

Complaint

91 F.T.C.

IN THE MATTER OF

INSILCO CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2919. Complaint, April 19, 1978 — Decision, April 19, 1978

Consent order requiring a Meriden, Conn., distributor of pre-cut housing products and its subsidiary, among other things, to cease misrepresenting or failing to make relevant disclosures with regard to product assembly, delivery costs, legal building requirements, need for skilled building tradesmen, mortgage liens, and cancellation rights—in Spanish, if applicable. The order further requires the firm to acknowledge and resolve complaints in a prescribed manner. Additionally, the firm must cease failing to provide consumers, in connection with the extension of credit, such material disclosures as required by Federal Reserve Board regulations.

Appearances

For the Commission: *Blanche Stein, Richard A. Palewicz and Walter R. Baron.*

For the respondent: *William G. Dillon, Simpson, Thacher & Bartlett, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Insilco Corporation, a corporation, and Miles Homes, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it now appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

a) The term "pre-cut housing" means homes sold to the general public by any of the Miles Homes Companies in the form of unassembled or partially assembled materials and components other than a package.

b) The term "package" means the materials and components for the

with pre-cut housing, or tile or paint which any of the Miles Home Companies offer to purchasers of pre-cut housing.

PAR. 2. Respondent Insilco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1000 Research Parkway, Meriden, Connecticut.

Respondent Insilco Corporation has numerous wholly-owned subsidiaries in various States of the United States which it collectively terms "Miles Homes Companies" and which includes, among others, Miles Homes, Inc.

Respondent Miles Homes, Inc. is a wholly-owned subsidiary of respondent Insilco Corporation, and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 4500 Lyndale Ave., North, Minneapolis, Minnesota.

Respondent Insilco Corporation by reason of its ownership of Miles Homes, Inc. has the power to and does control the acts and practices of Miles Homes, Inc.

PAR. 3. Respondents are now and for some time in the past have been engaged in the advertising, offering for sale and sale of pre-cut housing and packages for such housing to the general public.

PAR. 4. In the course and conduct of its business, as aforesaid, and by virtue of the control it exercises over respondent Miles Homes, Inc. by formulating, establishing and monitoring the financial and sales policies and operations of this subsidiary; through its wholly-owned corporate subsidiaries engaged in the sale of pre-cut housing in various States of the United States; and, through its other wholly-owned corporate subsidiaries which are distribution centers for pre-cut housing sold by respondents, respondent Insilco Corporation now causes, and for some time last past has caused, pre-cut housing to be transported from the states in which such distribution centers are located directly to purchasers located in various other States of the United States.

In the course and conduct of its business, as aforesaid, respondent Miles Homes, Inc. now causes, and for some time last past has caused, business papers and advertisements to be transmitted through the United States mail from respondent's place of business in Minnesota to members of the public located in various other States of the United States, and certain other advertisements to be inserted in newspapers of interstate circulation.

Therefore, each of the respondents now maintain, and at all times mentioned herein has maintained, a substantial course of trade in or

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affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 5. In the course and conduct of their housing business, as aforesaid, and for the purpose of inducing the public to purchase respondents' products, respondents have made, or are now making, certain statements and representations in advertising brochures and in advertising inserted in newspapers of interstate circulation.

Typical and illustrative of such statements and advertising representations, but not all inclusive thereof, are the following:

The only houses actually designed so they can be built by anyone who can drive a nail and follow simple instructions.

* * * * *

Build in spare hours without costly hired labor.

* * * * *

Your materials come pre-cut, ready to nail, with an excellent set of instructions designed for people with little or no previous building experience.

* * * * *

You can start the nailing and assembly within five minutes after you receive your home.

* * * * *

MILES PRECISION CUT HOMES

* * * * *

. . . a plan which combined financial assistance, all the materials, and easy to understand instructions. . . making it possible for any family to build their own home.

* * * * *

. . . We furnish precut building materials, step-by-step instructions, everything you need. . . inside and outside. Free delivery.

* * * * *

. . . You do not run out of material after you start building.

Our own fleet of trucks delivers your home in several loads, as you need it.

PAR. 6. By and through the use of the above-quoted statements and representations and others of similar import and meaning not expressly set cut herein, respondents have represented, or are now representing, directly or by implication that:

1. Pre-cut housing sold by respondents is easy to assemble and can be completely constructed by anyone.

2. Anyone can assemble respondents' pre-cut housing without utilizing the services of skilled building tradesmen during the course of construction.

3. Pre-cut housing sold by respondents is delivered to purchasers with all parts pre-cut to exact size with such accuracy that a purchaser need only to nail the parts in place.

4. Instructions furnished to purchasers by respondents for the assembly of pre-cut housing are designed for the specific style house ordered by each purchaser.

5. Instructions furnished to purchasers by respondents for the assembly of pre-cut housing are so simple that they can be easily followed by anyone.

6. Deliveries of materials and components of pre-cut housing sold by respondents are timed to meet the individual construction schedule needs of each purchaser.

7. Purchasers of respondents' pre-cut housing will be furnished adequate supplies of building materials to assure that the purchaser will not run short of materials or components during the course of construction.

8. Purchasers of respondents' pre-cut housing are not required to pay delivery charges for any of the materials or components for such housing purchased from respondents.

PAR. 7. In truth and in fact:

1. Pre-cut housing sold by respondents is not easy to assemble and cannot be completely constructed by any ordinary purchaser. In many instances purchasers, including those who have previous building construction experience, must hire skilled tradesmen to lay the foundation for the house.

2. Anyone cannot assemble respondents' pre-cut housing without using the services of skilled building tradesmen during the course of construction. In many instances, purchasers find it necessary to hire a carpenter, electrician or plumber for the construction of the house.

3. Pre-cut housing sold by respondents is not delivered to purchasers with all parts pre-cut to exact size with such accuracy that the parts need only to be nailed in place. Door and window openings, stairways, interior partition plates, interior wall studs, and hip, valley

and jack rafters are not pre-cut and must be measured and cut by purchasers during the construction of such housing.

4. Instructions furnished to purchasers by respondents for the assembly of pre-cut housing are not designed for the specific style house ordered by each purchaser. The instructions furnished are general in nature, and all purchasers receive an identical set of instructions regardless of the style house ordered.

5. Instructions furnished to purchasers by respondents for the assembly of pre-cut housing are not so simple that they can be easily followed by anyone. In many instances, purchasers are unable to interpret the instructions without the assistance of a carpenter, and instructions are not set out in the sequence of construction practice normally followed in the industry.

6. Deliveries of materials and components of pre-cut housing sold by respondents are not timed to meet the individual construction schedule needs of each purchaser. In many instances, deliveries are late, are made ahead of schedule, or are made at respondents' own convenience without regard to the schedule of delivery dates requested by purchasers.

7. Purchasers of respondents' pre-cut housing are not always furnished adequate supplies of building materials or components to assure that the purchaser will not run short of such materials or components during the course of construction. In some instances, an inadequate supply of nails, plywood or insulation is furnished. Respondents frequently delay, neglect, refuse or ignore making replacements of materials or components that are delivered to purchasers in damaged condition or where the delivery of the materials or components are not in accord with the purchaser's orders.

8. Purchasers of respondents' pre-cut housing are required to pay delivery charges for some of the materials or components for such housing. Delivery charges are added to purchasers' accounts when materials or components are shipped by carriers other than respondents' own trucks.

Therefore, the statements and representations as set forth in Paragraph Six above were and are false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' pre-cut housing, respondents have made, or are now making, statements and representations in advertising brochures and in advertising inserted in newspapers of interstate circulation concerning the financial arrangements for the purchase of such housing.

Typical and illustrative of such statements and representations, but

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You may build on your own lot. . .

* * * * *

Land need not be paid in full.

* * * * *

No Cash Needed. Monthly Payments: \$84, including custom kitchen cabinets, plumbing, heating, electrical, tile and paint. . .

* * * * *

MILES PRECISION-CUT HOMES are recommended by banks, lending institutions and mortgage companies throughout the United States.

By and through the use of such statements and representations, respondents have failed to disclose the following material facts which, if known to consumers would be likely to affect their decision to respond to said advertising or to enter into negotiations with respondents which results, in many instances, in the purchase of pre-cut housing offered for sale by respondents:

1. That, in addition to the requirement that purchasers enter into a written agreement for the purchase of pre-cut housing, purchasers are also required to give respondents a mortgage note and first mortgage lien on the land used as the building site.

2. That the plumbing, heating or electrical systems, tile and paint, and kitchen cabinets are optional items for which respondents make substantial additional charges.

3. That respondents add delivery charges for materials and components shipped by carriers other than respondents' own trucks, and that such delivery charges always will be made for any "packages" ordered.

4. That respondents do not arrange long-term financing for individual purchasers from institutions that customarily furnish mortgage loans.

5. That the monthly payments are essentially in payment of the interest on the mortgage note purchasers are required to give respondents and reflect little or no reduction in the principal amount of the amount financed.

Therefore, respondents' failure to disclose such material facts were and are unfair, false, misleading and deceptive acts and practices.

PAR. 9. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been and are now in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of housing of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, misleading and deceptive statements, representations and practices has had and now has, the capacity and tendency to mislead members of the purchasing public into the purchase of substantial numbers of respondents' pre-cut housing.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged were and are all to the prejudice and injury of the public and respondents' competitors and constituted and now constitute unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, the allegations of Paragraphs One, Two and Three hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend and for some time in the past have regularly extended, consumer credit, as "consumer credit" is defined in Section 226.2(p) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 13. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as "credit sale" is defined in Section 226.2(t) of Regulation Z, have caused, and are now causing, customers to execute a document entitled "Agreement," a retail installment contract, for the purchase of pre-cut housing. Concurrently with the agreement, respondents have furnished such customers with a "Separate Disclosure Statement of Credit Sale," a "notice to customers required by federal law" and an "Effect of Rescission."

PAR. 14. Subsequent to the Agreement referred to in Paragraph Thirteen, respondents made additional sales of materials, components or packages for the pre-cut housing (hereinafter sometimes referred to as "Additional Sales"). Such "Additional Sales" were a "credit sale" as defined in Section 226.2(t) of Regulation Z. Respondents provided no consumer credit cost disclosures required by Regulation Z.

PAR. 15. By and through the use of the "Agreement" referred to in Paragraph Thirteen, respondents, in some instances, have consummated a rescindable consumer transaction. Respondents, in some instances,

It is understood that this is not an order but a binding contract. After the Buyers' 3 day right of rescission, provided by the Truth-in-Lending Law has expired, if the Buyers repudiate or countermand this contract prior to the delivery of any materials, Seller shall receive from Buyers reimbursement for all losses resulting from Buyers' breach, including the sum of \$375.00 as and for Seller's loss of profit.

By and through the use of this quoted language, respondents have:

(1) Represented, directly or by implication, that customers will or may be liable for damages, penalties or any other charges if they exercise the right to rescind provided by Section 226.9 of Regulation Z on additional credit sales made pursuant to the "Agreement," contrary to the provisions of Section 226.9(d) of Regulation Z.

(2) Supplied additional information, not required by Regulation Z, which is stated so as to mislead or confuse the customers concerning his right to rescind the credit transaction, in violation of Section 226.6(c) of Regulation Z.

PAR. 16. By and through the use of the "Agreement" referred to in Paragraph Thirteen a security interest, as "security interest" is defined in Section 226.2(gg) of Regulation Z, is or will be retained or acquired in real property which is or is expected to be used as the principal residence of the customer. Respondents have included the following language in the "Agreement":

SECTION D. It is agreed that the taking of a promissory note as evidence of Buyers' indebtedness to Seller shall not preclude Seller from filing a mechanic's lien in an amount specified herein for materials furnished and used in the improvement and alteration of Buyers' real estate and the Buyers consent and authorize the same.

However, in some cases, in the "Separate Disclosure Statement of Credit Sale" respondents have failed to properly identify the security interest as required by Section 226.8(b)(5) of Regulation Z.

PAR. 17. By and through the making of the "Additional Sale" referred to in Paragraph Fourteen respondents have made a "credit sale" as defined in Section 226.2(t) of Regulation Z. On these "Additional Sales," respondents have:

1. Failed in any consumer credit transaction to disclose the price at which respondent, in the regular course of business, offers to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c)(1) of Regulation Z.

2. Failed to disclose the amount of any downpayment in money made in connection with any consumer credit transaction and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

3. Failed to disclose the "unpaid balance of cash price" to describe

the difference between the "cash price" and the "cash downpayment," as required by Section 226.8(c)(3) of Regulation Z.

4. Failed to disclose the "unpaid balance" to describe the sum of the "unpaid balance of cash price" and all other charges included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(5) of Regulation Z.

5. Failed to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

6. Failed to disclose the sum of all charges made to the customer which are required by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

7. Failed, in some instances, in consumer credit transactions to disclose accurately the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(8)(ii) of Regulation Z.

8. Failed to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5(b) of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

9. Failed to disclose the number, amount, and due dates or period of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

10. Failed to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

11. Failed to make all disclosures required by Section 226.8(a) of Regulation Z.

Therefore, respondents have failed to make the consumer credit cost disclosures required by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of the Regulation.

PAR. 18. By and through the use of the "Additional Sales" referred to in Paragraph Fourteen, a security interest, as "security interest" is defined in Section 226.2(gg) of Regulation Z, other than a first lien or equivalent security interest, in some instances is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondents' customers. Respondents' retention or acquisition of such security interest in said real property thereby entitles their credit customers to be given the right to rescind

the consummation of the transaction or the date of delivery of all the disclosures in the manner and form required by Regulation Z, whichever is later, as required by Section 226.9(a) of Regulation Z.

Having consummated a rescindable consumer credit transaction, respondents or their representatives have, in many instances, made deliveries of materials, components or packages.

By and through their actions as alleged above, respondents have:

(1) Failed to give notice, in some instances, to each customer of the right to rescind the credit transaction by furnishing the customer with two copies of the "Notice to customers required by Federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Failed to delay the making of deliveries, in some instances, to the residence of the customer until after the rescission period has expired, as required by Section 226.9(c)(4) of Regulation Z.

(3) Failed to provide customers, in some instances, with two copies of the "effect of rescission," set forth in Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

PAR. 19. Respondents have, in some instances, furnished a notice of Right of Rescission in accordance with Section 226.9 of Regulation Z. Such notice was not printed in capital and lower case letters of not less than twelve (12) point bold-faced type as required by Section 226.9(b) of Regulation Z.

PAR. 20. Subsequent to July 1, 1969, respondents, in the ordinary course of their business as aforesaid and in connection with credit sales, have caused, and are causing, to be published, advertisements, as "credit sale" and "advertisement" are defined in Section 226.2 of Regulation Z, which advertisements aid, promote or assist, directly or indirectly, the extension of other than open end credit.

PAR. 21. Respondents, in certain of the above-mentioned advertisements, have stated and are stating the amount of downpayment, the amount of an installment payment or the period of repayment without also stating, as required by Section 226.10(d)(2) of Regulation Z, all the following terms:

- (a) the cash price;
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) the amount of the finance charge expressed as an annual percentage rate; and
- (e) the deferred payment price (if applicable).

PAR. 22. Pursuant to Section 103(s) of the Truth in Lending Act,

respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Insilco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1000 Research Parkway, Meriden, Connecticut. It has numerous wholly-owned subsidiaries in various States of the United States which it collectively terms "Miles Homes Companies."

Respondent Miles Homes, Inc. is a wholly-owned subsidiary of respondent Insilco Corporation, and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 4500 Lyndale Ave., North, Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the matter.

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

DEFINITIONS

For purposes of this order, the following definitions shall apply:

(a) The term "pre-cut housing" means homes sold to the general public by any of the Miles Homes Companies in the form of unassembled or partially assembled materials and components other than a package.

(b) The term "package" means the materials and components for the plumbing, electrical or heating systems, kitchen cabinets not included with pre-cut housing, or tile or paint which any of the Miles Homes companies offers to purchasers of pre-cut housing.

(c) The term "legal holiday" means any one of the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day.

(d) The term "receipt" means three days following the date post-marked on written requests from purchasers provided that respondents are not precluded from establishing by other means the actual date of receipt of any written or oral request.

(e) The term "business days" means the days of the week that respondent Miles Homes, Inc. customarily conducts its business.

II

It is ordered, That respondents Insilco Corporation, a corporation, and Miles Homes, Inc., a corporation, and respondents' successors and assigns, and their officers, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale or delivery of pre-cut housing, packages, homes or housing, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by any means that:

(a) The only skill required for the assembly of respondents' pre-cut housing or packages is the ability to drive a nail or use a hammer, or that respondents' pre-cut housing or packages can be assembled by everyone without any construction skills or experience.

(b) Pre-cut housing or packages sold by respondents can in all cases

be completely assembled without utilizing the services of a mason carpenter, plumber, electrician or any other skilled building tradesman or other person experienced in building construction.

(c) Instructions furnished to purchasers for the assembly of respondents' pre-cut housing or packages are simple and are easily followed in all cases without any assistance from persons experienced in the building construction trades.

(d) No additional charge is made to purchasers for packages or other optional materials or components.

(e) All deliveries of materials and components for pre-cut housing or packages purchased from respondents are made without charge to purchasers.

2. Using the term "precision-cut" or any other words or terms of similar import or meaning which represents, directly or by implication that materials or components for pre-cut housing or packages are delivered to purchasers accurately cut to size and fit when such materials or components require measuring and cutting after delivery to purchasers for assembly or installation in pre-cut housing purchased from respondents.

III

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale or delivery of pre-cut housing packages, homes or housing, shall include in all catalogues furnished to prospective purchasers, and shall furnish to each purchaser prior to the time such purchaser enters into any initial binding agreement for the purchase of respondents' pre-cut housing, a written statement that will set forth the following disclosures in a clear and conspicuous manner:

1. That purchasers who do not possess building construction skills or experience may find it necessary to hire or to otherwise secure the assistance of persons experienced in the building construction trades, such as a mason to lay the foundation, a carpenter to measure and cut materials and components to size for the house plan, a plumber to assemble and install plumbing and heating systems, and an electrician to install the electrical system, and that in some localities certain of such work is required by law to be performed by licensed tradesmen;

2. That purchasers who do not possess building construction skills or experience may find it necessary to hire or to otherwise secure the assistance of persons experienced in building construction to explain or interpret the instructions furnished by respondents;

3. That the land upon which respondents' pre-cut housing is to be built will be subject to a mortgage lien as security for a note in an amount that will cover all purchases made from respondents.

respondents may require that the purchaser furnish respondents with a copy of the deed showing ownership of such land;

4. That in those instances where the purchaser has not completed payment for the land upon which the pre-cut housing is to be built, respondents may require a copy of the contract evidencing sale of the land to the purchaser of such pre-cut housing and a permission-to-build agreement from the seller of the land;

5. That purchasers will be charged an additional amount for packages or other optional materials or components ordered when such are not included in the original purchase price;

6. That only specified deliveries will be made without charge to each purchaser and that other delivery charges which will vary depending on the number of orders a purchaser places, the quantity of materials purchased, the location of the shipper, and the method of shipment will be added to each purchaser's total indebtedness to respondents;

7. That respondents do not arrange long-term financing for individual purchasers from institutions that customarily furnish mortgage loans;

8. That the monthly payments made by purchasers to respondents will be, for the most part, in payment of the interest on the total amount financed with little, or no reduction in the total amount financed;

9. That materials or components delivered to purchasers should be inventoried and, in some cases must be sorted, after unloading;

10. That procedures, which respondents shall specifically identify and describe, have been established for the informal settlement of complaints and disputes concerning the shortage, omission or replacement of any material or component, and that purchasers will not be charged any fee by respondents for use of these procedures.

IV

It is further ordered, That respondents, in connection with the sale of pre-cut housing shall, at the time a purchaser enters into any initial contract or agreement for the purchase of such housing from respondents, inform each such purchaser orally of his right to cancel such contract or agreement and shall furnish to each such purchaser:

1. A fully completed copy of such purchase agreement or contract which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the

purchaser and in boldface type of a minimum size of ten points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY, EXCLUDING SUNDAYS AND LEGAL HOLIDAYS, AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

2. A completed form in duplicate, captioned "NOTICE OF CANCELLATION" attached to the purchase agreement or contract and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO *(Name of Seller)*, AT *(Address of seller's place of business)* NOT LATER THAN MIDNIGHT OF *(Date)*.

I HEREBY CANCEL THIS TRANSACTION.

(Buyer's Signature)

3. The requirements set out in subparagraphs 1 and 2 above, do not apply in any case in which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto.

V

It is further ordered, That respondents, in connection with the sale or delivery of pre-cut housing, packages, homes or housing shall:

1. Upon the receipt of a purchaser's written request for delivery of materials or components, acknowledge each such request within ten (10) business days and notify the purchaser in writing within thirty (30) days of the receipt of such request of the date on which such delivery will be scheduled; *provided*, that if a purchaser has not furnished respondents with satisfactory documentary evidence that all conditions precedent to such purchaser's contractual right to the requested delivery have been fulfilled and that the construction of such purchaser's house has progressed to the point where delivery of the requested materials or components is appropriate, then respondents need not arrange for the requested delivery but must advise such purchasers, within thirty (30) days of the receipt of the request, of the reason or reasons why the request for delivery will not be honored;

2. Schedule the delivery date referred to in subparagraph 1 above for a date within ten (10) business days of the date requested by the purchaser; *provided*, that if the requested delivery date is less than thirty (30) days from the date of receipt by respondents of the request for delivery, then respondents shall schedule delivery for a reasonable time thereafter;

3. Notify each purchaser at the time the initial purchase contract is made where purchasers are directed to address inquiries or complaints concerning:

- (a) the purchaser's contractual agreement with respondents,
 - (b) the delivery of materials or components,
 - (c) shortages, omissions or replacement of materials or components,
- and
- (d) the construction, assembly and installation of pre-cut housing or packages.

4. Furnish to each purchaser a reasonable number of pre-addressed post cards for the purpose of submitting the inquiries or complaints referred to in subparagraph 3 above;

5. Acknowledge receipt of each written inquiry or complaint received from purchasers within ten (10) business days, and notify each

such purchaser in such acknowledgment of the approximate date on which response to the inquiry or complaint will be furnished; such response shall be in writing and no later than thirty (30) days from the date of the receipt of the inquiry or complaint;

6. Make a disposition relating to the purchaser's inquiry or complaint on or before the expiration of the thirty (30) day period referred to in subparagraph 5 above. Respondents' response to an inquiry or complaint relating to the shortage, omission or replacement of any material of component shall state:

(a) whether or not respondents will furnish such material or component,

(b) the date on which delivery of the requested material or component will be scheduled, which date shall not be unreasonably distant in the future, and

(c) the reason or reasons why respondents will not furnish the requested material or component, if such be the case.

Provided, that this subparagraph 6 shall not be construed to preclude respondents from furnishing any purchaser with a credit for the purchase price and delivery charges of any material or component or from taking other remedial action with respect to any material or component.

7. Designate a single focal point within the operations of Miles Homes Companies for the receipt of complaints which have not been resolved to the satisfaction of any purchaser under the procedures set out in subparagraphs 3, 4, 5 and 6 above, and notify each such purchaser at the time the response is made under subparagraph 6 above of the focal point and individual to whom such disputed complaints are to be directed;

8. Acknowledge, in writing, each complaint received pursuant to subparagraph 7 above within ten (10) business days of the date such complaint was received and within thirty (30) days of receipt of such complaint notify the purchaser in writing of the disposition made with respect to such dispute;

9. Establish a procedure whereby disputes with purchasers concerning the shortage, omission or replacement of any material or component which cannot be resolved on a mutually agreeable basis within forty (40) business days after the receipt of a complaint from a purchaser under the procedures described in subparagraphs 7 and 8 above, are promptly referred to and reviewed by an officer of Insilco Corporation. Such officer shall: be an officer who is not responsible for the day-to-day operation of Miles Homes, Inc. or for the day-to-day

tiously settle each dispute no later than thirty (30) business days from the date the dispute is received by the officer; and, notify the purchaser promptly, and in writing, of the disposition of the dispute;

10. Specifically perform without unreasonable delay and in good faith in each instance where a complaint or dispute is resolved in favor of a purchaser through the procedures in Part V of the order;

11. Use good faith efforts to meet each and every delivery date scheduled under Part V of the order, provided that in the event respondents are unable to make such deliveries as required due to intervening circumstances beyond their control such as labor strike, supplier failure to deliver, or unsuitable weather conditions, then respondents' obligation to deliver shall be suspended for the duration of such intervening circumstance and purchasers shall be notified in writing of the reason or reasons why delivery will be delayed.

Provided, however, in the event respondents adopt open-end credit plans under Section 226.7 of Regulation Z, respondents may petition the Commission to modify Part V of this order to make the time periods consistent with the time periods required under Sections 226.7 and 226.14 of Regulation Z (12 CFR 226).

VI

It is ordered, That respondents Insilco Corporation, a corporation, and Miles Homes, Inc., a corporation, and respondents' successors, assigns, officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of or arrangement for consumer credit, or any advertisement to aid, promote or assist, directly or indirectly any extension of or arrangement for consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act 15 U.S.C. 1601-65 (1970), *as amended*, 15 U.S.C. 1601-65(a) (Supp. IV) 1974, do forthwith cease and desist from:

1. Failing in any consumer credit transaction to disclose the price at which respondents, in the regular course of business, offer to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by Section 226.8(c)(1) of Regulation Z.

2. Failing to disclose the amount of any downpayment in money made in connection with any consumer credit transaction and to describe that amount as the "cash downpayment," as required by Section 226.8(c)(2) of Regulation Z.

3. Failing to disclose the "unpaid balance of cash price" to describe

the difference between the "cash price" and the "cash downpayment," as required by Section 226.8(c)(3) of Regulation Z.

4. Failing to disclose the "unpaid balance" to describe the sum of the "unpaid balance of cash price" and all other charges included in the amount financed but which are not part of the finance charge, as required by Section 226.8(c)(5) of Regulation Z.

5. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

6. Failing to disclose the sum of all charges made to the customer which are required by Section 226.4 of Regulation Z to be included in the finance charge, and to describe that sum as the "finance charge," as required by Section 226.8(c)(8)(i) of Regulation Z.

7. Failing to disclose accurately the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by Section 226.8(c)(ii) of Regulation Z.

8. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

9. Failing to disclose the number, amount, and due dates or period of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

10. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe the sum as the "total payments" as required by Section 226.8(b)(3) of Regulation Z.

11. Stating, utilizing, or placing any information or explanation not required or authorized by Regulation Z in a manner which might tend to mislead or confuse the customer or contradict, obscure, or detract attention from the information required by Regulation Z to be disclosed, as required by Section 226.6(c) of Regulation Z.

12. Failing to give notice to each customer of the right to rescind the credit transaction by furnishing the customer with two copies of the "Notice to customers required by Federal law," set forth in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z, and in the required type size set out in Section 226.9(b) of Regulation Z.

13. Failing to delay the making of deliveries to the residence of the customer until after the rescission period has expired, as required by Section 226.9(c)(4) of Regulation Z.

rescission," set forth in Section 226.9(d) of Regulation Z, in the manner and form prescribed by Section 226.9(b) of Regulation Z.

15. Failing to furnish customers with disclosures prescribed by Section 226.8 of Regulation Z at the time and in the manner and form required by that section.

16. Failing to furnish customers with a duplicate of the instrument or a statement by which the disclosures prescribed by Section 226.8 of Regulation Z are made, and on which the creditor is identified, as required by Section 226.8(a) of Regulation Z.

17. Failing to disclose a description or identification of the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

18. Representing in any advertisement, directly or by implication, that no downpayment is required, the amount of the downpayment or the amount of any instalment payment, either in dollars or as a percentage, the dollar amount of any finance charge, the number of instalments or the period of repayment, or that there is no charge for credit, unless all of the following items are clearly and conspicuously stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

- (a) the cash price;
- (b) the amount of the downpayment required or that no downpayment is required, as applicable;
- (c) the number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (d) the amount of the finance charge expressed as an equal percentage rate; and
- (e) the deferred payment price if applicable.

Provided, that respondents may make disclosures for open-end credit under Section 226.7 of Regulation Z without regard to any provisions required under Section 226.8 above of Regulation Z.

19. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z at the time and in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

VII

It is further ordered, That respondents in connection with the sale or delivery of pre-cut housing, packages, homes or housing shall:

1. Furnish each purchaser of respondents' pre-cut housing or

packages with an itemized statement of account at least once every six months which sets forth to such date all purchases, credits, payments credited to interest, payments credited to principal, and current balance owed to respondents.

2. Secure from each purchaser of respondents' pre-cut housing a written acknowledgment which shall state the following information:

(a) That the disclosures referred to in Part III of this order were received.

(b) The date on which the disclosures referred to in Part III of this order were received.

3. Notify each existing and future purchaser of respondents' obligations under Part V of this order.

VIII

It is further ordered, That respondents shall maintain and, upon reasonable notice, provide access to the Commission or its representatives for the purpose of inspection and copying, for a period of three years from the date each complaint is received:

1. All complaints made to respondents by purchasers concerning the shortage, omission, replacement or delivery of materials, components and packages.

2. All correspondence and documents regarding complaints, and disputes made by purchasers concerning the shortage, omission, replacement or delivery of materials, components and packages, including all records concerning the disposition of such complaints and disputes.

IX

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders, regulations, or building codes or directives of any kind issued or required by any governmental agency, or any other state or local laws, or act as a defense to actions instituted by municipal or state regulatory agencies, or be construed as a waiver of legal rights either party may have which vary from state to state.

X

It is further ordered, That respondents shall within thirty (30) days of the effective date of this order distribute a copy of the order to:

engaged in the advertising, offering for sale, sale or delivery of pre-cut housing, packages, homes or housing.

2. All personnel of the respondent corporations and of the operating divisions and subsidiaries of all of respondents' corporations who are engaged or who may hereafter become engaged in the consummation of any extension of consumer credit, and in the advertising, offering for sale, sale or delivery of respondents' pre-cut housing, packages, homes, or housing and that in connection with such distribution, respondents shall secure a signed statement from each person acknowledging receipt of a copy of this order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Modifying Order

91 F.T.C.

IN THE MATTER OF

XEROX CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8909. Final Order, July 29, 1975 — Modifying Order, April 20, 1978*

This order modifies an order to cease and desist issued July 29, 1975, 40 FR 42203, 86 F.T.C. 364, by deleting the words "*in camera*" from Paragraph IV C.(9) thereof.

ORDER MODIFYING ORDER TO CEASE AND DESIST

On July 29, 1975, the Federal Trade Commission issued a consent order in the above-referenced matter. 86 F.T.C. 364 (1975).

Section 5(b) of the Federal Trade Commission Act provides that the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by it, whenever in the opinion of the Commission conditions of fact or law have so changed as to require such action or if the public interest shall so require.

On January 19, 1978, the Commission issued its order to respondent to show cause why the Commission should not alter or modify the July 29, 1975 order so as to delete the words "*in camera*" from Paragraph IV C.(9) thereof.

On March 6, 1978, respondent filed an answer that did not oppose the proposed modification. Section 3.72(b)(3) of the Commission's Rules provides that if an order to show cause is not opposed the Commission may, in its discretion, decide the matter on the basis of that order and the answer thereto.

Accordingly, *it is ordered*, That the matter be reopened, and that Paragraph IV C.(9) of the order of July 29, 1975, be modified to read as follows:

If Xerox grants a license under *order patents* either pursuant to the terms of Paragraph II of this order or otherwise, the license agreement shall contain the irrevocable covenant of the licensee to license such of its *patents* as are licensed to Xerox on reasonable terms and conditions (including the license to itself of its licensees' *patents* or *improvement patents*) to any other person who is entitled to a license from Xerox pursuant to Paragraph II of this order, Provided That such license need not be effective prior to the effective date of the licensee's license to Xerox. Within 60 days following execution of a license agreement subject to this Paragraph IV C.(9) Xerox shall submit to