for the MOTOR VEHICLE, provided however, that the following sums shall be set-off against such consideration, and any such consideration less the amounts set-off therefrom shall be due to the BUYER upon rescission, to-wit:
   a. All costs, losses, expense or damage set forth in paragraph 2 hereinabove;
   b. In the event that BUYER has traded in a motor vehicle towards the purchase or lease of the MOTOR VEHICLE, then SELLER shall return the BUYER'S trade-in, less any amounts due or paid by SELLER to satisfy any liens or encumbrances thereon; provided, however, if BUYER'S trade-in has been sold by the SELLER, SELLER shall only be obligated to return the value (in cash) of the trade-in as appraised by SELLER at the time of the sale (as reflected on the Purchase Agreement), less any amounts due or paid by SELLER to satisfy any liens or encumbrances thereon. BUYER agrees and acknowledges that payment under this section shall be deemed to be full restoration of the consideration provided by SELLER for the motor vehicle which BUYER traded towards the purchase or lease of the MOTOR VEHICLE.
4. In the event that SELLER elects to rescind the BUYER'S ORDER or CONSUMER/COMMERCIAL LEASE AGREEMENT, then BUYER agrees that SELLER has expressly reserved the right to whatever action it deems appropriate and necessary in order to retake possession of the MOTOR VEHICLE including, but not limited to, self-help.
5. BUYER agrees to pay SELLER'S reasonable attorney's fees and costs in connection with the enforcement and interpretation of this Rescission Agreement. Further, BUYER expressly agrees that venue for the enforcement and construction of this Rescission Agreement shall lie in Broward County, Florida.
6. In the event that BUYER'S retail installment contract is not accepted by a financial institution and SELLER obtains the approval of another lender, the BUYER agrees to enter into a new retail installment contract and related documents with the new financial institution.
7. BUYER does hereby acknowledge that he/she/they have been given the opportunity to fully read this Rescission Agreement and that he/she/they understand and agree to its terms.

Dated this 7th day of JULY, 199 9.

[redacted]
Purchaser

Co-Purchaser

AU0019

Distribution: White Copy • Finance Yellow Copy • Guest

Supplemental Agreement

The undersigned Lessee/Purchaser (the "Customer"), having entered into ~~Lease~~/Purchase Agreement (the "Agreement") with Jerry's Ford Sales, Inc. (Jerry's Ford) whereby the Customer has agreed to ~~Lease~~/purchase a 2002 FORD FOCUS, VIN 1FAFP33P52W101847, (the "Vehicle") and Customer having made an application for credit in order to effect such Agreement or having tendered one or more checks or notes as initial payments, and Customer wishing to take delivery and possession of the Vehicle pending approval of the credit application and/or before one or more checks have been honored, and it being the intention of Jerry's Ford and the Customer that this Supplemental Agreement be made a part of the Agreement, Customer does hereby agree as follows:

Customer acknowledges and represents that he/she possesses a valid driver's license and current motor vehicle liability and collision insurance coverage and assumes risk of the Vehicle while in Customer's possession. Customer recognizes and acknowledges that Jerry's Ford retains a security interest in the Vehicle an that Jerry's Ford shall, upon failure of Customer to return the Vehicle, to be entitled to all statutory and common law remedies available to a seller or holder, including without limitation, the right to repossess the Vehicle wherever found. Customer also appoints Jerry's Ford, or its designees, as attorney-in-fact for the limited purpose of executing such documents as may be necessary to record a lien on the title to the Vehicle.

If Jerry's Ford does not receive approval from a financial institution to finance the Agreement on terms acceptable to Jerry's Ford, or the check(s) in not honored or the note is not paid when due, Customer will, upon written or oral notice from Jerry's Ford, return the Vehicle within twenty-four hours, in the same condition as when delivered, normal wear excepted. If the Customer complies, any down payment and/or trade-in will be returned to the Customer and the Agreement shall be rescinded.

If the Vehicle is not returned within twenty-four hours of the notice, the Customer agrees to pay Jerry's Ford for the use of the Vehicle computed as follows: $75.00 per day or part thereof during which the Vehicle remained in the Customer's possession, and $.20 for every mile driven. Customer also agrees to pay Jerry's Ford any cost incurred in repairing damage to the Vehicle which occurred while in the Customer's possession, or of reconditioning or recovering the Vehicle.

Customer understands and acknowledges that all financing decisions are made by a financing source not affiliated with Jerry's Ford and said source is the credit reporting agency in accordance with the Fair Credit Reporting Act.

In the event that a financial institution, other than originally contemplated by Jerry's Ford agrees to acquire the Agreement on the form required by such financial institution, Customer agrees to sign form required by that institution.

This Supplemental Agreement shall supersede and prevail over any prior or contemporaneous oral agreements entered into between the parties hereto, and shall supplement and be a part of the Agreement referred to above.

The validity and construction of this Supplemental Agreement and all matters pertaining hereto shall be determined in accordance with the laws of the Commonwealth of Virginia. The undersigned hereby waives presentment, demand, protest, notice of dishonor and all exemptions, and also waives all rights to a trial by jury. If any portion of this Supplemental Agreement or the Agreement are determined to be invalid or unenforceable, all other provisions of the Agreement and this Supplemental Agreement nevertheless continue in full force and effect.

Date: 01/30/02

JERRY'S FORD SALES, INC.

By: TODD J PATYKEWICH

[redacted]

Customer

By:

ENDNOTES

1 Yo-yo scams may also be referred to as "bushing", "fronting", or "MacArthur agreements" in reference to Gen. Douglas MacArthur who vowed "I shall return" when ordered to evacuate the Philippines in World War II.

2 Shoals Ford, Inc. v. Clardy, 588 So.2d 879 (Ala. 1991).

3 See, e.g., N.C.G.S. 20-75.1.

4 Mac Gordon, *Must Say No-No to Yo-Yo,* Ward's Dealer Business, Jul 1, 2005. According to consumer advocate Rosemary Shahan, getting the consumer to surrender the trade-in is also known as "de-horsing" in the industry, which further tilts the advantage to the dealer during negotiations.

5 Adam G. Taub, *Yo-Yo Sales: The Predatory Practice of Unscrupulous Car Dealers,* Consumer Law Newsletter, Volume 8, Issue 2, Aug 2003.

6 Delvin Davis and Joshua M. Frank, *Car Trouble: Predatory Auto Loans Burden North Carolina Consumers,* Center for Responsible Lending, Apr 2009.

7 Carolyn Shapiro, *Local car buyers' deals put in reverse in 'yo-yo sales',* The Virginian-Pilot, May 6, 2010.

8 NADA Comments to FTC, Motor Vehicle Roundtables Project Number P104811, Apr 11, 2011.

9 William C. Apgar and Allegra Calder, *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending,* published in The Geography of Opportunity: Race and Housing in Metropolitan America, 2005.

10 Delvin Davis and Joshua M. Frank, *Car Trouble: Predatory Auto Loans Burden North Carolina Consumers,* Center for Responsible Lending, Apr 2009.

11 Note that the majority of responses in the "other" category were specified as the dealer requiring a co-signer to complete the deal. Also, categories do not add up to 100% because respondents were allowed to check all options they felt were applicable to yo-yo financing.

12 Delvin Davis and Joshua M. Frank, *Car Trouble: Predatory Auto Loans Burden North Carolina Consumers,* Center for Responsible Lending, Apr 2009.

13 *New National Consumer Law Center Survey Finds Consumer Abuses in Auto Sales and Financing Are Common Throughout the United States,* National Consumer Law Center, Apr 12, 2011. In the same survey, 95.7% of attorneys reported that dealers in their area engage in yo-yo financing.

14 *Time to End 'Yo-Yo Sales' and 'Spot Delivery' Car Loans FTC is Told by Michigan Consumer Attorney Ian Lyngklip,* PR Newswire press release, Nov 30, 2011. Quote from Ian Lyngklip, senior partner at Lyngklip & Associates Consumer Law Center, PLC.

15 Peter Valdes-Dapena, *The 'yo-yo' car sale trap,* CNN/Money, Sep 14, 2004. Quote is from Ben Dickison, finance manager for Kent Brown Toyota in Elmira, NY.

16 Letter of Murray Brown, Deputy Commissioner, Michigan Department of Commerce, May 22, 1989. Found at http://www.michigan.gov/documents/cis_ofis_spotdel_24239_7.pdf.

About the Center for Responsible Lending

The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

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