



# THE SOURCE



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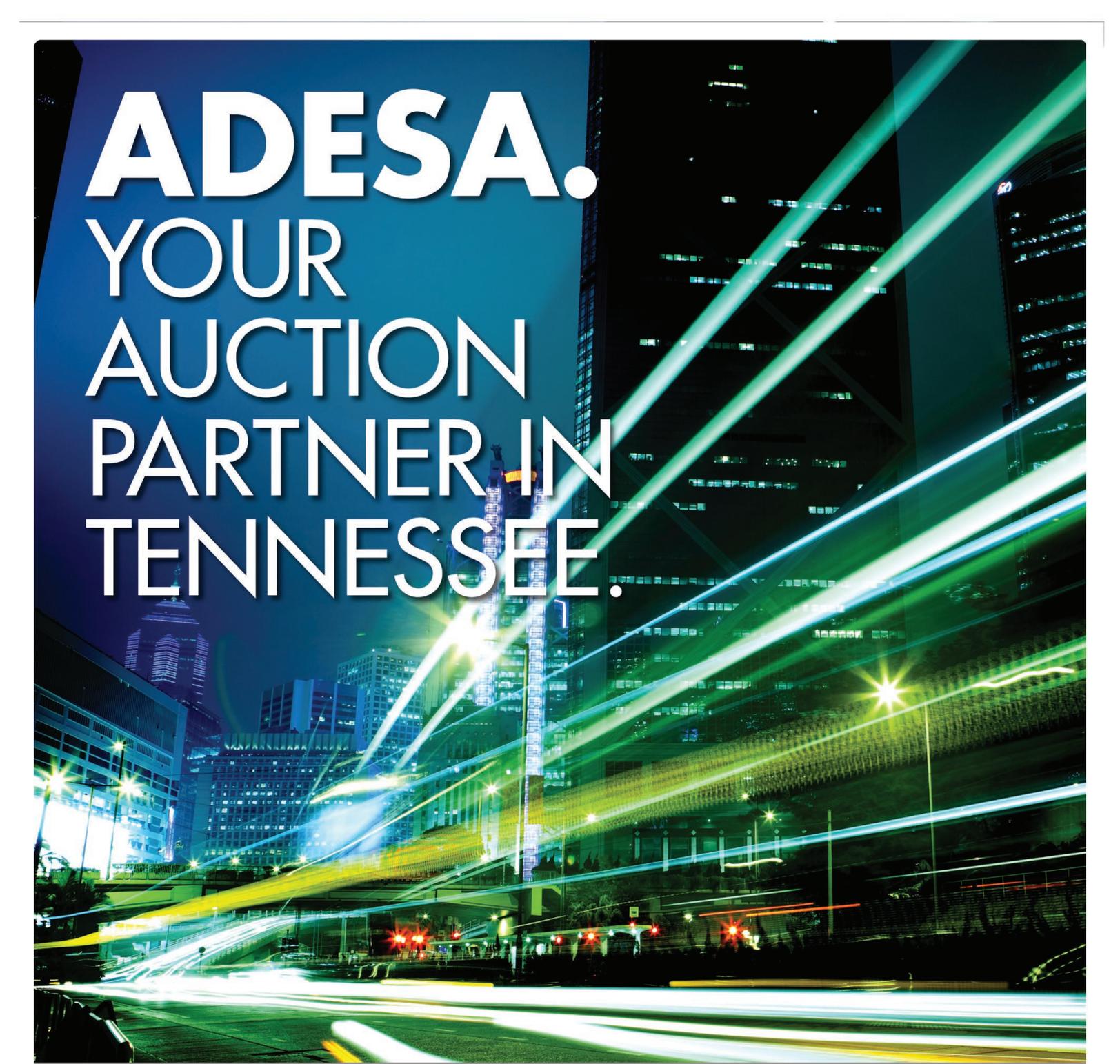
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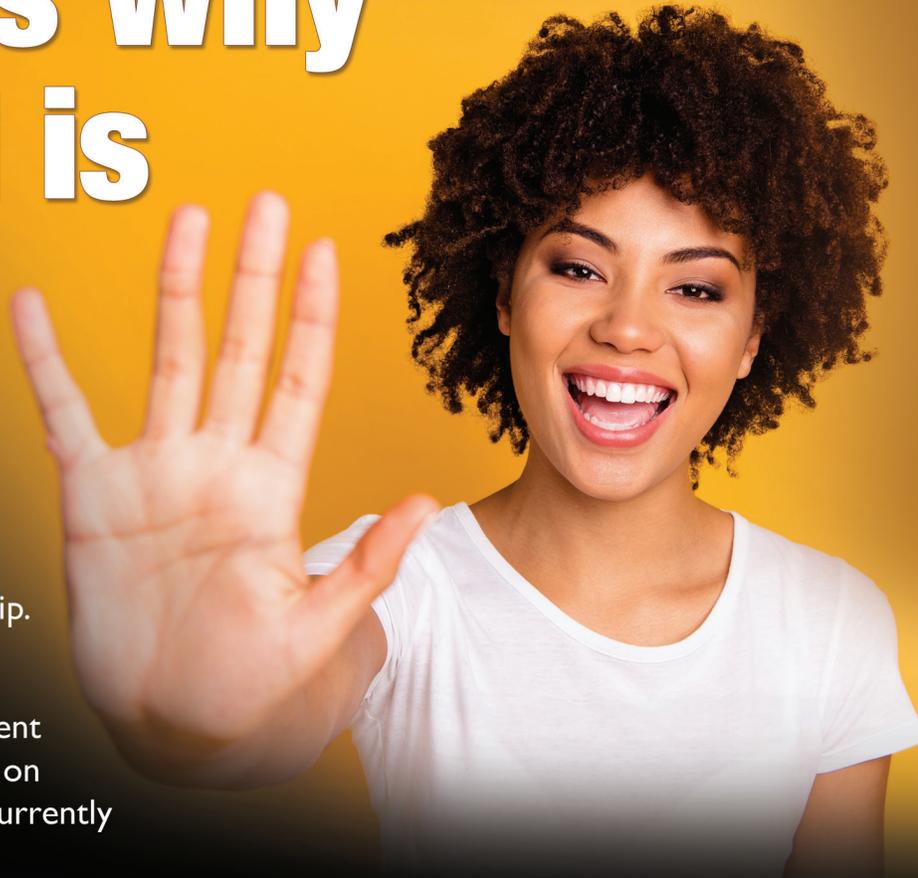
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**Chief Editor Phyllis Sartin**

In our fourth year of ownership of this publication we want to stop and thank a group of folks that have made this program successful.

We appreciate our Dealer Partners, Auction Partners, Advertising Partners, the TAA, our Contributors, and all who have provided timely and useful information to our subscribers.

All groups that conduct automotive industry business in Tennessee should consider utilizing our program and taking advantage of all the benefits we offer. Please contact us if we can help in any way.

**Disclaimer:**

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# AMERICA'S MOST TRUSTED AUTO BATTERY



# It's Going To Be Some Hangover

**T**he auto industry is having some-kind-of-year, especially retail auto sellers. Used vehicle sales continue to remain very good even though there were a few softer markets in the month of March. Although used vehicle prices aren't quite as high as they were last year, they still appear to be strong and that puts more pressure on dealers to make the best decisions possible when it comes to acquiring inventory. The last thing dealers want is to have a great many used vehicles in stock at higher prices when the market begins to normalize. **Front-end gross profits appear to remain exceptionally strong** for most dealers, including many independent used vehicle operations. Salespeople and many used vehicle managers have been making pretty good commissions over the past two years based off these higher than usual gross profits. Many Finance & Insurance managers have also enjoyed robust commissions as well.

**But with all good things, they must come to an end.** Used vehicle prices are starting to decline, front-end grosses, while higher than tradition dictates for our industry, are also showing signs of weakening. Concerns over rising interest rates, inflation currently at 8.5%, nervous consumers wary of higher gas prices, major lenders concerned over declining wholesale values and risk of loans (the possible increase in loan defaults)

**So, is the used vehicle party beginning to wind down?**

Are commissioned employees prepared to make inevitable adjustments in their commissions as sales either slow or used vehicle gross profits begin to take a tumble? I try to follow many used vehicle salesperson's blogs as I can. Over the past two years I've read and listened to

many salespeople boast and brag of their high grossing conquests. I've learned of salespeople who were quick to abandon one dealership for another seeking bigger and better commission plans for the slightest increase in commission opportunities. I've learned of commissioned managers who boast of purchasing a larger home, boats and cars and other toys all without concern for the outcome of tomorrow.

Now in "ancient times", dealers were eager to hire "hungry salespeople" or "salespeople are who are debt" under the assumption hungry salespeople or heavily indebted salespeople would work harder and do what was necessary to make a sale. Of course, what we learned is in fact, hungry, desperate employees traditionally make false promises to customers or demonstrate unethical or desperate behavior all for the sake of making a much needed sale.



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# It's Now Time to Revisit Sales Processes

**C**ongratulations! You and your team have likely enjoyed the greatest run of net profitability in the history of your store!

Of course, so has every other dealer in America.

What a great (and weird) time to be a car dealer. Tight inventories created discipline at the sales tower resulting in huge front-end grosses. You've been able to sell every vehicle you've stocked, and you're even turning a wholesale profit on the few vehicles you've sent to auction.

Plus, if you're like most dealers, you've been able to do all this with fewer salespeople and without managing those pesky sales processes. Your team is running on autopilot because, well, what difference would it make if you responded to leads quickly or if you logged every Up in the CRM? Would you sell any more vehicles?

## Bad Habits

Certainly, you've heard the adage that bad habits are created in good times... and times (from a profitability standpoint) have been very good. However, this begs a few questions: What will your grosses look like when we're back to 90+ days of new car inventory? What will your used car inventory turns look like? What about your wholesale losses?

In normal times, great processes that are strictly enforced are the biggest difference between dealers profitably growing market share and those just treading water. Where will your team be on this spectrum when we return to normal times?

The good news is that it's never too late to revisit your sales processes. By starting today, your team will be well equipped to manage whatever the new normal becomes. The great news is that it's not complicated or time consuming to get the most important processes – those that will drive future sales and profits – back in place.

## A Few Key Processes

If I was starting from scratch on sales processes in today's market, there are four important ones that I'd want in place first. In no particular order, I'd want to make sure we had a super-fast response to every lead, that we called our sold database on a sensible schedule, that we focused on setting appointments that showed on time, and that we logged every Up in the CRM. Here's why:

**Response Times:** We know from the data we've reviewed (both pre-covid and recently) that the first dealer to reach a new lead is three to four times more likely to sell them a vehicle than the second dealer who connects with them. This is because today's consumers have all the pricing information at their fingertips. So, there's no reason for them to deal with multiple dealers at once – even when they submit leads to several of them.

Ensuring your team is responding properly (by phone, text, and email) to all leads within 15 minutes is critical to closing these above an acceptable level.

**Database Calls:** When your previous buyers catch New Car Fever, what guarantees do you have they'll buy from you again? None. By reaching out on a sensible schedule and offering to buy back their vehicles or ensuring they ground their leased vehicles with you is the only way to remain in their consideration set when they're ready for an upgrade.

**Strong Appointments:** Appointments that show on time are four to five times more likely to buy than when these same

prospects walk in unannounced. Plus, your team spends less time per sold customer, and your grosses and CSI are higher with appointments. Period. End of story.

**Logging Ups:** Probably the biggest miss for most dealers today is the proper logging of Ups. This once mandatory practice has fallen by the wayside as we face more "unreasonable" buyers (for example, those who say they will never pay MSRP and/or don't want to order a vehicle).

Imagine if every Up who was looking for a specific model and didn't buy was properly logged in your CRM. What could your team do with that information when (not if) you have plenty in stock and the manufacturer was now offering an extra \$2,000 in rebates? In most CRMs, it would take less than ten minutes for you to send a quick email to all these prospects detailing the current deals and inviting them back into your store.

## Selling Cars Isn't Hard

While today's salespeople have basically become – through no fault of their own – order takers, tomorrow it will take some work. Of course, selling cars isn't hard, it just takes work. That work is simply the processes you and your managers should begin creating and enforcing today so that you'll continue to enjoy success even when we get back to normal... whatever that means.

Good Selling!



**Steve Stauning**  
**Founder**  
**Stauning Solutions Group**

Steve is the author of *Ridiculously Simple Sales Management* and *Assumptive Selling*; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm – and the free sales video training website [SteveStauning.com](http://SteveStauning.com). Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties.

You may contact Steve directly by calling him at 888-318-6598 or via email at [Steve@SteveStauning.com](mailto:Steve@SteveStauning.com)

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# How To Sell Abandoned Vehicles To Get Paid For Work Performed

Whether a business operates a service department, body shop or a towing company, the majority of automotive service businesses will encounter abandoned vehicles squatting on valuable real estate. Fortunately, Tennessee provides a process that permits businesses to file a lien against an abandoned vehicle, charge storage fees and ultimately obtain ownership if the charges aren't paid. That is, if all boxes are checked while enforcing a lien under Tennessee Code 66-19-101 et seq.

This process can only be utilized so long as the business maintains possession of the vehicle, otherwise referred to as a possessory lien. The business first needs to ensure the customer signed a repair order (or quote) provided upon taking possession of the vehicle. Next, the business must perform the work quoted, and then promptly notify the customer upon completion. If payment is not received, the business sends an additional notice to the owner and lienholder (this information can be obtained via the Department of Revenue's Title and Registration Division) to inform all interested parties that work has been performed, payment has not been received and storage fees will be charged.

Once the customer or lienholder fails to pay the charges, the business can sell the vehicle at auction for the repair charges and the storage fees. At this point, another notice must be sent to the interested parties informing them of the business's intent to sell the vehicle at public auction. This notice must provide the VIN of the vehicle, itemized statement of the

claims and when they became due, a demand that the claim be paid by a certain date (not less than 10 days from delivery of this notice) and a statement that unless the claim is paid within the time frame, the vehicle will be advertised and sold at auction at a specific time and place. If the claim is not paid, an advertisement must be placed in a newspaper of general circulation in the county in which the sale will be conducted, and the ad must provide a description of the vehicle, VIN, name of the owner or lienholder, and time and place of the sale. This advertisement must be published for 15 days prior to the sale date.

After the sale of the vehicle, the proceeds are to be used to pay off the outstanding amounts due plus reasonable charges for the sale and advertisement. If your business happens to be the winning bidder, process the appropriate paperwork with the State to receive a new title. Any funds remaining must be held for the customer or lienholder for 12 months, at which time they must be turned over to the County trustee.

It's not only recommended to consult with an attorney prior to starting this process, but an attorney can also ensure the business has the correct processes in place to permit the use of the garagekeeper lien statute in the first place.

*By: Jonathan D. Mason, Cameron Worley, P.C. 112 Westwood Place, Suite 240, Brentwood, TN 37027. Lawyers for dealers.*



**Jonathon D. Mason**  
Cameron Worley, P.C.

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# Encryption Decryption: Breaking Down Email Encryption Requirements under the Safeguards Rule

By: Dailey Wilson

On October 27th, the Federal Trade Commission finalized its long-awaited updates to the Safeguards Rule. The 2021 changes to the Rule require financial institutions, including auto dealers and finance companies who offer financing, to dust off their existing information security program and likely make some significant changes. This article highlights one key change –the requirement to encrypt emails containing customer information.

## What is Encryption?

As of December 9, 2022, financial institutions will be required to protect by encryption all customer information held or transmitted by the financial institution both in transit over external networks and at rest, or secure such information through effective and equivalent alternative safeguards. Technically speaking, “encryption” means the “transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key, consistent with cryptographic standards and accompanied by appropriate safeguards for cryptographic key material.” I don’t know about you, but that definition is about as clear as mud to me and I am a millennial. In non-IT speak, “encryption” is a process whereby plain text, like a text message or email, is scrambled into an unreadable format. When the intended recipient accesses the message, it is unscrambled and translated back into the original plain text.

## What must be encrypted?

When a financial institution sends any customer information through email over an external network, that financial institution will need to encrypt that email. So, what is customer information? “Customer information” means any record containing nonpublic personal information about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates. In layman’s terms, “customer information” can include:

- Information a consumer provides to you on an application to obtain a credit transaction;

- Payment history;
- Account balance information;
- The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;
- Any information a consumer provides to you or that your or your agent otherwise obtain in connection with collecting on, or servicing, a credit account;
- Any information in connection with a financing transaction you collect through an internet “cookie;” and
- Information from a consumer report.

“Customer information” encompasses a lot of types of information that may be included on communications you have with your customers. For example, information from the consumer’s credit report would be included in an adverse action notice. Account balance information is likely included on monthly statements provided to customers in connection with their motor vehicle financing transaction. If you email these communications to customers, you will now be required to encrypt these emails.

## Practical Considerations

When implementing an email encryption solution, it is critical to consider the encryption process from the customer’s point of view. Encryption solutions that require customers to take additional steps, such as downloading special software to access the encrypted email, could frustrate customers and reduce the likelihood that they take the extra step to actually receive and read important legal disclosures. Accordingly, it is a good idea to test a potential email encryption solution and evaluate its impact on the customer experience prior to fully implementing it.

***Continued on Page 18***



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## Federal Developments

**CFPB Reports on Consumer Complaints in 2021.** On March 31, the CFPB issued its Consumer Response Annual Report highlighting the consumer complaints it received in 2021. The report analyzes complaint data across multiple consumer financial products and services, multi-year complaint trends, and how companies responded to consumer complaints.

**FTC and Illinois Obtain \$10 Million Settlement with Dealerships and General Manager.** On April 1, the FTC and the State of Illinois announced that North American Automotive Services, Inc., d/b/a Ed Napleton Automotive Group, will pay \$10 million to settle allegations that eight of its dealerships and the general manager of two of those dealerships charged consumers for optional products and services, such as service contracts, GAP insurance, and paint protection, in vehicle purchase and financing documents without the consumers' express, informed consent, in violation of the FTC Act and the Truth in Lending Act. In some instances, according to the complaint, the defendants mentioned the optional products and services but falsely told consumers that they were free or that their purchase was required. In addition, the FTC and the State of Illinois alleged that the defendants had a discretionary policy that permitted their employees to mark up interest rates for vehicle financing applicants and added unauthorized charges for optional products and services, resulting in higher costs for Black applicants as compared to similarly situated non-Latino White applicants, in violation of the Equal Credit Opportunity Act. The proposed settlement also resolved allegations that one dealership and the general manager violated the Illinois Consumer Fraud and Deceptive Business Practices Act and the Illinois Motor Vehicle Advertising Regulations by placing prohibited coupon offers in advertising materials and by failing to provide certain required disclosures in advertisements, which also allegedly violated TILA.

Under the terms of the proposed settlement, the defendants are required to pay a \$10 million penalty, to establish a comprehensive fair lending program that, among other things, will cap the additional interest markup they can charge consumers, and to obtain consumers' express, informed consent for all charges and are prohibited from misrepresenting the costs or terms to buy, lease, or finance a vehicle or whether a fee or charge is optional.

**CFPB Sues CRA and Top Executive for Violating Consent Order.** On April 12, the CFPB filed a complaint against credit reporting agency TransUnion and two of its subsidiaries, TransUnion, LLC, and TransUnion Interactive, Inc., as well as one of the top executives at TransUnion Interactive, alleging: (1) a failure to implement the requirements of the CFPB's 2017 consent order that alleged that the defendants had engaged in deceptive acts and practices in connection with the marketing and sale of credit scores, credit reports, and credit monitoring products to consumers; and (2) a continuation of the alleged deceptive acts and practices related to the marketing and sale of credit-related products, in violation of the Consumer Financial Protection Act of 2010, the Fair Credit Reporting Act and its implementing regulation, and the Electronic Fund Transfer Act and its implementing regulation.

The complaint alleged that the defendants did not implement the requirements of the 2017 order, including: (1) ensuring that consumers were not misled about the nature and terms of their credit monitoring product; (2) adding a checkbox to their trial offer subscription products to ensure that consumers consented to enrolling in such products; and (3) providing a way for consumers to immediately and easily cancel their subscriptions and obtain refunds. Additionally, the complaint alleged that the defendants failed to properly obtain consumers' authorization to make recurring withdrawals from their bank accounts, in violation of the EFTA and its implementing regulation, and that the defendants included misleading advertisements on annualcreditreport.com that diverted consumers seeking their free annual credit reports to indefinite paid subscriptions for credit monitoring. The complaint further alleged that the defendants misrepresented their credit monitoring service as a standalone credit score or credit report. Finally, the complaint alleged that the individual defendant failed to ensure that TransUnion took certain required steps and refrained from prohibited conduct. The CFPB is seeking monetary relief for consumers, injunctive relief, and civil money penalties.

Transunion issued a press release the same day, referring to the CFPB's complaint as "meritless." In its statement, TransUnion claimed that the CFPB ignored the compliance plan it submitted for approval, leaving the company no option but to implement the consent order without the CFPB's guidance. TransUnion added that the CFPB refused to meet with the company to attempt to resolve the CFPB's concerns.

*Continued on page 20*

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## Encryption Decryption: Breaking Down Email Encryption Requirements under the Safeguards Rule

Additionally, you should notify both new and existing customers that you use an email encryption solution. Customers who are not expecting to receive an encrypted communication from you may be confused, and even concerned that the communication is a phishing attempt rather than an important customer communication.

Finally, note that you could avoid the requirement to encrypt emails by making communications containing customer information available through an alternative method. For example, you could make the information available in a customer's account accessible via username and password, only using email to notify customers that such communication is available. Because the email would only alert the customer that a notification is available and would not itself contain customer information, email encryption would not be required.

Customers will appreciate the added protection to their nonpublic personal information that an encryption email solution, or other equivalent safeguard, will provide. Just make sure it's simple to use and not unexpected.

*\* K. Dailey Wilson is a senior associate in the Tennessee office of Hudson Cook, LLP. She can be reached at 423.490.7567 or by email at [dwilson@hudco.com](mailto:dwilson@hudco.com).*



**Dailey Wilson**

Senior Associate of Hudson Cook, LLP



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## Federal Developments

**CFPB Flexes Supervisory Authority over Nonbanks.** On April 25, the CFPB announced that it has begun to invoke its supervision authority over nonbanks whose activities the CFPB has reasonable cause to determine pose risks to consumers. This authority is not specific to any particular consumer financial product or service. CFPB Director Rohit Chopra stated that the CFPB is beginning to use this dormant authority because of the “rapid growth of consumer offerings by nonbanks” and that this authority will “hold nonbanks to the same standard that banks are held to.”

A 2013 procedural rule promulgated by the CFPB outlines several steps that the CFPB must take when invoking this authority. First, the initiating official from the CFPB issues a Notice of Reasonable Cause that the entity has engaged in conduct that poses risks to consumers based on complaints or information from other sources. This conduct may involve potentially unfair, deceptive, or abusive acts or practices or other potential violations of federal consumer financial law. While the CFPB does not define how it will determine which entities pose risks to consumers, it stated that it may review complaints from its database, whistleblower complaints, judicial opinions, administrative decisions, news reports, or information from state and federal partners to make determinations. After receiving the notice, the entity has 30 days to provide a written response and can request an opportunity to provide a supplemental oral response in a meeting with the CFPB. The staff has 45 days to provide the director with a recommended determination, and the director then has 45 days to issue a final decision.

When the CFPB implemented the 2013 rule, it considered public comments and decided that all aspects of a proceeding relate to the CFPB’s supervisory process and should be deemed confidential supervisory information. However, the CFPB has now decided something different. The CFPB’s press release announced that it is issuing a new procedural rule that gives the director the authority to make final decisions and orders public. The rule is effective immediately, but the CFPB will accept comments for 30 days and may amend the rule if it receives comments warranting changes. Although the CFPB noted that a “central principle of the supervisory process is confidentiality,” it decided that there were countervailing interests that necessitated a procedural mechanism to determine when a decision and order should be made publicly available. Specifically, the CFPB highlighted the public interest in transparency and the opportunity to use an order as a precedent in the future after it is publicly released. After a decision and order, the entity has seven days to submit a response on the issue of confidentiality, and then the director determines whether the decision and order will be released on the CFPB’s website in whole or in part.

The CFPB’s recent supervision changes could create serious implications for nonbank lenders, fintech firms, and other nonbank covered persons who are not otherwise subject to the CFPB’s exam authority. While the CFPB did not previously assert supervisory authority over these entities, that no longer appears to be the case.

**CFPB Director Highlights Agency’s Priorities.** On April 26, CFPB Director Rohit Chopra provided testimony before the Senate Committee on Banking, Housing, and Urban Affairs in conjunction with the agency’s submission of its semiannual report to Congress. Chopra highlighted some of the agency’s supervisory and enforcement work and stated that, during his tenure, the agency intends to: (1) “shift[] enforcement resources away from investigating small firms and instead focus[] on repeat offenders and large players engaged in large-scale harm”; (2) “dramatically increase its issuance of guidance documents, such as advisory opinions, compliance bulletins, policy statements, and other publications”; (3) change its approach to regulations by developing rules that Congress has authorized and by simplifying rules when possible; (4) listen to and learn from local financial institutions and the broader business community; (5) promote competition; and (6) address privacy, fraud, and discrimination issues, among other concerns, that may arise from the involvement of Big Tech in markets for consumer financial products and services.

Eric (ejohnson@hudco.com) is a Partner in the law firm of Hudson Cook, LLP, Editor in Chief of CounselorLibrary.com’s Spot Delivery®, a monthly legal newsletter for auto dealers and a contributing author to the F&I Legal Desk Book. For information, visit [www.counselorlibrary.com](http://www.counselorlibrary.com). ©CounselorLibrary.com 2021, all rights reserved. Single publication rights only to the Association. HC# 4872-4651-0600



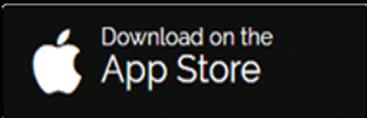
**Eric L. Johnson**  
*Partner of Hudson Cook, LLP*



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# Auction Spotlight



## Tucker Treadway

I was first introduced to the auction business by my father Robin Treadway. Robin is a face most would recognize in the auction industry and is well known in the southeast auction world for the last 35 years. Some of my oldest and fondest memories are of me running around the car auctions as a youngster. I worked for years on the auction lot doing various jobs such as maintenance, parking, washing cars, and uploading pictures for the sale. Then one day my father finally asked me to hang out in the lanes. I started working in the ring when I was 18 years old and I remember distinctly AmeriCredit was the seller.

The respected auction veteran Mark Hall is a ring man that has pretty much taught me everything I know about taking bids on the floor. Moving forward a few years to 2021 & I found myself competing in a ring man competition after a dear friend Tommy Bellemany had told me to attend for quite some time. Tommy and I went to Dallas as a team & took home the Reserve World Champion Title. I was blessed to take home the Grand World Champion Ringman Title.

The auction community has some of the best & respected people I've ever met. All are very hard working and driven. It's also very fun to come from a second generation auctioneer in the Nashville area & quite frankly, there is nothing else I would rather do.

See ya in the lanes!

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Auction	Auction	Auction	Auction	Auction	Auction
\$25.00	\$23.00	\$25.00	\$23.00	\$25.00	\$23.00
Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018
Auction	Auction	Auction	Auction	Auction	Auction
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