

Complaint

IN THE MATTER OF

**ALIYAH ASSOCIATES, LLC,
D/B/A AMERICAN ADVANCE**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF THE TRUTH IN LENDING ACT

*Docket C-4229; File No. 072 3206
Complaint, August 8, 2008 – Decision, August 8, 2008*

This consent order addresses payday loan advertisements disseminated by Aliyah Associates, LLC, doing business as American Advance. The advertisements failed to disclose the annual percentage rate for these loans. The order prohibits the respondent, in any advertisement of consumer credit, from stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by the Truth in Lending Act and its implementing Regulation Z, including the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate. The respondent is prohibited from stating a rate of finance charge without stating it as an annual percentage rate. The respondent is also prohibited from failing to comply in any other respect with the Truth in Lending Act or Regulation Z. Additional provisions of the order include requirements that the respondent retain documents, to ensure compliance with the proposed order; distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of any changes in its corporate structure that might affect compliance with the order; and file with the Commission one or more reports detailing compliance with the order.

Participants

For the Commission: Beverly Childs, Thomas B. Pahl, Cara Petersen, Peggy L. Twohig, and Quisaira Whitney.

For the Respondent: Michael Mallow, Loeb & Loeb LLP.

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The Federal Trade Commission, having reason to believe that Aliyah Associates, LLC d/b/a American Advance (“respondent”), has violated the provisions of the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Aliyah Associates, LLC d/b/a American Advance is a limited liability company with its principal office or place of business at 7525 E. Camelback, Suite 210, Scottsdale, Arizona 85251.
2. Respondent has disseminated advertisements to the public that promote extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “credit,” “closed-end credit,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.
3. Respondent advertises credit to consumers in the form of payday loans. Credit is defined as “the right to defer payment of debt or to incur debt and defer its payment.” Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended. Credit includes “a transaction in which a cash advance is made to a consumer in exchange for the consumer’s personal check, or in exchange for the consumer’s authorization to debit the consumer’s deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer’s deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a ‘payday loan’ or ‘payday advance’ or ‘deferred-presentment loan.’” Comment 2 to Section 226.2(a)(14) of the Official Staff Commentary to Regulation Z; 12 C.F.R. Section 226.2(a)(14)-2, Supp.1, as amended. Payday loans have high rates and short repayment periods; they are often due on the borrower’s next payday, usually about every two weeks.

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4. Respondent has disseminated or has caused to be disseminated payday loan advertisements on the Internet, including but not necessarily limited to the attached Exhibit 1. Respondent collects information from consumers, called leads, through its online application, and then provides this information to lenders that ultimately offer payday loans to the consumers. Respondent is paid by the payday lenders for generating these consumer leads.

A. The advertisement states that “American Advance charges a fee of \$30 for every \$100 borrowed. Please see our Disclosures section for detailed rate information.” The Disclosures section of the website does not provide any additional information about costs or rates.

B. The advertisement also states that the loans are to be “repaid on your next pay date.”

5. On a \$100 loan with a \$30 fee repayable in a typical pay period of 14 days, the APR would be 782%.

Failure to Disclose Information Required by TILA

6. In credit advertisements, including but not necessarily limited to Exhibit 1, respondent has stated the number of payments or period of repayment and/or the amount of any finance charge, as terms for obtaining consumer credit in the form of a payday loan.

7. These advertisements have failed to disclose the “annual percentage rate” or “APR” using that term as required by Regulation Z.

8. Respondent’s practices have violated Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

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THEREFORE, the Federal Trade Commission this eighth day of August, 2008, has issued this complaint against respondent.

By the Commission.

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EXHIBIT 1

American Advance - Instant Online Payday Loans

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AMERICAN ADVANCE | INSTANT ONLINE PAYDAY LOANS

APPLY NOW | HOW IT WORKS | FAQ | DISCLOSURES | MY ACCOUNT | CONTACT US

Instant online payday loans

APPLY NOW in under 2 minutes!

American Advance Payday Loans
The online payday loan specialists

American Advance provides express payday loan services for clients nationwide. Bad credit, slow credit, or no credit? We can help! Our application process is fast, easy and completely secure, with no credit checks or hidden application fees. American Advance will have you approved within minutes, and cash deposited directly to your bank account overnight. We offer flexible repayment options and friendly customer service experts.

Fast, secure and confidential - American Advance, your online payday loan specialists.

 **Apply now**

First Name

Last Name

Email

Yes No
☒ Yes ☐ No I am currently employed or receive recurring income regularly

☒ Yes ☐ No I make at least \$1000 per month

☐ Yes ☐ No I currently have an active checking account

APPLY NOW

Apply Now | How It Works | FAQ | Disclosures | My Account | Contact Us

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Frequently Asked Questions about Payday Loans

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AMERICAN ADVANCE | AMERICAN ADVANCE PAYDAY LOANS

[APPLY NOW](#) [HOW IT WORKS](#) [FAQ](#) [DISCLOSURES](#) [MY ACCOUNT](#) [CONTACT US](#)



Frequently Asked Questions

Is a payday loan and cash advance the same thing?
Payday loans are short-term personal loans collateralized against your next paycheck(s). For many of our customers it's the easiest and fastest way to emergency cash between paydays. Online payday loans from American Advance are electronically deposited into your checking or savings account overnight, and repaid on your next pay date with an authorized automatic withdrawal.

Who qualifies for a payday loan?
To qualify for an American Advance payday loan you only need to meet the following requirements:

- Receive income regularly.
- Make at least \$800 a month.
- A checking account in good standing with direct deposit.

We do not perform credit checks, so even if you have bad credit, no credit, or a bankruptcy you can still qualify.

Do I need to fax anything?
Some lenders do not require you to fax any documents, however sometimes you will be asked to provide some of the following information via a fax:

- Recent bank statement
- Valid ID (drivers license, military ID or state issued ID).
- Current pay stub.
- Personal check marked VOID

When will I receive the payday loan?
Customers typically receive loan approval within a few hours of applying, and receive the cash advance loan amount via wire transfer overnight!

Will a poor credit history hurt me?
American Advance doesn't perform credit checks on our payday loans. However we do verify information with several national consumer databases.

Do I need direct deposit?
Yes.

Is there an application fee?
Not at this time.

Is my financial information secure?
Please visit our disclosures section.

How often can I get a payday loan?
You will want to pay off your existing payday loan before getting another one.

How much money can I borrow?
Your actual loan amount is determined by various factors including state law, income, length of employment, and other outstanding loans.

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Frequently Asked Questions about Payday Loans

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How much does a payday loan cost?

American Advance charges a fee of \$30 for every \$100 borrowed. Please see our Disclosures section for detailed rate information.

When is my loan due

Payday loans are usually due when you receive your next paycheck via direct deposit. The standard time for loan repayment is usually no less than seven days and no longer than eighteen days. You may also pay back your loan early without prepayment penalties.

What are my repayment options?

An email reminder will be sent to you 3 days before your payday loan is due. American Advance offers flexible payment terms on all our payday loans. There are three payment options available to our clients:

1. You may pay the payday loan in full.
2. You may renew the loan by paying the finance fee and a portion of the principle.
3. You may renew by pay only the finance fee.

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

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Disclosures and Other Important Information

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AMERICAN ADVANCE | AMERICAN ADVANCE ASSOCIATES, INC.

[APPLY NOW](#) [HOW IT WORKS](#) [FAQ](#) [DISCLOSURES](#) [MY ACCOUNT](#) [CONTACT US](#)



Disclosures

Privacy Policy Information

American Advance is committed to protecting our clients privacy. This Privacy Statement explains our views and practices concerning privacy.

"You" or "Your" means you as participant in or as a user of the American Advance site. "We" or "Our" or "Us" means American Advance. "Our site" means americanadvance.com. All information transmitted, printed or otherwise submitted to American Advance via this website shall be deemed to be the property of American Advance and American Advance shall be free to use such information for any lawful purpose as detailed herein. This site contains links to other sites and we are not responsible for the privacy practices or the content of such sites. We reserve the right to release such information to law enforcement or other governmental officials as we, in our sole and absolute discretion, deem necessary to comply with the law.

Section 1.

Collected Information

We automatically collect and/or track the following:

- (1) web page http headers (home server domain names, IP address, type of client computer, and type of Web browser);
- (2) information knowingly provided by you through on-line forms, registration forms, surveys, and/or other entries, such as email addresses, personal, financial or demographic information;
- (3) information, user specific or aggregate, on what pages our visitors access and
- (4) the e-mail addresses of visitors that communicate with American Advance via e-mail.
- (5) Information from outside sources. Information from outside sources regarding their employment, credit and other relationships with our customers or verifying representations made by a customer. Examples include customer employment history, loan balances, balances and bank account information and balances.
- (6) Other general information. Information from outside sources, such as data from public records, that is not assembled or used for the purpose of determining your eligibility for a product or service.

Section 2.

Use of Data Collected

We use your personal, demographic and profile data to enhance your experience at our site and to enable us to present content we think you might be interested in. We use your contact information to send you information about our company and promotional material from our partners. We may also use your personal, demographic and profile data to improve our site, for statistical analysis, for marketing and promotional purposes, and for editorial or feedback purposes for our advertisers. Information collected by us may be added to our databases and used for future e-mails or postal mailings regarding site updates, new products and services, upcoming events, and/or status of orders placed online.

Section 3.

Disclosure of Data to Third Parties

If you choose to provide personal information, it will be used for the following purposes: (1) sharing of your information with trusted third parties such as credit bureaus and/or other financial services providers, (2) as required by law and (3) for marketing products and services which we

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Disclosures and Other Important Information

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determine, in our sole judgment, that you might find of interest. We reserve the right to share, rent, sell, or otherwise disclose data we collect to third parties. Any third party we share, rent, sell, or otherwise disclose data to will be carefully prescreened by us, determined by us to be reputable, and will use the personal data for marketing products and services which we determine, in our sole judgment, that you might find of interest.

Section 4.**Your Opt-Out Rights**

You may opt-out of receiving communications from us and/or our partners by not submitting your information. We also allow you to remove your information from our database. If you remove your information from our database it will no longer be used by us for secondary purposes, disclosed to third parties, or used by us or third parties to send promotional correspondence to you. You can remove your information by using our automated opt-out utility.

Section 5.**We Do Not Intend To Collect Data From Children**

The information and services provided to us or our affiliates, sponsors, and advertisers are not intended to be viewed by children (under 18 years old). No information collected from children is knowingly used for any marketing or promotional purposes whatsoever, either inside or outside American Advance.

Section 7.**Our Right To Contact You**

We reserve the right to contact you regarding your account status and changes to subscriber agreements, privacy policy, or any other policies or agreements relevant to you.

Section 8.**Our Right To Change Policy Information**

We reserve the right to change this policy at any time by notifying you of the existence and location of the new or revised privacy policy or by posting the changes online at our site.

Notice

This website does not constitute an offer or solicitation to lend. American Advance is not a lender and does not make loans or credit decisions. American Advance provides a matching service only and is not acting as a representative, agent, or correspondent for any of our Service Providers. American Advance does not endorse any particular Service Provider, or loan product. You are under no obligation to use American Advance's service to initiate contact, or apply for credit with any of our Service Providers. This service is not available in all States. The States this website services may change from time to time and without notice. All aspects and transactions on this site will be deemed to have taken place in the State of Arizona, regardless of where you may be accessing this site. American Advance does not guarantee that completing an application form will result in your being matched with a Service Provider, being offered a loan product with satisfactory rates or terms, or receiving a loan from a Service Provider. There is no charge for you to use American Advance's service.

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

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American Advance - Payday Loan Contact Form

Page 1 of 1

AMERICAN ADVANCE | INSTANT ONLINE PAYDAY LOANS

APPLY NOW | HOW IT WORKS | FAQ | DISCLOSURES | MY ACCOUNT | CONTACT US

Contact Form

In order to serve you better, please complete the short form below. If you have already completed an application, please use the same email address as used on your application.

A customer support representative will contact you as soon as possible.

Email

Name

Subject Comments

(Please do not use any html when adding your comments. It will be rejected)

[Apply Now](#) | [How It Works](#) | [FAQ](#) | [Disclosures](#) | [My Account](#) | [Contact Us](#)

Decision and Order

DECISION AND ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act and its implementing Regulation Z; and

The respondent and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all 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 respondent that the law has been violated as alleged in the 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Truth in Lending Act and its implementing Regulation Z, 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Aliyah Associates, LLC d/b/a American Advance is a limited liability company with its principal office or place of business at 7525 E. Camelback, Suite 210, Scottsdale, AZ 85251.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

1. “Advertisement” shall mean a commercial message in any medium that promotes, directly or indirectly, a credit transaction.
2. “Consumer” means a cardholder or a natural person to whom consumer credit is offered or extended. The term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to a security interest.
3. “Consumer Credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes.
4. “Clearly and conspicuously” shall mean as follows:
 - A. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read and comprehend it.
 - B. In an electronic medium, the disclosure shall be:
 - (a) unavoidable;

Decision and Order

- (b) of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;
 - (c) understandable language and syntax; and
 - (d) prior to the consumer incurring any financial obligation.
- C. In a television or video advertisement, the audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it, and shall be in understandable language and syntax.
- D. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the material terms shall be used in any advertisement or promotion.

5. “Respondent” unless otherwise specified, shall mean Aliyah Associates, LLC d/b/a American Advance, its successors and assigns and its officers, agents, representatives, and employees.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any

Decision and Order

extension of consumer credit in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. State the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board’s Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(c), as amended, including, but not limited to:
 - 1. The amount or percentage of the down payment;
 - 2. The terms of repayment;
 - 3. The annual percentage rate, using that term or the abbreviation “APR.” If the annual percentage rate may be increased after the consummation of the credit transaction, that fact must also be disclosed.
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term, as required by Section 144 of the TILA, 15 U.S.C. § 1664, as amended, and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b), as amended, as more fully set out in Section 226.24(b) of the Federal Reserve Board’s Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.24(b), as amended.
- C. Fail to comply in any other respect with the TILA, 15 U.S.C. §§ 1601-1667, as amended, and Regulation Z, 12 C.F.R. § 226, as amended.

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II.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, for a period of five (5) years from the date of issuance of this order, 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, and its successors and assigns, for a period of five (5) years from the date of issuance of this order, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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

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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, Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, 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 they have complied with this order.

VI.

This order will terminate on August 8, 2028, 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;
- 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

Analysis to Aid Public Comment

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 OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Aliyah Associates, LLC d/b/a American Advance (“respondent”).

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 or make final the agreement’s proposed order.

Respondent engaged in practices that violate Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and Section 226.24(c) of its implementing Regulation Z, 12 C.F.R. § 226.24(c). Respondent disseminated payday loan advertisements on the Internet stating the number of payments or period of repayment, or the amount of a finance charge, as terms for obtaining a payday loan. These advertisements failed, however, to

Analysis to Aid Public Comment

disclose the “annual percentage rate” or “APR” for these loans as required by TILA and its implementing Regulation Z.

TILA and Regulation Z require that advertisers, including payday loan advertisers, disclose APRs on their loans to assist consumers in comparison shopping. The respondent’s failure to disclose the APR for the payday loans it advertised undermined consumers’ ability to compare these loans to those offered by other payday lenders. The respondent’s failure to disclose the APR for the payday loans it advertised also frustrated consumers’ ability to compare these loans to alternative forms of credit. Through its law enforcement actions the Commission intends to promote compliance with the APR disclosure requirements of TILA and Regulation Z, thereby promoting comparison shopping relating to payday loans.

The proposed consent order contains provisions designed to prevent respondent from failing to make disclosures required by TILA and Regulation Z in the future.

Part I.A. of the proposed order prohibits respondent, in connection with any advertisement of consumer credit, from stating the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by TILA and Regulation Z, including the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation “APR.”

Part I.B. of the proposed order prohibits respondent from stating a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR.”

Part I.C. of the proposed order prohibits respondent from failing to comply in any other respect with TILA or Regulation Z.

Analysis to Aid Public Comment

Part II of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain all records that will demonstrate compliance with the proposed order.

Part III of the proposed order requires respondent to distribute copies of the order to various principals, officers, directors, and managers, and all current and future employees, agents and representatives having responsibilities with respect to the subject matter of the order.

Part IV of the proposed order requires respondent to notify the Commission of any changes in its corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

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

Complaint

IN THE MATTER OF

FLOW INTERNATIONAL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket C-4231; File No. 081 0079

Complaint, August 15, 2008 – Decision, August 15, 2008

This consent order addresses the acquisition of OMAX Corporation by Flow International Corporation. The companies are the leading manufacturers of waterjet cutting systems in the United States, and the transaction may substantially lessen competition in the market for the development, manufacture, marketing, and sale of such systems. Both companies offer an efficient PC-based controller that compensates for the unique characteristics of how a waterjet cuts. Under the terms of the order, Flow must grant a royalty-free license to each competitor who seeks to license the two broad OMAX patents relating to controllers that Flow will acquire with its acquisition of OMAX. This will eliminate the entry barrier faced by current waterjet cutting system competitors and future entrants and ensure that other firms are able to replace the competition that would otherwise be eliminated by the acquisition. In addition, Flow may not provide, disclose, or otherwise make available any confidential business information to any person except as set forth in the order. If Flow fails to grant a license within the time periods specified, the Commission may appoint a Licensing Trustee to grant the license to any competitors to satisfy the requirements of the order. Additional provisions include the requirements that Flow notify the Commission of any changes in corporate structure and file written reports on its compliance with the order.

Participants

For the *Commission*: *Stuart Hirschfeld, Joe Lipinsky, Alan Loughnan, Susan Raitt, Robert J. Schroeder, Art Strong, and Lore Unt.*

For the *Respondent*: *Ramona Emerson and Jim Weiss, K&L Gates.*