

IN THE MATTER OF
CHRYSLER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9072. Complaint, Feb. 10, 1976—Decision, Feb. 10, 1981*

This consent order requires, among other things, a Highland Park, Mich. motor vehicle manufacturer (Chrysler) and its Troy, Mich. credit corporation subsidiary (Chrysler Credit) to timely provide dealerships with a prescribed system, together with a standardized form, to be used in calculating and recording payment of surpluses realized on repossessed vehicles; and to make the "Repossessed Vehicle Surplus/Deficiency system" a part of Chrysler's Dealer Uniform Accounting System Manual. Respondents are required to conduct training programs designed to familiarize dealers with their obligations in handling repossessions; and follow up the programs with a series of audits to verify that surpluses are being correctly calculated and paid. The order further requires that Chrysler take specified measures with respect to repayment of surpluses realized by Chrysler-owned dealerships from May 1, 1974; send bulletins to dealers urging them to pay surpluses on vehicles returned to them by Chrysler Credit since May 1, 1974; and notify each customer whose vehicle is repossessed of the nature and duration of customer's rights to redemption or refund of surpluses. Additionally, Chrysler Credit is required to develop revised retail installment contract forms that include a clear, concise statement advising customers that in the event of repossession, they are entitled to a refund of any surplus realized from the resale of the vehicle.

Appearances

For the Commission: *Dean Fournier, Bruce D. Carter, Sharon S. Armstrong, David Bricklin and Stevan Phillips.*

For the respondents: *Clifford L. Johnson, House Counsel, Chrysler Corporation, Detroit, Michigan, A.L. Ronquillo, House Counsel, Chrysler Credit Corporation, Troy, Michigan and William A. Krohley, Kelley Drye & Warren, New York City.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the above respondents* with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having

* Complaint previously published at 97 F.T.C. 107.

In the original form of the complaint, Chrysler Motors Corporation was a named party and Chrysler Corporation was not. Upon advice that Chrysler Corporation had succeeded Chrysler Motors pursuant to a merger effective December 31, 1975, the complaint was amended by mutual consent on June 14, 1976 to substitute Chrysler Corporation as a party respondent in lieu of Chrysler Motors.

been served with a copy of that complaint together with a proposed form of order; and

Respondents Chrysler Corporation and Chrysler Credit Corporation, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, admissions by these respondents as to the Commission's jurisdiction, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and other provisions in accordance with the Commission's Rules; and

The Secretary of the Commission having thereafter, in accordance with Section 3.25(c) of its Rules, withdrawn this matter from adjudication as to Chrysler Corporation and Chrysler Credit Corporation; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed pursuant to Section 3.25(f) of its Rules; now, in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and enters the following order:

1. Respondent Chrysler Corporation is a Delaware corporation with its office and principal place of business at 12000 Lynn Townsend Drive, Highland Park, Michigan.
2. Respondent Chrysler Credit Corporation is a Delaware Corporation with its office and principal place of business at 900 Tower Drive, Troy, Michigan.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as to Chrysler Corporation and Chrysler Credit Corporation, and of these respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for purposes of this Order the following definitions shall apply:

A. "*Chrysler Respondents*" means Chrysler Corporation ("Chrysler") and Chrysler Credit Corporation ("Chrysler Credit"). It shall not refer to Aurora Chrysler-Plymouth, Inc. References to either or

both of the Chrysler respondents shall include their successors, assignees of any of their business operations subject to this Order, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or other forms of business organization through which they may act in the United States. *Provided, however,* that references to Chrysler shall not include Chrysler Credit, and references to Chrysler Credit shall not include Chrysler, and references to either or both of the Chrysler respondents shall not include Dealerships.

B. "*Vehicle*" means a passenger car or a truck with a gross Vehicle weight less than 26,000 pounds (11,794 kilograms).

C. "*Dealer*" or "*Dealership*" means a corporation, partnership or proprietorship that is a Chrysler, Plymouth or Dodge Vehicle Dealership pursuant to a Direct Dealer Agreement with Chrysler or any subsequent comparable agreement but excludes truck Dealerships whose principal business is the sale of trucks with a gross Vehicle weight of more than 8,000 pounds (3,629 kilograms).

D. "*Retail Sale*" means the installment credit sale of a Vehicle, other than for purposes of resale (e.g., sale to Dealerships or wholesalers), lease or rental, to a purchaser who is not a fleet purchaser.

E. "*Repurchase Financing*" means the financing of a Retail Sale subject to an agreement between a finance company or institution and a Dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the Dealership is obligated to pay off the outstanding obligation to the finance company or institution after receiving a transfer of the repossessed Vehicle.

F. "*Repurchase Dealer*" or "*Repurchase Dealership*" means a Dealership that engages more than occasionally in Repurchase Financing transactions.

G. "*Equity Dealership*" means a Dealership in which Chrysler holds more than 50 percent of the voting stock or is entitled to elect more than 50 percent of the board of directors.

H. "*Liquidating Dealership*" means an Equity Dealership whose business has been or is being wound up by Chrysler or under Chrysler's supervision. It shall not mean a Dealership not previously an Equity Dealership whose assets come into the possession or control of either of the Chrysler Respondents by virtue of default on or compromise of a debt obligation.

I. "*Financing Customer*" means a purchaser of a Vehicle from a Dealership by means of a Retail Sale.

J. "*Disposition*" or "*Dispose*" refers to a Dealership's sale or

initial lease of a repossessed Vehicle previously sold by that Dealership and returned to it by or for a finance company or institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.*, it does not include a sale or lease to the finance company or institution, the Dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed Vehicle. Disposition or Dispose shall not refer to the repurchase of a repossessed Vehicle by a Dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

K. "*Proceeds*" means whatever is received upon Disposition in exchange for the repossessed Vehicle, but exclusive of sales taxes, service contracts or separately priced warranties.

L. "*Allowable Expenses*" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for Disposition and Disposing of the Vehicle, and not otherwise reimbursed to the Dealership. They are limited to the following charges (if allowable under applicable state law):

1. expenses paid to others, who are not employees of the Dealership or of the finance company or institution that financed the Vehicle, for repossessing, towing or transporting the Vehicle;
2. filing fees, court costs, cost of bonds, fees paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of the Dealership or the finance company or institution for obtaining possession of or title to the Vehicle;
3. fees paid to others to obtain title to the Vehicle, to obtain legally required inspection of the Vehicle, or to register the Vehicle;
4. expenses paid to others for storage (excluding a charge for storage at facilities operated by the Dealership);
5. labor and associated parts and supplies furnished by the Dealership for the repair, reconditioning or maintenance of the Vehicle in preparation for Disposition, computed at Dealership cost (as defined in the Initial Compliance Report);
6. amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the Vehicle in preparation for Disposition;
7. cost of sales commissions paid for actual participation in the Disposition of the particular Vehicle, computed at a rate no higher than for a similar nonrepossessed Vehicle and excluding portions of

commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

8. expenses of advertisements that specifically mention the particular Vehicle, including a proportional share of any advertisement that also mentions other Vehicles;

9. auctioneer expenses and fees paid;

10. amounts paid to others for communication (including telephone calls, postage, and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning and Disposition of the Vehicle; and

11. amounts paid to insure the particular Vehicle while holding it.

M. "*Contract Balance*" means (1) the unpaid balance as of the date of repossession less unearned finance charge and insurance premium rebates deducted by the finance company or institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession.

N. "*Surplus*" means the excess of (1) the Proceeds plus applicable insurance or warranty reimbursements received by the Dealership or finance company or institution plus any other applicable rebates or credits not deducted by the finance company or institution, over (2) the Contract Balance, Allowable Expenses, and amounts paid to discharge any security interest provided for by law.

O. "*Pay*" or "*Paid*," in reference to payment of a Surplus, means a reasonable attempt to pay in accordance with the standards set forth in the Initial Compliance Report.

II.

It is further ordered, That Chrysler shall provide to all existing Dealerships within sixty (60) days of the effective date of this Order, and to each new Dealership within thirty (30) days of entering into a Direct Dealer Agreement, a system for determining the existence of Surpluses and for accounting for Surpluses and for any deficiencies sought (hereinafter the "Reposessed Vehicle Surplus/Deficiency system").

A. The Direct Dealer Agreements presently in effect between Chrysler and Dealerships provide that the Dealership "will use and keep accurate and current at all times a uniform accounting system and will follow accounting practices, both satisfactory to Chrysler". Chrysler shall make the Reposessed Vehicle Surplus/Deficiency system part of the uniform accounting system and accounting practices referred to in the Direct Dealer Agreements and any

subsequent comparable agreements. So long as the Direct Dealer Agreements or subsequent comparable agreements remain in effect, Chrysler shall not change them so as to affect the status of the Repossessed Vehicle Surplus/Deficiency system without sixty (60) days notice to the Commission and shall not change those agreements so as to affect the status of the Repossessed Vehicle Surplus/Deficiency system if the Commission, within that time period, advises Chrysler that it objects to the change.

B. The Repossessed Vehicle Surplus/Deficiency system shall include a standardized form ("Record of Repossessed Vehicle Sale") for Dealerships' use in determining the existence and amount of Surpluses and of any deficiencies sought, and in recording payment of each Surplus in accordance with the provisions of Paragraph II.C below.

C. The Repossessed Vehicle Surplus/Deficiency system shall contain provisions that:

1. Each Surplus is to be determined according to Paragraphs I.J through I.N of this Order and Paid to the defaulting customer within forty-five (45) days of Disposition.

2. Expenses other than Allowable Expenses are not to be deducted in calculating Surpluses and deficiencies sought.

3. Dispositions are to be commercially reasonable, which in practice means that the Dealership should make the same efforts to Dispose of the repossessed Vehicle at the best available price as would be made for a comparable used Vehicle except that a Dealership is not required to offer a warranty without extra charge even though such warranties are provided on other used Vehicles.

4. If any rebate owing to the defaulting customer's account has not been received at the time the Record of Repossessed Vehicle Sale is completed, such rebate is to be applied for promptly.

5. If any rebate is received after completion of the Record of Repossessed Vehicle Sale, any Surplus or deficiency sought is to be redetermined, a new or amended Record of Repossessed Vehicle Sale is to be prepared, and any remaining Surplus Paid within forty-five (45) days of Disposition or within ten (10) days of receiving the rebate, whichever is later.

6. The Record of Repossessed Vehicle Sale is to be prepared by the Dealership for each Disposition of a repossessed Vehicle and:

- a. is to set forth the calculation of each Surplus, and of each deficiency sought;

- b. is to be certified by a person authorized to sign retail installment contracts on behalf of the Dealership;

c. a copy of the form is to be sent with the Surplus payment to each defaulting customer to whom a Surplus is Paid and to each defaulting customer from whom a deficiency is sought; and

d. is to be retained by the Dealership, together with all relevant books and records, for at least two (2) years from the date of Disposition.

7. Dealerships are not to seek or obtain waivers of Surplus or redemption rights from Financing Customers, except in the precise manner and circumstances contemplated by the applicable version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless the Dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the Dealer shall not represent that it thereby proposes to forego its right to a deficiency judgment unless it intends to seek such a judgment should the waiver not be given.

8. The Dealership may seek a deficiency only to the extent allowed by state law.

9. The Dealership shall, in accordance with state law, permit redemption of a repossessed Vehicle at any time prior to a binding agreement for its Disposition, except as may otherwise be provided by the laws of the individual states.

D. The Repossessed Vehicle Surplus/Deficiency system shall state that:

1. The Repossessed Vehicle Surplus/Deficiency system is part of the uniform accounting system and accounting practices referred to in Paragraph 9 of the Direct Dealer Agreement between Chrysler and the Dealership.

2. Failure to adhere to the standards of Paragraph II.C or to account properly to customers for Surpluses may expose the Dealership to legal action by the Federal Trade Commission and/or consumers.

E. Chrysler shall give the Federal Trade Commission thirty (30) days advance notice of any change in its manner and form of carrying out the requirements of Part II of this Order.

F. The Repossessed Vehicle Surplus/Deficiency system shall not apply to sales of repossessed Vehicles subsequent to judicial sales in Louisiana.

G. The Federal Trade Commission has proposed a Trade Regulation Rule that defines duties involved in disposing of a repossessed

Vehicle differently from the method described in Subparagraph II.C.3 above. Said Subparagraph is not to be considered a ratification or acceptance by the Commission of that method of Disposition except for purposes of this Order.

III.

A. *It is further ordered, That Chrysler:*

1. Shall, in the manner and in accordance with the schedule set forth in the Initial Compliance Report, develop and provide assistance and detailed educational materials to each Repurchase Dealership to carry out the purposes of Part II of this Order and of Part VI (insofar as it relates to reinstatement and redemption rights).

2. Shall, commencing no later than one hundred eighty (180) days after the effective date of this Order, include detailed information on all pertinent aspects of Part II of this Order and Part VI (insofar as it relates to reinstatement and redemption rights) in the "Dealership Accounting Conference" and in all comparable successor courses of instruction, and in all courses and training materials dealing with repossession accounting or the rights and duties of the parties with respect to Surpluses, deficiencies, redemption, and reinstatement which may be made available by Chrysler to Dealerships.

3. Shall provide no instructions to Dealerships inconsistent with this Order.

4. Shall, within ninety (90) days of the effective date of this Order, send to each Repurchase Dealership a letter which contains information to the following effect, with nothing to the contrary or in mitigation thereof:

a. state law requires that any surplus generated on the disposition of a repossessed Vehicle must be returned to the defaulting customer;

b. the duty to pay surpluses has existed for many years and the company urges Dealerships to pay all Surpluses on repossessed Vehicles disposed of prior to the date of the letter, as well as those arising later;

c. except in California and Louisiana, state law provides that if a Dealership does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price";

d. if a customer to whom a Surplus is owed has been reported by

the Dealership or its agent to a credit reporting agency as owing a deficiency, the Dealership should promptly advise such agency of the correct facts; and

e. the Federal Trade Commission has issued complaints against three automobile Dealerships charging that their failure to pay past Surpluses violated federal law.

5. Shall include in the above mailing a copy of this Order and of the Commission's published Analysis of Consent Order, except those portions of the Analysis referring to the Order as a "proposed" Order open to public comment.

6. Shall, within ninety (90) days of the effective date of this Order, develop and provide to all Marketing Investment Department branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this Order, as described in the Initial Compliance Report.

7. Shall provide to authorized representatives of the Federal Trade Commission upon thirty (30) days written notice a set of mailing labels addressed to an appropriate officer or manager of each Dealership, together with a list containing the same information and a certification that the labels and list are complete and accurate. These materials need be provided only once and are to be used by the Commission solely in connection with the service on Dealerships of any final order issued in Docket Nos. 9072, 9073 or 9074, and related notices.

B. It is further ordered, That Chrysler Credit:

1. Shall, within one hundred five (105) days of the effective date of this Order, send to each Dealership to which Chrysler Credit has returned a Vehicle, pursuant to a repurchase agreement, that was repossessed since May 1, 1974:

a. Chrysler Credit's endorsement of the statements in Subparagraphs III.A.4.a-e above; and

b. a list containing the following data for each Chrysler Credit repossession returned to the Dealership between May 1, 1974 and the effective date of this Order: name, address and account number of the Financing Customer, net payoff and date of repossession of the Vehicle.

2. Shall, within ninety (90) days of the effective date of this Order, develop and provide to all Chrysler Credit branch personnel involved in Repurchase Financing transactions (other than clerical employees) educational materials and training to carry out the

purposes of Parts II and VI of this Order, as described in the Initial Compliance Report.

3. Shall provide no instructions to Repurchase Dealerships inconsistent with this Order.

IV.

It is further ordered, That:

A. To determine whether Dealerships are correctly calculating and Paying Surpluses after implementation of Part II of this Order, Chrysler shall conduct or cause to be conducted a series of audits of Repurchase Dealers as described below and in the Initial Compliance Report.

1. Four successive twelve-month periods shall be audited, as further described in the Initial Compliance Report.

2. One hundred ten (110) Repurchase Dealers and not more than three thousand (3,000) of their Repurchase Financing repossessions per twelve-month audit period shall be audited, selected pursuant to procedures established by the staff of the Federal Trade Commission and set forth in the Initial Compliance Report, plus not more than sixty (60) Dealerships found in the preceding twelve-months' audit to require a further audit as set forth in the Initial Compliance Report.

3. The audit process shall consist of examination of the prescribed number of Repurchase Financing repossessions with resort to relevant books and records as set forth in the Initial Compliance Report. The audit shall include, for each Dealership audited, the preparation of a report ("Dealer Report") as described in the Initial Compliance Report. The Dealer Report shall contain a certification that it is accurate to the best of the knowledge of the person who performed the audit, and that such person has informed the Dealership in writing that it should retain the relevant books and records relating to any non-complying transaction for at least three (3) years after the audit. For each non-complying transaction, the person performing the audit shall attach to the Dealer Report (a) a Transactional Report Form completed in connection with the audit as described in the Initial Compliance Report, and (b) any worksheet he or she prepares in connection with such transaction.

B. Dealer Reports and documents prepared in the course of an audit pursuant to Paragraph IV.A, by the person who performed the audit, shall be maintained by Chrysler for four (4) years following the end of the twelve-month audit period for which they were prepared.

C. Chrysler shall file with the Commission an "Annual Audit Summary" within one (1) year after the end of each twelve-month audit period described in Subparagraph IV.A.1; *provided, however*, that the filing deadline for any such summary otherwise due between the 10th and 31st of December shall instead be January 31 of the following year. Each Annual Audit Summary shall contain the following information in aggregate form:

1. the period audited, the number of Repurchase Dealers audited, and the total number of Repurchase Financing repossessions returned to those dealerships during that period;
2. the number of Repurchase Financing repossessions audited and, with respect to those repossessions:

- a. the number and total dollar amount of Surpluses properly calculated and Paid by the Dealers, and the number and total dollar amount of those Surpluses as to which the Dealers' attempts to pay were unsuccessful;

- b. the number and total dollar amount of Surpluses which were properly calculated by the Dealers but not Paid, and the number of Dealerships involved;

- c. the number of Surpluses not properly calculated by the Dealers, the number of Dealerships involved, and the total dollar amount which was not Paid;

- d. the number of deficiencies sought in an amount in excess of the amount permitted by the Repossessed Vehicle Surplus/Deficiency system, the number of Dealerships involved, and the total excess dollar amount sought;

- e. the number of repossession transactions in which a waiver of the customer's Surplus rights was sought or obtained, and the number of Dealerships involved;

- f. the number of repossession transactions in which one or more entries on the Record of Repossessed Vehicle Sale were not substantiated by information contained in Dealership books and records and (i) as a result thereof the person performing the audit was unable to determine whether or not the disposition resulted in a Surplus or the correct amount thereof in accordance with the Repossessed Vehicle Surplus/Deficiency system, or (ii) the Dealership sought a deficiency in excess of the amount substantiated by information contained in its books and records; and the number of Dealerships involved;

- g. the number of repossessed Vehicles disposed of other than to an independent third party, and the number of Dealerships involved;

- h. the number of repossessed Vehicles sold at wholesale; and

3. a statement describing the action(s) taken by Chrysler, although none is required, to correct the non-compliance of Dealerships discovered during the audit to have failed to follow the Repossessed Vehicle Surplus/Deficiency system in calculating or Paying Surpluses or in seeking deficiencies.

D. The audits described in Subparagraph IV.A shall be performed by qualified persons as defined in the Initial Compliance Report. The following conditions shall be observed:

1. The Chrysler respondents shall not inform Dealerships or other third parties of the details of the random selection process established by the staff of the Federal Trade Commission, except to the extent described in this Order and in the Initial Compliance Report.

2. The Chrysler respondents shall not inform Dealerships or other third parties (excluding third parties engaged to participate in the audit process) of the details of the audit procedure, the audit periods, or the identity of Dealerships selected for audit, except to the extent described in this Order and in the Initial Compliance Report.

3. Dealerships selected for audit under this Part IV shall not be given more than ten (10) business days advance notice of the scheduled audit.

V.

It is further ordered, That:

A. Chrysler shall, as a shareholder holding a majority of the voting stock of each Equity Dealership (or as it otherwise may become entitled to elect more than 50 percent of the board of directors pursuant to any change in its relationship with Equity Dealerships), exercise all of its lawful rights for the purpose of causing the directors thereof to vote for resolutions requiring that each such Dealership:

1. within sixty (60) days of the effective date of this Order or within sixty (60) days of initiating operation as a Dealership, whichever is later, adopts and maintains the Repossessed Vehicle Surplus/Deficiency system described in Part II of this Order;

2. Pays all Surpluses with respect to repossessed Vehicles returned to the Dealership after the effective date of this Order;

3. shall not seek or obtain waivers of Surplus or redemption

rights from Financing Customers except in strict conformity with Paragraph II.C.7 of this Order; and

4. has an annual examination of its documents by a certified public accounting firm to determine whether the Dealership is following the Repossessed Vehicle Surplus/Deficiency system.

a. The first such examination after the effective date of this Order shall include an inspection of the relevant books and records and the Record of Repossessed Vehicle Sale forms (described in Part II of this Order) for all Repurchase Financing reposessions returned to the Dealership by financing institutions since January 1, 1979; *provided, however*, that such examination need not include reposessions audited pursuant to Part IV of this Order or examined for these purposes in a prior examination by a certified public accounting firm and reported to the Dealership board of directors regarding any non-compliance.

b. Subsequent examinations in succeeding years shall include an inspection of the relevant books and records and the Record of Repossessed Vehicle Sale forms (described in Part II of this Order) for all Repurchase Financing reposessions returned to the Dealership by financing institutions since the period covered by the last annual examination pursuant to Subparagraph V.A.4 and not audited pursuant to Part IV of this Order.

c. Each such examination shall be followed by a report to the Dealership board of directors regarding any non-complying transactions.

B. If any examination required by Subparagraph V.A.4 or any audit conducted under Part IV reveals that an Equity Dealership has any non-complying transaction as defined in the Initial Compliance Report which has not been corrected by the Dealership, then Chrysler shall, as a shareholder holding a majority of the voting stock of that Equity Dealership, exercise all of its lawful rights for the purpose of causing the directors thereof to institute appropriate measures to correct the non-compliance.

C. Chrysler shall (1) ascertain, for each Equity Dealership which becomes a Liquidating Dealership after the effective date of this Order, whether any unpaid Surpluses have arisen since the effective date of the Order or the period covered by the last annual audit by an independent certified public accounting firm during which repossession transactions were examined pursuant to the standards set forth in Part IV of this Order and the Initial Compliance Report, whichever is later, and (2) cause each such Surplus to be paid. *Provided*, that the provisions of Paragraphs V.A, B, and C shall

remain in effect for seventy-five (75) years from the effective date of this Order, at which time the provisions of said Paragraphs will be of no further force or effect.

D. Chrysler shall, within one hundred eighty (180) days of the effective date of this Order, with respect to repossessed Vehicles returned between May 1, 1974 and December 31, 1978 to Dealerships which are Equity Dealerships as of the effective date of this Order, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. all Surpluses have been Paid; and
2. in each instance where a defaulting customer entitled to receive a Surplus pursuant to Subparagraph V.D.1 above had been previously reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently notified of the correct facts.

E. Chrysler shall, within three hundred sixty (360) days of the effective date of this Order, with respect to repossessed Vehicles returned between May 1, 1974 and the effective date of this Order to any Liquidating Dealership which began operation as an Equity Dealership after July 30, 1978 or whose books and records, as of July 30, 1978, were located at the Kansas City, San Francisco or Troy liquidating centers or at the Dealership, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. all Surpluses have been Paid; and
2. in each instance where a defaulting customer entitled to receive a Surplus pursuant to Subparagraph V.E.1 above had been previously reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently notified of the correct facts.

VI.

It is further ordered, That Chrysler Credit:

A. Shall develop revised Chrysler Credit retail installment contract forms that include a clear, concise statement in lay language that, in the event of repossession:

1. no expenses other than reasonable expenses incurred as a direct result of repossessing (including, where permitted, attorneys' fees and court costs), holding, preparing for Disposition and Dispos-

ing of the Vehicle may be deducted from the Proceeds in determining a Surplus or deficiency; and

2. any Surplus realized on the resale or other Disposition of the Vehicle is to be Paid to the customer.

B. Shall distribute the revised retail installment contract forms to all Dealers who use Chrysler Credit installment contract forms, within one year after the Commission issues a final rule or final adjudicated order no less restrictive than the Paragraph VI.A statements concerning allowable expenses and the duty to pay surpluses. If the Commission's final rule or final adjudicated order is deemed by Chrysler Credit to be less restrictive than the said Paragraph VI.A statements, Chrysler Credit shall (1) within forty-five (45) days after written notice by Commission staff to the Secretary of Chrysler Credit that such rule or order has become final, request a reopening of this proceeding to conform the Paragraph VI.A statements to such rule or order; and (2) perform the above distribution of revised forms within one year after the Commission has acted on its request for conformance.

C. Shall, no later than twelve (12) months after the effective date of this Order, cease and desist the use of any Chrysler Credit retail installment contract form which represents that the debtor may be liable to pay a deficiency where Chrysler Credit knows or should know that it is not entitled under state or federal law to collect a deficiency.

D. Shall direct its branch offices that, commencing thirty (30) days after the distribution to a Dealership of revised Chrysler Credit retail installment contract forms pursuant to Paragraphs VI.B and/or C, they are not to purchase from that Dealership Chrysler Credit forms of retail installment contracts that are not on the revised forms. For a period of two (2) years thereafter, Chrysler Credit shall examine its branch office files at least every twelve (12) months in accordance with the procedures established in the Initial Compliance Report to determine whether prior retail installment contract forms are being used, and, if so, shall institute appropriate corrective action.

E. Shall, commencing seventy-five (75) days after the effective date of this Order, include the following information in clear lay language in a notice (which may be included in a notice of intent to repossess) sent prior to repossession to those Chrysler Credit Financing Customers to whom a notice of intent to repossess is sent:

1. the total amount past due as of the date stated in the notice,

which shall be mailed within five (5) days of the date stated in the notice;

2. in transactions where the customer is entitled under state law to reinstatement of the contract, the customer will have an absolute right to such reinstatement and to regain possession of the Vehicle by paying all past due installments and by paying such other amounts and fulfilling such other conditions as provided by law, or provided by contract and not prohibited by law;

3. that the customer will have an absolute right to redeem the Vehicle at any time prior to a binding agreement for its Disposition, except as otherwise provided by state law, and that this right can be exercised by paying the Contract Balance plus all reasonable expenses incurred as a direct result of repossessing the Vehicle (including, where permitted, attorneys' fees and court costs), holding it, and preparing it for Disposition;

4. the date prior to or interval of time during which the Vehicle will not be Disposed of;

5. that if the Vehicle is not redeemed (nor the contract reinstated) the customer will be entitled to a refund of any Surplus, and that where the Vehicle is returned to the Dealership such refund is to be made within forty-five (45) days after Disposition (the notice may also state that the refund should be made by the Dealer);

6. that failure to account for and refund a Surplus will give the customer a right to sue for the amount of the Surplus and, except in California and Louisiana, for statutory penalties as provided by state law; and

7. the statutory limitations and restrictions on the right of Chrysler Credit and the Dealership to collect a deficiency.

F. Shall, within sixty (60) days after the effective date of this Order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to each Chrysler Credit Financing Customer as soon as practicable after repossession. The post-repossession notice shall specify in clear, lay language:

1. the name, address and telephone number of the Dealership to which the Vehicle has been or will be returned for Disposition, if applicable, and the address and telephone number of the Chrysler Credit branch office to be contacted;

2. the date or interval of time within which the customer may reinstate the contract in states where the creditor is required to permit reinstatement of the contract;

3. the net amount necessary to redeem the Vehicle, and, in transactions where the customer is entitled to reinstatement, the

amount necessary to reinstate the contract, at the time the notice is sent;

4. the date or interval of time prior to which the Vehicle will not be sold;

5. that the Vehicle can be redeemed at any time prior to a binding agreement for its Disposition, except as otherwise provided by state law;

6. that under the law the only expenses which need be paid upon redemption are reasonable expenses incurred as a direct result of repossessing the Vehicle, holding it, and preparing it for Disposition; and that these may increase in amount if redemption is delayed;

7. that Chrysler Credit should be contacted for further information about reinstatement of the contract, in states where the customer is entitled to reinstatement;

8. that Chrysler Credit should be contacted for further information about redemption including the procedure for redeeming the Vehicle;

9. that if the Vehicle is not redeemed (nor the contract reinstated) the customer is entitled to a refund of any surplus, and that where the Vehicle is returned to the Dealership such refund is to be made within forty-five (45) days after Disposition (the notice may also state that the refund should be made by the Dealer);

10. that in those instances where the Vehicle is returned to the Dealership, the Dealership is to send a copy of the Record of Repossessed Vehicle Sale to each defaulting customer to whom a Surplus is Paid or from whom a deficiency is sought;

11. that failure to account for and refund a Surplus will give the customer a right to sue for the amount of the Surplus and, except in California and Louisiana, for statutory penalties as provided by state law;

12. that the customer may be liable for a deficiency or that state law restricts or prohibits Chrysler Credit and the Dealership from collecting a deficiency (the notice is to include the applicable language only); and

13. that the customer has the right to direct the Dealership to apply for a rebate of any unearned premiums payable by any insurance carrier or agent from whom the Dealership has, on behalf of the customer, obtained a credit life, accident and health, or collision insurance policy.

G. Shall, for a period of two (2) years commencing seventy-five (75) days after the effective date of this Order, examine its branch files at least once every twelve (12) months in accordance with the

procedures established in the Initial Compliance Report to determine whether the notices required by Paragraphs VI.E and F have been and are being sent, and shall institute appropriate actions to assure that this procedure is adhered to.

H. Shall take no action to obtain or attempt to obtain or bring about any waiver of a Financing Customer's redemption or Surplus rights, except in the precise manner and circumstances contemplated by the applicable version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless the secured party intends to retain the collateral for its own use for the immediate future rather than to (1) resell it in the ordinary course of business or (2) return it to another party pursuant to a repurchase agreement. If a waiver is sought, Chrysler Credit shall not represent that it thereby proposes to forego its right to a deficiency judgment unless it intends to seek such a judgment should the waiver not be given.

I. Shall instruct its branch office personnel involved in Repurchase Financing transactions to cease and desist from making any representation, directly or by implication, contrary to the representations required by Paragraphs VI.E and F of this Order, and shall within sixty (60) days of the effective date of this Order establish procedures which reasonably assure strict adherence by branch personnel to these instructions.

J. Shall, within twelve (12) months after the effective date of this Order, revise all pertinent Chrysler Credit forms (including but not limited to repurchase agreement forms, form letters, and notices) and internal written procedures to be consistent with the provisions of this Order, as described in the Initial Compliance Report.

VII.

It is further ordered, That:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, finance companies or institutions, or Vehicle Dealerships than a provision or provisions of this Order relative to (1) the disposition of repossessed Vehicles, (2) the determination, calculation or communication of the existence of or the amount of Surpluses or deficiencies, including waivers of Surplus rights, or the time or manner of paying or accounting for Surpluses or deficiencies, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less

restrictive standards shall, on the effective date of the Rule, supersede and replace the corresponding provision(s) of this Order. The enumeration of the subject matter contained in clauses (1), (2) and (3) of this Paragraph is exclusive. *Provided, however*, that a Chrysler Respondent shall advise the Commission of its intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this Order thirty (30) days in advance of reliance thereon. *Provided further* that this Paragraph shall not be construed as exempting the Chrysler Respondents from any Trade Regulation Rule, or as limiting in any way their legal right or standing to challenge or otherwise contest any Trade Regulation Rule.

B. In the event any of the proceedings bearing Docket Nos. 9072, 9073, or 9074 results in a final adjudicated or consent order applying standards less restrictive on any automobile manufacturer, finance company, or Vehicle Dealership than a provision or provisions of this Order relative to:

1. the disposition of repossessed Vehicles;
2. the determination, calculation or communication of the existence of or the amount of Surpluses or deficiencies, including waivers of Surplus rights, or the time or manner of paying or accounting for Surpluses or deficiencies; or
3. the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem);

then the Commission shall, within one hundred twenty (120) days of a Chrysler Respondent's request pursuant to Section 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this Order and/or other relief, as necessary and appropriate, to conform this Order to such less restrictive standards applied in the other order(s). The enumeration of the subject matter contained in clauses B.1, 2, and 3 of this Paragraph is exclusive.

C. In the event a Chrysler Respondent is of the opinion that changed conditions of law or fact require that this Order be altered, modified, or set aside, or that the public interest so requires, the Chrysler Respondent may, pursuant to Section 2.51 of the Commission's Rules of Practice, file a request for reopening of this proceeding for that purpose.

VIII.

It is further ordered, That:

A. Each Chrysler Respondent shall, as described in the Initial Compliance Report, maintain complete business records relative to the manner and form of its compliance with this Order and shall retain all such records for at least three (3) years, and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission. Except as provided in Paragraph III.A.7 of this Order, respondents will disclose the identity or identities of any individual Dealership or Dealerships to Commission representatives only upon service of a civil investigative demand issued under Section 2.7 of the Rules of Practice of the Federal Trade Commission.

B. Each of the Chrysler Respondents shall, within one hundred eighty (180) days after the effective date of this Order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this Order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Chrysler shall, within four (4) weeks of the effective date of this Order, distribute a copy of this Order to its U.S. Automotive Sales Division, to each Zone Manager, and to its Marketing Investment Department and each of its branch offices. Chrysler Credit shall, within the same time frame, distribute a copy of this Order to each of its branch offices.

D. Each of the Chrysler Respondents shall notify the Commission at least thirty (30) days prior to any corporate change which may reasonably be expected to affect compliance obligations arising out of this Order such as those dissolutions, assignments or sales resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change which may reasonably be expected to affect compliance with this Order. Chrysler shall notify the Commission at least thirty (30) days prior to effecting any change in its program for investing in Equity Dealerships, which may reasonably be expected to affect compliance with this Order.

Interlocutory Order

IN THE MATTER OF

KELLOGG COMPANY, ET AL.

Docket 8883. Interlocutory Order, Feb. 13, 1981

Denial of respondent's motions seeking disqualification of Chairman Pertschuk respecting issues outside the scope of his prior recusal.

ORDER

On July 21, 1980, respondent Kellogg Company ("Kellogg") filed a motion requesting Chairman Pertschuk to disqualify himself from all further participation in any aspect of this case or, in the alternative, that the Commission direct his disqualification. On August 5, 1980, respondent General Mills, Inc. ("General Mills") likewise moved to disqualify the Chairman. On September 22, 1980, Chairman Pertschuk filed a memorandum declining to disqualify himself and referring the matter to the full Commission for consideration of the alternative requests of Kellogg and General Mills that the Commission direct his disqualification. Chairman Pertschuk's response was placed on the public record and served on respondents.¹ For the reasons stated in the Chairman's September 22, 1980, memorandum, and the additional reasons discussed below, the alternative requests of Kellogg and General Mills are denied.

I.

Kellogg contends that "a decisionmaker cannot legally recuse himself from part of an adjudicative proceeding, while purporting to reserve to himself the right to continue presiding over the remainder of that proceeding." (Kellogg Motion at 3.) In support, Kellogg cites the same authorities and rationales as those it advanced in connection with its earlier request that Judge Berman be disqualified from presiding over the proceedings on the merits of the Commission's complaint.²

We cannot agree with Kellogg that the Chairman's recusal from the proceedings concerning Judge Hinkes' retirement mandates his disqualification from the proceedings on the merits. Each of the

¹ Because Chairman Pertschuk has himself referred the alternative requests to the Commission for decision without his participation, we need not consider whether, absent such a referral, the Commission would have power to disqualify one of its members over that member's objection.

² See Memorandum In Support of Motion of Respondent Kellogg Company to Disqualify Administrative Law Judge or, In the Alternative, for Related Discovery (Feb. 1, 1980); Memorandum of Respondent Kellogg Company in Reply to Complaint Counsel's Answer to Motion to Disqualify Administrative Law Judge (Feb. 11, 1980); Memorandum of Respondent Kellogg Company to the Commission In Support of Its Motion to Disqualify Administrative Law Judge or, In the Alternative, For Related Discovery (Feb. 20, 1980).