

## World-Class Risk and Compliance Checklist

### Developing and Enhancing Your Departmental Culture

Please indicate, by inserting a number between 1 and 10 in one of the two right hand columns, if the described process at your dealership is world-class or if “action is required” to bring it up to “world-class” standards. Scores of 8, 9, and 10 are considered “world-class;” scores of 7 and below will “require action.” If this process is NOT “world-class” at your dealership, please use the “comments” section to describe any appropriate actions you must take to improve the process.

Risk and Compliance	World Class	Action Required
<p><b>1. Compliance Management System:</b> Do you have a Compliance Management System (CMS) as mandated by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) and whose responsibility is it? Are all of your compliance activities housed in one place where they are accessible? Are routine operational concerns automated? Are the areas of responsibilities being tracked for timeliness and accuracy? Is there a tickler system set up to remind your employees when to perform and complete certain activities, i.e. your annual Red Flag report?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>2. Protecting your assets:</b> When was the last enterprise risk assessment completed to verify all personal and dealership assets are protected? (Who has looked at the “big picture?”) How much is your enterprise worth and how much is at risk? What policies and procedures are in place to prevent problems from occurring in the first place? How would you categorize the risks? Risk of fines? Risk of lost revenue? Breach of contract? Where are your biggest vulnerabilities and what are you doing to protect against losses in that area?</p>		
<p><b>Comments (if not world-class):</b></p>		

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<p><b>3. Compliance training:</b> Who trains the staff about compliance and how often? Is it documented? Could you show a state Attorney General or legislator or regulator a series of signed employee acknowledgements? Could you prove your documented and ongoing efforts to keep employees up to date on current trends and compliance topics? Given these efforts, could they accuse you of “willful non-compliance” where the penalties are exponentially more expensive?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>4. Insurance analysis:</b> Annually, does anyone do a coverage analysis to determine where and how you are exposed? Do you understand those exposures and have a list of them? In the case of a catastrophic accident, do you have enough umbrella insurance to cover the entire value of the company? Have you considered what perils could be an enterprise-ending event? Are these perils covered by your insurance policies? What are consumers alleging and is this covered by your policies? Do your internal test drive procedures match the requirements of your insurance policy? Do you have a rental fleet which rents to the public, and if so, do you have insurance outside of the manufacturers programs, in case that policy rejects a claim?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>5. Consumer complaints:</b> Do you have a process to find and fix consumer complaints, including those which are posted online? Do your employees look for these reviews on a daily basis over 30+ primary websites? Do they respond on an individual basis instead of using a “canned response?” Will your employee actually pick up the phone and invite the customer back to the dealership to resolve the issue? Do they have the authority to bring these items to conclusion? After the customer is satisfied, does the employee invite the customer to “update” the review so “everyone will see we are good guys after all?”</p>		
<p><b>Comments (if not world-class):</b></p>		

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<p><b>6. Clear communication and problem prevention:</b> As problem prevention is much less expensive than problem mitigation and amelioration, do you cultivate a culture where this is both appreciated and on-going? Are employees rewarded in some way when they foresee an issue and bring it to the attention of management? Or is that considered “a bother?” Do your employees know to run with bad news and walk with good news? Do employees (themselves) have their own channel and mechanism to bring their complaints to the attention of management? If so, is this policy published and well known?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>7. Employee Guidebook:</b> Do you have an Employee Guidebook? When was the last time it was updated? Do you have a central repository for personnel and compliance policies, facilitating easy distribution and allowing employees to access and acknowledge these policies efficiently? Do employees sign a Legal Rights Agreement with how they will be handled in case of a legal dispute? Do you have Employer’s Liability insurance to indemnify you in case of an employee claim? Have you reviewed the limits and exclusions to know where you may be exposed? Does the employee have a written job description and a written and signed pay plan? Is your Corrective Action and Discipline section clear and concise? Are your EEOC policy and your American With Disabilities Act plainly stated? Do you have an Equal Opportunity Policy for Visitors to avoid allegations of customer discrimination? Alcohol and drug use policy? Code of Ethics and Business Conduct to avoid situations of kickbacks or payments “under the table?” Social media policy to avoid arguing with employees of what they can or cannot post? Are all benefits described accurately and up to date? Are your signature pages also “stitched into” the Guidebook so the employee has a copy of everything they signed?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>8. Media story:</b> Are you prepared if the media reaches out and wants to do a story about an upset customer or employee? In case the camera crew arrives at the dealership regarding a customer complaint, do your employees know what to do, what to say, or who to direct the reporter to? How would you approach the questions provided by the reporter and would you allow the camera crew to film you? Would you be able to utilize a better approach than “no comment?”</p>		
<p><b>Comments (if not world-class):</b></p>		

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<p><b>9. Human resources:</b> Do you have an on-boarding process to establish a great start for new employees and to indoctrinate them to your policies and procedures? Has anyone reviewed the forms you use to comport with today's laws, rules, and regulations? Is there an off-boarding process for employees? Are there names removed from all systems to protect the dealership and avoid data compromise issues? Is someone designated to do exit interviews to prevent misunderstandings and to possibly prevent future problems?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>10. Advertising:</b> Do you have a process to mystery shop and audit your own website for potential advertising violations? Has anyone checked your disclaimer for accuracy? Is the disclaimer "clear and conspicuous?" Are you in compliance with state and federal advertising laws? Is there anyone from your marketing department training your sales department on what's being advertised so as to avoid allegations of "bait and switch advertising?" Are your photographs portraying the correct trim level so as to avoid other "bait and switch" allegations? Do third party websites properly display your inventory and disclaimers? Are processing fees disclosed correctly in accordance with your state laws? Are rebates being stacked improperly where no one could actually purchase the vehicle because they could not possibly qualify for all the rebates displayed? Are trigger terms being used in advertising without disclosing the other mandatory terms as required in the Truth in Lending Act?</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>11. Regulatory:</b> What would you do if a regulator walked into your dealership? Do you have a plan as to how you would handle that situation? Who is in charge of handling regulatory inquiries, to include, the Motor Vehicle Dealer Board, the Office of Consumer Affairs, the state Attorney General, the State Police, the local police, and federal government agencies?</p>		

<b>Comments (if not world-class):</b>		
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<p><b>12. Auditing:</b> Does anyone, in any way, audit for compliance of your own internal policies? How do you know if your wishes are being followed? If you have more than one store, is there a reporting mechanism for this information to flow to one person in charge of your policies and procedures? Internal monitoring and auditing is followed by enforcement and disciplinary action, when appropriate. Are these expectations evident, unambiguous, and unmistakable?</p>		
<b>Comments (if not world-class):</b>		
<p><b>13. Safeguards Rule:</b> Are you compliant with the Gramm Leach Bliley Act (GLBA)? Have you written your annual report to the Board of Directors? If you have a SaaS software solution, is anyone in charge of it? Have you queried the person in charge to give you an update to ensure you are on track? Is your IT Department involved to ensure everyone is pulling in the same direction? Do you have written policies for: Clear Desk and Clear Screen, Data and Document Retention and Disposal, Incident Response Plan, Acceptable Use Policy, Bring Your Own Device, Information Security Program? Do you have a cyber policy to act as a backstop in case of a security breach? Will it cover third party systems which may go down to cause a business interruption (like CDK)?</p>		
<b>Comments (if not world-class):</b>		
<p><b>14. Federal Trade Commission (FTC):</b> The Buyer's Guide is one of the more involved compliance items at the store. Has anyone inspected to determine if the Buyer's Guide on the window of the vehicle is the same one which the F&amp;I manager has the customer sign? Are the same boxes checked? If you have the remainder of the factory warranty or a CPO, is the proper box checked? Is there a warranty "available?" How do your employees (both lot porters and F&amp;I managers) know for certain if there is a remaining factory warranty in order to fill out the form properly? Is anyone routinely checking behind your sales staff and documenting these efforts as</p>		

each mistake can warrant a \$51,744 penalty?		
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<p><b>15. Pollution:</b> Is anyone tracking how your waste (trash, cardboard, used tires, used oil, used transmission oil, used brake fluid, brake cleaner, used batteries, used paint, used oil and fuel filters, antifreeze, aerosol cans, plastic bottles etc.) is being disposed of? Have you audited your vendors to verify they have adequate insurance to protect the dealership if it's disposal is not handled properly? Have you asked to be named on their policy as an "additional insured?" Do you have pollution insurance to cover you in case the vendors insurance won't cover the loss?</p>		
<b>Comments (if not world-class):</b>		
<p><b>16. Lawsuits and Claims:</b> Do you have a criteria or policy about when to turn in a claim to your insurance company? Do you choose your own attorneys instead of the ones the insurance companies are providing? Is anyone interfacing with the insurance company to make certain they are adjudicating the claims so they are not paying too much to the claimants? Does anyone monitor the claims to ensure they are being closed by the insurance company on a timely basis? Before your insurance renewal, is anyone verifying how much is showing in the insurance reserves as those monies are considered monies paid out on your behalf, even though they are still in "reserve" and are anticipated payments? Have you asked the insurance company to reduce or remove the reserves to a number which is acceptable to you, in order to negotiate the best renewal possible?</p>		
<b>Comments (if not world-class):</b>		
<p><b>17. Adverse Action Notices:</b> When a customer is not approved for credit at the store, are you, as the dealership sending out Adverse Action Notices telling the customer the dealership (itself) has not approved them for credit? During the hiring process, is the dealership using consumer reports to screen employees? Are Pre-</p>		

<p>Adverse Action and Adverse Action Notices being sent from the dealership during the interviewing process? Failure to send these could result in a class action lawsuit to include punitive damages for “willful non-compliance.”</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>Risk and Compliance</b></p>	<p><b>World Class</b></p>	<p><b>Action Required</b></p>
<p><b>18. F&amp;I and Deal Jackets:</b> To avoid allegations of product stuffing, when aftermarket products are purchased, do you have a policy where the product will be disclosed (1) on a Buyer’s Order, (2) on a menu (showing “approved” and “rejected” products), (3) on the Retail Installment Sales Contract (RISC), and (4) on the product enrollment form? Do the cost on all four disclosures match? Does the F&amp;I manager have a checklist which is routinely filled out? Do all the signatures match and look the same? Will the billing department reject deals which are not in compliance and refuse to book them? Is anyone auditing your deal jackets to confirm items such as: an unexpired driver’s license, a signed credit application, that the paystubs match the application, a signed two page menu, a signed risk based pricing disclosure, any strikeovers, changes, or alterations are initialed by the customer, negative equity disclosed properly, if any customer copies erroneously remain in the deal, a signed Buyer’s Guide, any aftermarket products sold were in compliance with product pricing policy, and the OFAC check completed and cleared.</p>		
<p><b>Comments (if not world-class):</b></p>		
<p><b>19. IRS 8300 Cash Reporting:</b> Do you have a policy where employees understand when cashier’s checks can be considered cash by the Internal Revenue Service (IRS)? Are the cashiers receipting your money, cashiers checks, money orders, and travelers checks in such a way so you can pull a monthly report from your DMS to determine if an 8300 Form should be filed? Are you sending letters to those customers by January 31 notifying them that you have filed a report on them? Failure to comply can result in penalties up to \$250,000 per missed report and up to five (5) years of jail time.</p>		
<p><b>Comments (if not world-class):</b></p>		

<p><b>20. Recall Policy:</b> Do you have a process in place to fix vehicle which have safety recalls? For both “your brand” and the non-brand vehicles which are sold in the used vehicle department? Were you aware the dealership could be liable if a customer were in an accident as the result of an unfixed recall? Do customers sign anything about the status of the vehicle, whether or not there are any recalls?</p>		
<p><b>Comments (if not world-class):</b></p>		