

Complaint

IN THE MATTER OF

QUICKEN LOANS INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 615(A)
OF THE FAIR CREDIT REPORTING ACT

*Docket 9304; File No. 0223103**Complaint, November 5, 2002--Decision, April 8, 2003*

This consent order addresses allegations that Respondent Quicken Loans violated Section 615(a) of the Fair Credit Reporting Act ("FCRA") and Section 5 of the Federal Trade Commission Act. The consent order, among other things, requires the respondent – whenever it takes adverse action with respect to a consumer's application for credit, based either wholly or partly on information in a consumer report – to provide the consumer with a notice that complies with Section 615(a) of the FCRA. The order also provides that the Commission will not view the respondent's failure to grant an online request for preapproval as an adverse action if, among other things, (1) the respondent clearly and conspicuously discloses, in close proximity to the preapproval offer, that preapproval may be granted online or offline; and (2) if the respondent determines that it cannot grant preapproval online because it needs additional information, it notifies the consumer (a) that the request for preapproval has not been denied, but rather that the respondent needs additional information from the consumer, and (b) that if the consumer submits the additional information, the respondent will determine whether to grant the request and will communicate the decision to the consumer.

Participants

For the Commission: *Thomas E. Kane, Sandra Farrington, Bradley H. Blower, Joel Winston, Margaret Patterson, and Susan Braman.*

For the Respondent: *Jonathan D. Jerison, Thomas M. Hefferon, and Jeremiah S. Buckley, Goodwin Procter LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Quicken Loans Inc., a corporation ("respondent"), has violated provisions of the Federal Trade Commission Act, 15 U.S.C. § 41

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et seq., and the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Quicken Loans Inc. is a Michigan corporation, with its principal place of business in Livonia, Michigan.
2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent offered loans to consumers. Over approximately a one-year period, respondent maintained an Internet web site at which it provided information about its mortgage loans to "consumers," as that term is defined in Section 603(c) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(c). Respondent offered approximately 35 different loan products on its website ("online loan products") for which consumers might qualify. In addition, respondent offered approximately 65 loan products that could only be obtained offline. On its website, respondent invited consumers to submit information, such as their income and assets, and the loan amount, down payment and type of loan sought.
4. During the online application process, respondent invited consumers to request that respondent either "prequalify" the consumer for a loan based solely on information the consumer entered, or "preapprove" the consumer for a loan based on the consumer's consumer report as well as the consumer-supplied information. In selecting the preapproval option, consumers were required to click a radio button next to the statement "Order my credit report and use it to preapprove me for a loan." Through these means, respondent communicated the message that by selecting the preapproval option, consumers were filing applications for preapproval of a loan, as "application" is defined in Section 202.2(f) of Regulation B, 12 C.F.R. § 202.2(f).
5. For those consumers who requested preapproval, respondent obtained "consumer reports," as that term is defined in Section

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603(d) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(d), from “consumer reporting agencies,” as that term is defined in Section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), and used the consumer reports among other information to evaluate the consumers’ creditworthiness for any of its online loan products.

6. For those consumers whom respondent preapproved for one of its online loan products, respondent provided an online preapproval letter containing the specific terms (*e.g.*, loan amount, interest rate, points, and APR) of the loans for which the consumers were preapproved.

7. Those consumers whom respondent did not preapprove for one of its online loan products received an online advisory informing them that, “[b]ased on the information you have provided, it appears that you have unique borrowing needs.” Quicken invited these consumers to click a button reading “NEXT STEP” to permit a Quicken loan consultant to contact them about other possible Quicken loan options. The message communicated through the advisory was that consumers’ online applications for preapproval had been denied. As a result, many consumers who received this advisory left the website without submitting contact information. Consumers who received the “unique borrowing needs” advisory but did not then submit contact information online received no further contact from respondent.

8. Section 615 of the Fair Credit Reporting Act, 15 U.S.C. § 1681m, requires credit grantors who take “adverse action,” as that term is defined in Section 603(k) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(k), based in whole or in part on information in a consumer’s consumer report, to notify the consumer of the action taken; the name, address, and telephone number of the consumer reporting agency from which the consumer report was obtained; the consumer’s right to obtain a free copy of the consumer report; and the consumer’s right to dispute the accuracy or completeness of information in the consumer report.

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9. Through the practices described in Paragraphs 3 through 7, respondent took adverse action with respect to consumers in some instances based in whole or in part on information contained in a consumer report, but failed to notify the consumer of the action taken; the name, address, and telephone number of the consumer reporting agency from which the consumer report was obtained; the consumer's right to obtain a free copy of the consumer report; and the consumer's right to dispute the accuracy or completeness of information in the consumer report.

10. By and through the use of the practices described in Paragraphs 3 through 7, respondent has violated Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681m(a).

11. By its violations of Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed with this complaint.

You may file an answer to this complaint. Any such answer must be filed within 20 days after service of the complaint on you. If you contest the complaint's allegations of fact, your answer must concisely state the facts constituting each ground of defense, and must specifically admit, deny, explain, or disclaim knowledge of each fact alleged in the complaint. You will be deemed to have admitted any allegations of the complaint that you do not so answer.

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If you elect not to contest the allegations of fact set forth in the complaint, your answer shall state that you admit all of the material allegations to be true. Such an answer will constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the ALJ will file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. Such an answer may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice.

If you do not answer within the specified time, you waive your right to appear and contest the allegations of the complaint. The ALJ is then authorized, without further notice to you, to find that the facts are as alleged in the complaint and to enter an initial decision and a cease and desist order.

The ALJ will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed by the ALJ, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

A hearing on the complaint will begin on February 5, 2003, at 10:00 A.M. in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as

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alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

ORDER

DEFINITIONS

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

1. “Consumer,” “consumer report” and “consumer reporting agency” shall be defined as provided in Sections 603(c), 603(d) and 603(f) respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681a(c), 1681a(d) and 1681a(f).
2. “Application” shall be defined as provided in Sections 202.2(f) of Regulation B, 12 C.F.R. § 202.2(f).
3. “Adverse action” shall be defined as provided in Section 603(k) of the FCRA, 15 U.S.C. § 1681a(k), Section 701(d)(6) of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(d)(6), and Section 202.2(c) of Regulation B, 12 C.F.R. § 202.2(c).
4. “Respondent” shall mean Quicken Loans Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
5. “Preapproval” shall mean a determination by respondent, after receiving a request for credit from a consumer and analyzing the consumer’s creditworthiness, that the consumer appears to be eligible for credit from respondent in a specified amount on stated terms, subject to limited conditions, that is conveyed to the consumer in a written statement.

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I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any application by a consumer for credit, whenever respondent takes adverse action with respect to such application, either wholly or partly because of information contained in a consumer report from a consumer reporting agency, unless alternative credit is offered and accepted by the applicant, shall, as required by Section 615 of the FCRA, 15 U.S.C. § 1681m, provide to the applicant at the time such adverse action is communicated to the applicant or within thirty (30) days thereafter, orally, in writing, or electronically (1) notice of the adverse action; (2) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; (3) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and (4) notice of the consumer's right

(A) to obtain, under Section 612 of the FCRA, 15 U.S.C. § 1681j, a free copy of a consumer report on the consumer from the consumer reporting agency referred to at (2) above, which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under Section 611 of the FCRA, 15 U.S.C. § 1681i, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

For purposes of this Part, it shall be considered an adverse action when respondent denies preapproval of a loan in response to a

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request by a consumer, or the consumer otherwise does not qualify for the requested credit.

II.

IT IS FURTHER ORDERED that respondent shall, for five (5) years maintain and upon request make available to the Federal Trade Commission for inspection and copying documents demonstrating compliance with the requirements of Part I of this order, such documents to include, but not be limited to, all credit evaluation criteria relating to consumer reports, written or electronic instructions given to employees regarding compliance with the provisions of this order, all notices or a written or electronically stored notation of the description of the form of notice and the date such notice was provided to applicants pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained to whom offers of credit are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

IT IS FURTHER ORDERED that respondent Quicken Loans Inc. shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent Quicken Loans Inc. and its successors and assigns shall notify the Commission at

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least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent Quicken Loans Inc. shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;

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- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

THEREFORE, the Federal Trade Commission this fifth day of November 2002, has issued this complaint against respondent.

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DECISION AND ORDER

The Commission having heretofore issued its Complaint charging the Respondent named in the caption hereof with violations of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681(m), as amended, and Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), as amended, and Respondent having been served with a copy of that Complaint, together with a notice of contemplated relief; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by Respondent of all the jurisdictional facts set forth in the Complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; 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 thirty (30) days, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Respondent Quicken Loans Inc. is a Michigan corporation with its principal office or place of business at 20555 Victor Parkway, Livonia, Michigan 48152.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

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ORDER

DEFINITIONS

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

1. “Consumer,” “consumer report” and “consumer reporting agency” shall be defined as provided in Sections 603(c), 603(d) and 603(f) respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681a(c), 1681a(d) and 1681a(f).
2. “Application” shall be defined as provided in Sections 202.2(f) of Regulation B, 12 C.F.R. § 202.2(f), or as amended in the future.
3. “Adverse action” shall be defined as provided in Section 603(k) of the FCRA, 15 U.S.C. § 1681a(k), Section 701(d)(6) of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(d)(6), and Section 202.2(c) of Regulation B, 12 C.F.R. § 202.2(c), or as those provisions are amended in the future.
4. “Respondent” shall mean Quicken Loans Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
5. “Preapproval” shall mean a written or electronic statement by Respondent, after receiving a request from a consumer and analyzing the consumer’s creditworthiness, that the consumer appears to be eligible for a loan from Respondent in a stated amount and on stated terms, subject to conditions. If Regulation B or any appropriate final findings, decisions, commentary, or orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Board of Governors of the Federal Reserve System are hereafter amended to include a definition of or a reference to “preapproval” that is inconsistent with this definition, then that definition or reference shall be substituted for this definition to the extent of the inconsistency.

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I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any application by a consumer for credit, whenever Respondent takes any adverse action with respect to such application, either wholly or partly because of information contained in a consumer report from a consumer reporting agency, unless alternative credit is offered to and accepted by the applicant, shall, as required by Section 615 of the FCRA, 15 U.S.C. § 1681m, provide to the applicant at the time such adverse action is communicated to the applicant or within thirty (30) days thereafter, orally, in writing, or electronically (1) notice of the adverse action; (2) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; (3) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and (4) notice of the consumer's right

(A) to obtain, under Section 612 of the FCRA, 15 U.S.C. § 1681j, a free copy of a consumer report on the consumer from the consumer reporting agency referred to at (2) above, which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under Section 611 of the FCRA, 15 U.S.C. § 1681i, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

Provided that, Respondent's failure to grant a request for preapproval that is initiated online shall not be considered an adverse action for purposes of this Part, if Respondent satisfies all of the following requirements:

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- A. At the time it offered the preapproval, Respondent disclosed, clearly and conspicuously and in close proximity to the offer, that (i) preapproval may be granted online or offline, and (ii) the failure to obtain preapproval online would not prevent the consumer from obtaining preapproval offline;
- B. Respondent's online system has not determined, based on the information available online, whether to approve the request for preapproval; and
- C. Respondent provides a clear and conspicuous online notice in response to the request for preapproval stating that:
 - 1. The consumer's request for preapproval has not been declined;
 - 2. Respondent requires additional information from the consumer, including the specific type or types of information required, to the extent it is feasible for Respondent to identify such information, given the technological limitations of Respondent's online system and the loan products that are available on that system, before determining whether to grant the request for preapproval;
 - 3. The manner by which that additional information may be provided;
 - 4. After obtaining the additional information, Respondent will determine whether to grant or decline the request for preapproval, but if, within seven (7) days or a longer time designated by Respondent, the consumer does not provide the requested information, the consumer will have to submit a new request for preapproval if the consumer would like Respondent to give the request further consideration; and
 - 5. If, after receiving the additional information, Respondent determines to deny the request for preapproval based in

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whole or in part on information in the consumer's credit file at a consumer reporting agency, Respondent will communicate this fact to the consumer.

In the event that Respondent takes adverse action against a consumer after providing the foregoing notice and obtaining a completed application from that consumer, Respondent shall comply with all applicable requirements of Section 615(a) of the FCRA.

II.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years, maintain and upon request make available to the Federal Trade Commission for inspection and copying documents demonstrating compliance with the requirements of Part I of this Order, such documents to include, but not be limited to, all credit evaluation criteria relating to consumer reports, written or electronic instructions given to employees regarding compliance with the provisions of this Order, all notices or a written or electronically stored notation of the description of the form of notice and the date such notice was provided to applicants pursuant to any provisions of this Order, and the complete application files for all applicants for whom consumer reports were obtained to whom offers of credit are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

IT IS FURTHER ORDERED that Respondent Quicken Loans Inc. shall deliver a copy of this Order to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having decision-making responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Respondent shall deliver this Order to such current personnel within thirty (30) days

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after the date of service of this Order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that Respondent Quicken Loans Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that Respondent Quicken Loans Inc. shall, within sixty (60) days after the date of service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VI.

This Order will terminate on April 8, 2023, or twenty (20) years from the most recent date that the United States or the

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Federal Trade Commission files a Complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a Complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any Respondent that is not named as a defendant in such Complaint; and
- C. This Order if such Complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such Complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the Complaint had never been filed, except that the Order will not terminate between the date such Complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Quicken Loans Inc. The proposed order would settle charges that Quicken Loans violated Section 615(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681m(a), and Section 5 of the Federal Trade Commission Act. Section 615(a) requires that a credit grantor who takes adverse action with respect to a consumer, based in whole or in part on information contained in a credit report (“consumer report”), notify the consumer of the adverse action as well as the identity of the credit bureau (“consumer reporting agency”) that produced the report, so the consumer can identify and correct any inaccuracies in the report.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement’s proposed order.

According to the Commission’s Complaint, for a period of approximately one year, Quicken Loans offered loans to consumers through its website. Quicken Loans invited consumers to submit information, such as their income and assets, and the loan amount, down payment and type of loan sought. Consumers then were invited to request that Quicken Loans either “prequalify” the consumer for a loan based solely on information the consumer had entered, or “preapprove” the consumer for a loan based on the consumer’s consumer report, as well as the consumer-supplied information. To select the preapproval option, consumers were required to click a radio button next to the statement “Order my credit report and use it to preapprove me for a loan.” According to the Complaint, by selecting this option, consumers were filing applications for preapproval of a loan.

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For those consumers who requested preapproval, Quicken Loans obtained consumer reports from consumer reporting agencies and used the reports, along with consumer-supplied information, to evaluate the consumers' creditworthiness for any of its online loan products. For those consumers whom Quicken Loans preapproved for one of its online loan products, respondent provided an online preapproval letter containing the specific terms (*e.g.*, loan amount, interest rate, points, and APR) of the loans for which the consumers were preapproved.

Those consumers whom respondent did not preapprove for one of its online loan products received an online advisory informing them that, "[b]ased on the information you have provided, it appears that you have unique borrowing needs." Quicken Loans invited these consumers to click a button reading "NEXT STEP" to permit a Quicken Loans loan consultant to contact them about other possible Quicken Loans loan options. The Commission's Complaint alleges that the message communicated through the advisory was that consumers' online applications for preapproval had been denied. As a result, many consumers who received this advisory left the website without submitting contact information. Consumers who received the "unique borrowing needs" advisory but did not then submit contact information online received no further contact from respondent. The Complaint alleges that, through the actions described above, Quicken Loans took adverse action with respect to consumers in some instances, based in whole or in part on information contained in consumer reports, but failed to provide the notice required by Section 615.

Part I of the proposed order requires that whenever Quicken Loans takes adverse action with respect to a consumer's application for credit, based either wholly or partly on information in a consumer report, Quicken Loans must provide the consumer with a notice that complies with Section 615(a). Part I also provides that the Commission would not view Quicken Loans' failure to grant an online request for preapproval as an adverse

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action if the company meets certain specific requirements, which include that (1) Quicken Loans provides a clear and conspicuous disclosure in close proximity to the preapproval offer that preapproval may be granted online or offline; and (2) if Quicken Loans determines it cannot grant preapproval online because it needs additional information, it will notify the consumer that (a) the request for preapproval has not been denied, but rather that Quicken Loans needs additional information from the consumer, and (b) if the consumer submits the additional information, Quicken Loans will determine whether to grant the request and communicate the decision to the consumer.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires that Quicken Loans maintain and make available for Federal Trade Commission inspection and copying documents demonstrating compliance with Part I of the order. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates compliance reports within sixty (60) days after service of the order and at such other times as the FTC may require. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondent. It is not the Commission’s intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

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IN THE MATTER OF

BRISTOL-MYERS SQUIBB COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4076; File No. 0010221, 0110046, 0210181
Complaint, April 14, 2003--Decision, April 14, 2003*

This consent order addresses practices used by Respondent Bristol-Myers Squibb Corporation (“BMS”) with respect to generic versions – that is, versions that contain the same active ingredients as, and are bioequivalent to, their brand-name counterparts – of three of its major drug products, including BuSpar, used to treat persistent anxiety; Taxol, used to treat cancers of the ovaries, breasts and lungs, and AIDS-related Kaposi’s sarcoma; and Platinol, used in chemotherapy to treat various forms of cancer. The order, among other things, prohibits the respondent from seeking to list the ‘365 patent relating to BuSpar in the Orange Book – in relation to any New Drug Application (“NDA”) in which the active ingredient is buspirone – and restricts the extent to which the respondent can attempt to enforce the ‘365 patent. The order also prohibits the respondent from seeking to enforce, or collecting royalties on, any patent covering any BMS paclitaxel drug product sold as of October 2002. In addition, the order prohibits the respondent from taking any action to obtain or maintain a statutory 30-month stay on Food and Drug Administration approval with respect to an Abbreviated New Drug Application (“ANDA”) that references BuSpar or Taxol. The order also prohibits the respondent from securing Orange Book listings that are contrary to the statutes and regulations governing such listings, such as listing patents in the Orange Book that do not actually claim the drug products at issue. In addition, the order prohibits the respondent from triggering a 30-month stay when the patent at issue is listed after the filing of any ANDA referencing the NDA. The order also prohibits the respondent from making false and misleading statements to the FDA that are material to the approvability or sale of a generic version of a BMS brand-name drug product, unless BMS has a reasonable belief that the statement is neither false nor misleading; from asserting any objectively baseless patent infringement claim; and from seeking to enforce a patent that BMS knows is invalid, unenforceable, or not infringed. In addition, the order prohibits the respondent from being a party to an agreement, with an ANDA filer who has received anything of value, to settle a patent infringement claim, or to refrain from the sale of the ANDA product during litigation of a patent infringement claim, unless, among other provisos, the respondent, pursuant to a request for an advisory opinion, receives a response from the Commission that the agreement would not raise issues under Section 5 of the Federal Trade Commission Act.