

Complaint

**IN THE MATTER OF
ELLERY COLEMAN****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT**

*Docket C-3948; File No. 0023053
Complaint, June 5, 2000--Decision, June 5, 2000*

This consent order requires Respondent Ellery Coleman to have a reasonable basis substantiating any representation that the users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis, that specific trades or investments were actually made and resulted in substantial profits, about the amount of earnings, income, profit, or rate of return that a prospective user of the trading program could reasonably expect to attain, about the percentage, ratio, or number of trades that a prospective user of Respondent's programs could reasonably expect to be profitable, or about any financial or other benefit from any trading programs offered by the Respondent. The order also prohibits Respondent from misrepresenting that users of his trading programs can expect to profit with very little financial risk, that Respondent uses his program on his own behalf, whether trade suggested were actually made or only hypothetical, whether any testimonial or endorsement of the Respondent's program represents the testimonialist's or endorser's actual experience and current opinions, findings, beliefs, or experiences, or from misrepresenting the risk to which users of the trading program are exposed. In addition, the order requires Respondent to disclose, clearly and conspicuously, "FUTURES [or STOCK, CURRENCY, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation he makes about the financial benefits of any trading program. Respondent is also prohibited from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondent must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

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Participants

For the Commission: *Michael Dershowitz, Jean Sullivan, C. Lee Peeler, and BE.*

For the Respondents: *Charles Cox, Cole & Cox.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Ellery Coleman ("respondent"), individually and doing business as Granite Investments, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Ellery Coleman is the sole proprietor of Granite Investments, a Georgia company with its principal office or place of business at 133 Bunkers Trail, Warner Robins, GA 31088. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the company, including the acts or practices alleged in this complaint.
2. Respondent has advertised, offered for sale, sold, and distributed S&P futures trading computer programs and training to the public. Respondent advises his clients to buy and sell specific S&P futures contracts on a daily basis. Respondent sells "RPM" or "Reliable Pattern Match," "S&P Savvy," and "Choice Daytrades" computer programs. Respondent sells his programs and training through his Internet Website, www.choicedaytrades.com.
3. 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.
4. Respondent has disseminated or has caused to be disseminated Internet advertisements for his S&P futures computer trading programs and training, including but not necessarily limited to the

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attached Exhibits A through G. These advertisements contain the following statements:

A.

“Highly effective daytrading based on a very powerful methodology which has worked for decades
Daytrading systems that consistently identify winning day trades in the stock market.”

. . . .

“RPM delivers a solid \$10,350 profit for June.”

“S&P Savvy up \$40,750 for June99 contract.”

“S&P Savvy up \$44,050 for March99 contract.”

“S&P Savvy up \$62,425 for December98 contract.”

“S&P Savvy has made at least \$25,000 for each contract period for the last three years.”

“Learn to Daytrade the S&P 500 like a pro!”

. . . .

“Are you . . .

Still searching for the holy grail of trading?

Unhappy with the money you made trading last year?

Sick of that empty knot in your stomach because you missed another big trade?

Complaint

Tired of not being among the 10% of traders who win consistently?

Then take a look at our products and training!"

....

"While many of the trades shown were taken in real time with real money, since not all of them were taken:

The CFTC requires that we state: NOTICE:

HYPOTHETICAL OR SIMULATED PERFORMANCE RESULTS HAVE CERTAIN INHERENT LIMITATIONS. UNLIKE AN ACTUAL PERFORMANCE RECORD, SIMULATED RESULTS DO NOT REPRESENT ACTUAL TRADING. ALSO SINCE THE TRADES HAVE NOT ACTUALLY BEEN EXECUTED THE RESULTS MAY HAVE UNDER OR OVER COMPENSATED FOR THE IMPACT, IF ANY, OF CERTAIN MARKET FACTORS, SUCH AS LACK OF LIQUIDITY. SIMULATED TRADING PROGRAMS IN GENERAL ARE ALSO SUBJECT TO THE FACT THAT THEY ARE DESIGNED WITH THE BENEFIT OF HINDSIGHT. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFITS OR LOSSES SIMILAR TO THOSE SHOWN. SIMULATED RESULTS DO NOT NECESSARILY IMPLY FUTURE PROFITS. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION."

[This notice appears in fine print near the bottom of the Web page attached as Exhibit A.]

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B.

“I have been a professional trader for many years After reading most of the books on trading and personally studying with some of the biggest names in the business, I subjected these methods to rigorous computer testing and discovered that most of these methods do not generate the kinds of profits one might expect, and many do not work at all. However, the research did uncover the real gems. It will open your eyes and you will understand what is really going on.’ Ellery Coleman.”

. . . .

“Comments from students:

‘I can’t say enough great things about my visit with you. The time I spent watching you trade the S&P was extremely valuable. Your method of trading has provided me some excellent profits.’ L.S. Wisconsin - A former broker who now trades for a living.

. . . .

‘You told me that there would be no reason why I should not be profitable right from day one. In the first two and a half weeks of trading your methodology, my expectations have been completely surpassed.’

‘I never thought I could make \$8,500.00 in 13 trading days just by trading one contract. But I did it.’
(Exhibit B)

C.

“S&P Savvy Up \$154,725 for 1998”

. . . .

Complaint

“S&P Savvy DSP8Z- 09/10/98 - 12/02/98

Performance Summary: All Trades

Total net profit \$ 62425.00 . . .

Gross profit \$ 108425.00 Gross loss \$ -46000.00

Total # of trades 430 Percent profitable 61%

. . . .

Return on account 2041 %”

. . . .

“Take advantage of the markets [sic] volatility. S&P Savvy thrives on it while using tight stops. I thought this was a great system when I developed it for my own use three years ago, and it just keeps getting better. Since I still trade this program, a very limited number of copies will be made available.”

. . . .

[Consumer endorser:] “I made enough my first day trading S&P Savvy to pay for it.”

. . . .

“If you want something that works, this is it!”

. . . .

“While many of the trades shown are taken in real time with real money, since not all of them were taken:

The CFTC requires that we state: NOTICE:

HYPOTHETICAL OR SIMULATED PERFORMANCE
RESULTS HAVE CERTAIN INHERENT LIMITATIONS.
UNLIKE AN ACTUAL PERFORMANCE RECORD,
SIMULATED RESULTS DO NOT REPRESENT ACTUAL

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TRADING. ALSO SINCE THE TRADES HAVE NOT ACTUALLY BEEN EXECUTED THE RESULTS MAY HAVE UNDER OR OVER COMPENSATED FOR THE IMPACT, IF ANY, OF CERTAIN MARKET FACTORS, SUCH AS LACK OF LIQUIDITY. SIMULATED TRADING PROGRAMS IN GENERAL ARE ALSO SUBJECT TO THE FACT THAT THEY ARE DESIGNED WITH THE BENEFIT OF HINDSIGHT. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFITS OR LOSSES SIMILAR TO THOSE SHOWN. SIMULATED RESULTS DO NOT NECESSARILY IMPLY FUTURE PROFITS. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION.”

[This notice appears in fine print at the bottom of the Web page attached as Exhibit C.]

D.

“Choice Daytrades

....

\$331,850.00

per 2 contracts in 1998
Day trading S&P 500.”

(Exhibit D)

E.

“Testimonials

....

‘I have meant to tell you for a long time, you’re the greatest. No question about it. Your figures are amazingly close; mind boggling to me.’ W.S. Ohio

Decision and Order

. . . .

'Thank you so much for the training you gave me. For the first time I am making money consistently and not giving it back . . .' M.S. Canada.

We get fan mail like this every day."
(Exhibit E)

F.

"Want Proof?

People are always asking for my account statements to prove that I am really a trader. Would you show your tax returns to strangers? I don't think so. But to demonstrate that I know how to trade, here are two account statements from one of my three accounts."
(Exhibit F)

G.

"RPM makes the S&P as readable as a road map each day. It keeps your risk low because it never holds overnight."

. . . .

[Respondent's RPM program] "was an immediate success because nothing stacks the odds in your favor like RPM."

. . . .

"What RPM can do for you:

Give you precise buy and sell signals with low risk stops
Take the stress out of your trading decisions
Give you the discipline needed for success
Provide you with a complete trading manual showing past recommendations and results
Provide a proven system that takes the doubt and frustration out of your trading"

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.....

"Join our fan club!

'Your RPM is uncanny in its accuracy. Anyone using this system has to make money.'

'Wow! You nailed it. I made more money in one trade than I have in a long time.'

'RPM is very consistent, precise and easy to use. I strongly recommend it.'

'RPM gives me the extra edge I need to win consistently.'" (Exhibit G)

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:
 - a. Users of respondent's S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis (*e.g.*, \$25,000 per futures contract).
 - b. The specific trades or investments enumerated in the advertisements were actually made and resulted in the substantial profits stated in the advertisements.
 - c. Testimonials appearing in the advertisements for respondent's S&P futures trading programs reflect the typical or ordinary experience of members of the public who use the programs.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that he possessed and relied upon a reasonable basis that substantiated the

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representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- a. Users of respondent's S&P futures trading programs can reasonably expect to trade profitably with little financial risk.
- b. Testimonials appearing in the advertisements for respondent's S&P futures trading programs reflect the actual experiences of consumers who have used the programs.
- c. Respondent personally uses his S&P futures trading programs to trade profitably on his own behalf.
- d. The trades recommended by respondent's S&P futures trading programs, as enumerated in the advertisements, were actually made in many cases.

9. In truth and in fact,

- a. Users of respondent's S&P futures trading programs cannot reasonably expect to trade with little financial risk.
- b. Testimonials appearing in the advertisements for respondent's S&P futures trading programs do not reflect the actual experiences of consumers who have used the programs.

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- c. Respondent does not personally use his S&P futures trading programs to trade on his own behalf.
- d. None of the trades recommended by respondent's S&P futures trading programs was actually made.

Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fifth day of June, 2000, has issued this complaint against respondent.

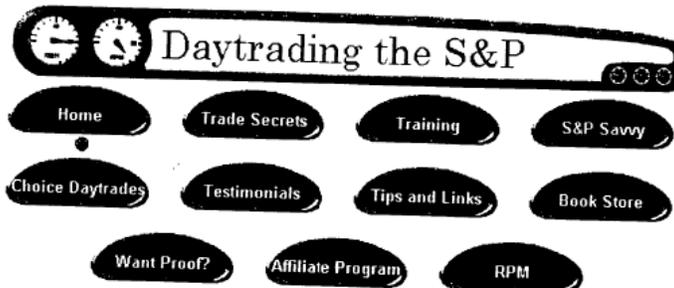
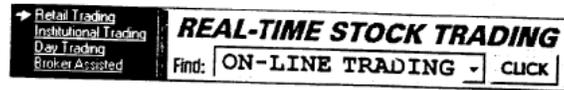
By the Commission.

Complaint Exhibits

Complaint Exhibits

http://www.choicedaytrades.com/stock/mkt/daytrading

EXHIBIT A
Page



Daytrading and technical analysis tools for daytrading the S&P 500. Highly effective daytrading based on a very powerful methodology which has worked for decades. Stocks and options daytrading. Daytrading systems that consistently identify winning day trades in the stock market. Daytrading courses and daytrading software for computerized daytrading. Tradestation and Supercharts daytrading tools.

Last Updated July 31, 1999

Trade Secrets! Free. [Click here.](#)

RPM delivers a solid \$10,350 profit for June.

S&P Savvy up \$40,750 for June99 contract.

S&P Savvy up \$44,050 for March99 contract.

S&P Savvy up \$62,425 for December98 contract.

S&P Savvy has made at least \$25,000 for each contract period for the last three years. [Check it out!](#)



Learn to Daytrade the S&P 500 like a pro!



Complaint Exhibits

Daytrading in 3000 futures markets- stock Market Day Trading

EXHIBIT A
Page 2

Free daytrading system. Click here to register.



Check out our new Book Store.

Check out our Daytrading Tips page.

Systems and Guidance for Stock Market and Futures Traders.

We are professional S&P 500 Daytraders.

Are you...

Still searching for the holy grail of trading?

Unhappy with the money you made trading last year?

Sick of that empty knot in your stomach because you missed another big trade?

Tired of not being among the 10% of traders who win consistently?

Then take a look at our products and training!

Choice Daytrades

133 Bunkers Trail

Warner Robins, GA 31088

912-922-9019

For questions or comments, mailto: Ellery@ChoiceDaytrades.com

Do you like this site? Tell a friend!

Name **Email**

You:

Your Friend:



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...viding a 3000 Futures Market Stock Market Day Trading

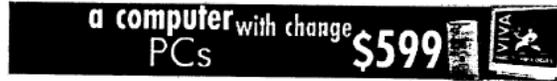
EXHIBIT A
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While many of the trades shown were taken in real time with real money, since not all of them were taken:

The CFTC requires that we state: NOTICE:

HYPOTHETICAL OR SIMULATED PERFORMANCE RESULTS HAVE CERTAIN INHERENT LIMITATIONS. UNLIKE AN ACTUAL PERFORMANCE RECORD, SIMULATED RESULTS DO NOT REPRESENT ACTUAL TRADING. ALSO SINCE THE TRADES HAVE NOT ACTUALLY BEEN EXECUTED THE RESULTS MAY HAVE UNDER OR OVER COMPENSATED FOR THE IMPACT, IF ANY, OF CERTAIN MARKET FACTORS, SUCH AS LACK OF LIQUIDITY. SIMULATED TRADING PROGRAMS IN GENERAL ARE ALSO SUBJECT TO THE FACT THAT THEY ARE DESIGNED WITH THE BENEFIT OF HINDSIGHT. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFITS OR LOSSES SIMILAR TO THOSE SHOWN. SIMULATED RESULTS DO NOT NECESSARILY IMPLY FUTURE PROFITS. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION.



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Exceptional customer service. Free shipping.



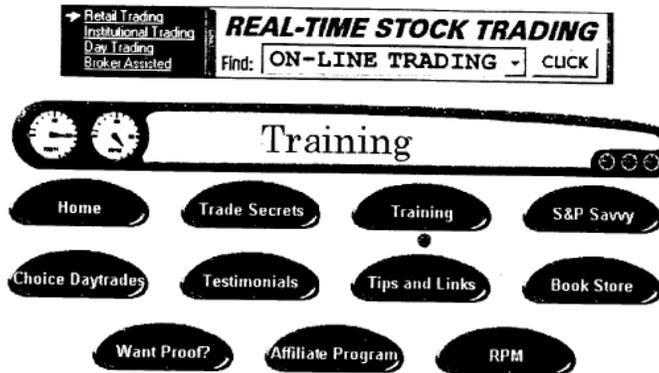
[FFA Links](#)

[Top](#)

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www.choicedaytrades.com/REAL-TIME STOCK TRADING - Stock Market tips - Day Trading

EXHIBIT B
Page 1



Learn from a Pro!

1. Learn to daytrade for a living
2. Increase your winning percentage
3. Reduce your losses
4. Take the fear and stress out of your trading
5. Learn what really works and what doesn't
6. Bring your trading to new levels of profitability
7. Proprietary software
8. Learn which trend you can afford to trade and how
9. Continued mentoring after you leave if needed
10. Manual on the psychology of trading my system
11. Learn to avoid the mistakes 90% of all traders make.
12. Learn to identify when the tops and bottoms are forming, when to enter and when to exit.
13. Learn when it is just too risky to trade.
14. Tax deductible.
15. Guarantee - If you are not happy with what you have learned at the end of the first day, all your money will be refunded.

Special - if you order online on this visit:

\$1795 in advance & \$1795 thirty days after your training, only if you feel it was well worth it.



<http://www.choicedaytrades.com/training.htm>

8/17/99

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Expanding Trading - DAY TRADING - Stock Market Tips - Day Trading

EXHIBIT 1
Page 2



Charge your purchase on our secure server

[Click Here to reserve the next class](#)

We will call you to arrange mutually acceptable training dates.

"I have been a professional trader for many years. Moreover, I have been a computer programmer since the dark ages of 1970. After reading most of the books on trading and personally studying with some of the biggest names in the business, I subjected these methods to rigorous computer testing and discovered that most of these methods do not generate the kinds of profits one might expect, and many do not work at all. However, the research did uncover the real gems. It will open your eyes and you will understand what is really going on."
Ellery Coleman

Three day tutoring session with a maximum of two students taught during live, real time trading.

Whether you are a new trader or experienced, you will be impressed.

Comments from students:

"I can't say enough great things about my visit with you. The time I spent watching you trade the S&P was extremely valuable. Your method of trading has provided me some excellent profits." L.S. Wisconsin - A former broker who now trades for a living.

"I have been trying to earn a living trading the S&P 500 for the past 2 years. I have spent a lot of time and money on courses and people that promised the world. The only thing that this has gotten me is frustration, disappointment and a sense of desperation to the point of almost giving up many times."

"What has been amazing to me, is that you also promised me wonderful things by trading your methodology, and the reality of it is, that you were absolutely, 100% correct."

"You told me that there would be no reason why I should not be profitable right from day one. In the first two and a half weeks of trading your methodology, my expectations have been completely surpassed."

"I never thought that I could make \$8,500.00 in 13 trading days just by trading one contract. But I did it."

"Thanks Ellery, you have finally made it possible for me to earn a

Complaint Exhibits

... living doing what I love."

EXHIBIT E
Page 3

"Now I can finally call myself a trader." M.S. Canada

"I have meant to tell you for a long time, you're the greatest. No question about it. Your figures are amazingly close; mind boggling to me." W.S. Ohio

These unsolicited testimonials are on file in our office for your inspection. See our testimonials page for many more.

Choice Daytrades

133 Bunkers Trail

Warner Robins, GA 31088

912-922-9019

For questions or comments, mailto: Ellery@ChoiceDaytrades.com



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http://www.choicedaytrades.com/daytrading

EXHIBIT C
Page 1

\$62,425.00

per contract for December98 contract

Up \$154,725 for 1998

\$44,050 for March99 contract

\$40,750 for June99 contract

Day trades the S&P 500 using 2 minute charts and \$550 maximum stops. Enters on limit orders to prevent slippage.

Must own Omega Research's TradeStation

Largest drawdown was

\$3775

Only a few more will be

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http://www.choicedaytrades.com/daytrading.htm

EXHIBIT C
Page 1**sold!****Free training included if you buy today!**

TradeStation performance summary:

S&P Savvy DSP8Z- 09/10/98 - 12/02/98

Performance Summary: All Trades

Total net profit \$ 62425.00 Open position P/L \$ 0.00

Gross profit \$ 108425.00 Gross loss \$ -46000.00

Total # of trades 430 Percent profitable 61%

Largest winning trade \$ 3100.00 Largest losing trade \$ -625.00

Average winning trade \$ 651.11 Average losing trade \$ -450.75

Ratio avg win/avg loss 1.44 Avg trade(win & loss) \$ 222.37

Max consec. winners 13 Max consec. losers 5

Avg # bars in winners 6 Avg # bars in losers 3

Max intraday drawdown \$ -3775.00

Profit factor 2.27 Max # contracts held 1

Account size required \$ 3775.00 Return on account 2041%

Take advantage of the markets volatility. S&P Savvy thrives on it while using tight stops. I thought this was a great system when I developed it for my own use three years ago, and it just keeps getting better. Since I still trade this program, a very limited number of copies will be made available.

Only \$4995**Today only \$3495**

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EXHIBIT C
Page 3

"I am writing to let you know how pleased and satisfied I am with your 'S&P Savvy' software. It is refreshing to deal with someone who is honest, helpful and knowledgeable. I appreciate the promptness of the way you returned my phone inquires and the solutions you provided. I am impressed with the depth and breadth of the knowledge you have demonstrated to me in our dealings."

"I made enough my first day trading S&P Savvy to pay for it."

"Your software package is very easy to use and proved to be very effective for me. I have been trading the S&P for some time now and the S&P Savvy system is a potent tool."

"I am a pleased customer and would recommend your services without reservation. Keep up the good work Ellery." A.V. New York

This offer may be withdrawn at any time.

I am a trader, not a system vendor, so don't ask me for numbers or studies that I don't have time to prepare. If you are interested in fancy brochures, look elsewhere. If you want something that works, this is it!

To order, mail a check for \$4995, or if you can make a decision without a lot of discussion, charge it today for only \$3495.



Sale Price ends July 31, 1999

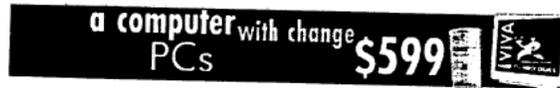
You may charge your purchase on our secure server:

[Click Here for Secure Payment Form](#)

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EXHIBIT C
Page 4

Ellery Coleman
133 Bunkers Trail
Warner Robins, GA 31088
912-922-9019



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Computers, software, peripherals, and training at low prices.
Exceptional customer service. Free shipping.

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While many of the trades are taken in real time with real money, since not all of them were taken:

The CFTC requires that we state: NOTICE

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Day trading and technical analysis tools for day trading the S&P 500. Highly effective day trading based on a very powerful methodology which has worked for decades. Stocks and options day trading. Day trading systems that consistently identify winning day trades in the stock market. Day trading courses and day trading software for computerized day trading. Tradestation and Supercharts day trading tools.

\$ 331,850.00

per 2 contracts in 1998

Day trading the S&P 500

Only a limited number of subscribers will be accepted.

Choice day trades are my discretionary trades. I do use my S&P Savvy system as the basis for my decisions but I prefer to use some discretion with it.

Trade signals by AbbottChat for instantaneous signals, if you are online all day, or we have brokers who can trade it for you. Download AbbottChat free from this link.

Special web price: \$995 a quarter, or \$2450 per year.



Special: \$795 for your first quarter, if you charge it on this visit only.

You may charge your purchase on our secure server:

<http://www.choicedaytrades.com/choice.htm>

8/17/99

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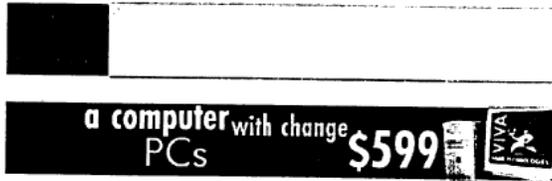
http://www.choicedaytrades.com/choice.htm

EXHIBIT D
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For your convenience, your credit card will be charged \$995 per quarter after the first unless you ask us to stop.

[Click Here for Secure Payment Form](#)

Ellery Coleman
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Warner Robins, GA 31088



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Computers, software, peripherals, and training at low prices. Exceptional customer service. Free shipping.

Past performance does not guarantee future profits.

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DAY TRADING Testimonials Day trades

EXHIBIT B
Page 1

Retail Trading
 Institutional Trading
 Day Trading
 Broker Assisted

REAL-TIME STOCK TRADING

Find:

Testimonials

Join our daytrading fan club!

☺ "Thank you for all the great trades this month." M.M. Texas

☺ "I am very impressed by your work." M.M. CTA Oregon

☺ "Excellent job! Excellent results!" E.H. New York

"Are you a wizard of what? I like this.
This is fun." B.P. California



☺

☺ "I would like to thank you for yet another excellent trade." A.P. London

☺ "Thanks for the golden opportunity." R.W. FL

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Choice Daytrades

EXHIBIT E
Page 2

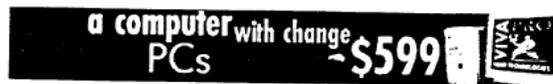
- ☺ "Keep up the good work!" A.R. Missouri
- ☺ "I really appreciate your help. Your newsletter is the best one on the market." G.S. New York
- ☺ "I have meant to tell you for a long time, you're the greatest. No question about it. Your figures are amazingly close; mind boggling to me." W.S. Ohio
- ☺ "I can't say enough great things about my visit with you. The time I spent watching you trade the S&P was extremely valuable. Your method of trading has provided me some excellent profits. My greatest obstacle to overcome is not to second guess the numbers." L.S. Wisconsin (former broker who now trades for a living)
- ☺ "You are a great advisor and trader. Your system works!" M.S. Chicago
- ☺ "Thank you so much for the training you gave me. For the first time I am making money consistently and not giving it back. What you taught me is light-years ahead of the other seminars I have attended." M.S. Canada
- ☺ We get fan mail like this every day. Join our fan club and see the difference our programs make in your trading.
- ☺ All of these unsolicited remarks are on file in our office for your inspection.

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http://www.choicedaytrades.com

EXHIBIT B
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Computer Software USA

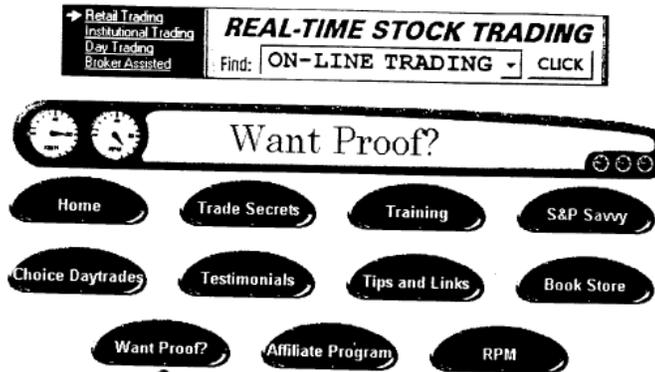
Computers, software, peripherals, and training at low prices. Exceptional customer service. Free shipping.



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EXHIBIT F
Page 1



People are always asking to see my account statements to prove that I am re you show your tax returns to strangers? I don't think so. But to silence the here are two account statements from one of my three accounts. The first o 1997 and the second one is for November 5, 1997. I set this particular accou purpose.

This covers a period of seven trading days. Please note that at the beginnin 28 my beginning balance was \$4,071.59 and on November 5 my ending balan That is a profit after commissions and fees of \$13,361.57 in seven days tradi certify that no money was deposited to the account except trading profits fro 500.

These scanned account statements are very large image files, so it will take them. Also, some browsers are unable to handle these large images. If that I will be happy to fax copies to you. Just call me at 912-922-9019.

ED & F MAN INTERNATIONAL INC
TWO WORLD FINANCIAL CENTER
225 LIBERTY STREET, 27TH FLOOR, NEW YORK, NY 10080-6127

OCT 28, 1997

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 129

Complaint Exhibits

EXHIBIT F
PAGE 2

ELLERY G COLEMAN
133 BUNKERS TRAIL
WARNER ROBINS GA 30088

***** CONFIRMATION *****
THE FOLLOWING TRADES HAVE BEEN MADE THIS DAY FOR YOUR ACCOUNT AND RISK.

TRADE	SETTL	AT	BUY	SELL	CONTRACT DESCRIPTION	EX TRADE PRICE	CC
10/28/7	F1		1		DEC 97 IMM S&P 500	16 895.50	US
10/28/7	F1		1*	1*	DEC 97 IMM S&P 500	16 897.00	US
	F1						COMMISSION US
	F1						CLEARING FEES US
	F1						NFA/SEC FEES US
	F1						BROKERAGE US

***** PURCHASE & SALE *****							
TRADE	SETTL	AT	BUY	SELL	CONTRACT DESCRIPTION	EX TRADE PRICE	CC
10/28/7	F1		1		DEC 97 IMM S&P 500	16 895.50	US
10/28/7	F1		1*	1*	DEC 97 IMM S&P 500	16 897.00	US
	F1						GROSS PROFIT OR LOSS US
	F1						NET PROFIT OR LOSS FROM TRADES US

*** U.S. DOLLARS ***	
BEGINNING BALANCE	4,071.59
COMMISSION	12.00DR
CLEARING FEES	1.40DR
BROKERAGE FEES	3.00DR
NFA/SEC FEES	14DR
TOTAL FEES	4.54DR
GROSS PROFIT OR LOSS	790.00
NET PROFIT/LOSS FROM TRADES	733.46
ENDING BALANCE	4,805.05
TOTAL EQUITY	4,805.05
ACCOUNT VALUE AT MARKET	4,805.05
MARGIN DEFICIT/EXCESS	4,805.05

E & O E
RETAIN FOR TAX RECORDS

SUBJECT TO TERMS AND CONDITIONS
ON REVERSE SIDE
CODED SYMBOLS ARE EXPLAINED
ON REVERSE SIDE

PLEASE REPORT ANY DIFFERENCES IMMEDIATELY. THE FAILURE
YOUR RIGHT TO HAVE ERRORS CORRECTED.

Complaint Exhibits

EXHIBIT F
Page 3

F D & F MAN INTERNATIONAL INC
1703 WORLD FINANCIAL CENTER
225 LIBERTY STREET, 27TH FLOOR, NEW YORK, NY 10080-6127

NOV 5 1997

ELLERY G COLEMAN
133 BUNKERS TRAIL
WARNER ROBINS GA 31088

*** U.S. DOLLARS ***	
TOTAL FEES	24.97DR
GROSS PROFIT OR LOSS	2,225.00
NET PROFIT/LOSS FROM TRADES	2,134.03
ENDING BALANCE	17,433.18
OPEN TRADE EQUITY	325.00DR
TOTAL EQUITY	18,808.18
ACCOUNT VALUE AT MARKET	18,808.18
INITIAL MARGIN REQUIREMENT	20,180.00
MAINTENANCE MARGIN REQUIREMENT	17,400.00
MARGIN DEFICIT/EXCESS	4,271.82DR

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 129

Complaint Exhibits

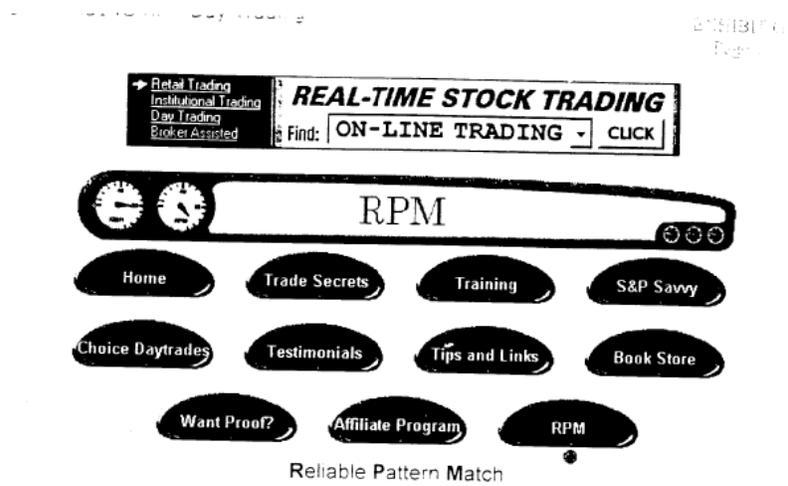
EXHIBIT F
Page 4

E & O E
RETAIN FOR TAX RECORDS

SUBJECT TO TERMS AND CONDITIONS
ON REVERSE SIDE
*CODED SYMBOLS ARE EXPLAINED
ON REVERSE SIDE

PLEASE REPORT ANY DIFFERENCES IMMEDIATELY THE FAILURE
YOUR RIGHT TO HAVE ERRORS CORRECTED WILL BE DENIED.

Complaint Exhibits



A great system for daytrading the S&P 500

Would you like a system for day trading the S&P 500 that does not require you to watch the market during the day? Then RPM is the system for you.

RPM is the result of extensive computer research done by E.G. Coleman, who has been a professional S&P daytrader for many years. As a math major at the University of Georgia in 1970, he wondered, "Wouldn't it be great to predict the direction of the stock market using the computer?" Thus the idea for RPM was born. Mr. Coleman ran his computer day and night testing millions of different parameters with just one thing in mind---

"What combination of factors has the most predictive power for tomorrow?"

The discovery he made is what is now known as the

RPM paradigm.

RPM looks at these same factors every day. It searches through the entire history of the market looking for matches of the RPM paradigm to determine the probable direction of the market the next day. Also, it gives the historic likelihood as a percent that selected support and resistance levels will be touched during the day. RPM makes the S&P as readable as a road map each day. It keeps your risk low because it never holds overnight.

In December of 1994, we began making the RPM trades available to the public by means of a daily fax subscription. The cost of the subscription was initially \$595 per quarter and was later raised to \$995. It was an immediate success because nothing stacks the odds in your favor like RPM.

Complaint Exhibits

... .. 227, 228, 229
EXHIBIT G
10/11/99

Now you can purchase the RPM software and use it forever for the price of an annual subscription, only \$2,950. Included is complete data on the history of the S&P 500 futures and a trading manual. This software is completely self-contained. No other software is needed. It can use CSI or Metastock data or you can enter daily data yourself. Or try it by fax for 3 months for only \$795.

What RPM can do for you

- Ⓢ Give you precise buy and sell signals with low risk stops
- Ⓢ Take the stress out of your trading decisions
- Ⓢ Give you the discipline needed for success
- Ⓢ Provide you with a complete trading manual showing past recommendations and results
- Ⓢ Provide a proven system that takes the doubt and frustration out of your trading

Just before making RPM available to the public, it was used in a six month national trading contest. The account started with \$50,000 and finished with over \$300,000. This was announced in the March 1995 issue of Stocks and Commodities magazine, where Ellery Coleman, developer of RPM, appears under the caption "Top Guns."

Join our fan club!

- Ⓢ "Your RPM is uncanny in its accuracy. Anyone using this system has to make money. I review your manual weekly." W.S. Ohio
- Ⓢ "Wow! You nailed it. I made more money in one trade than I have in a long time." R.P. CA
- Ⓢ "RPM is very consistent, precise and easy to use. I strongly recommend it." T.C. Professional daytrader California
- Ⓢ "RPM gives me the extra edge I need to win consistently. I cannot picture taking a position without the statistical outlook RPM gives." M.E. Broker Missouri
- Ⓢ "RPM is quite impressive!" D.R. Colorado

Complaint Exhibits

EXHIBIT G
Page 3

We get fan mail like this every day. Join our fan club and see the difference RPM makes in your trading.

Actual Sample of RPM printout

***** R P M *****
*** Reliable Pattern Match of December S&P 500 for 10-15-1998 ***

IF THE OPEN IS GREATER THAN 1023.00 THEN: (12)
There is a 67 % Probability of a Higher Close
Projected Low = Open - 1.86 Projected High = Open +14.02
33 % Chance 1052.87 will be hit - Resistance 4
58 % Chance 1045.40 will be hit - Resistance 3
58 % Chance 1037.93 will be hit - Resistance 2
83 % Chance 1031.15 will be hit - Resistance 1
58 % Chance 1024.37 will be hit - Resistance 1
58 % Chance 1023.00 will be hit - Previous High
42 % Chance 1016.90 will be hit - Opening Resistance
25 % Chance 1010.80 will be hit - ***** Close *****
25 % Chance 1009.43 will be hit - *** Pivot Point ***
25 % Chance 1002.65 will be hit - Opening Support
17 % Chance 995.87 will be hit - Support 1
17 % Chance 994.50 will be hit - Previous Low
17 % Chance 988.40 will be hit - Support
17 % Chance 980.93 will be hit - Support 2
8 % Chance 974.15 will be hit - Support 3
Buy the Open; stop 4.30 points. Cover MOC

IF THE OPEN IS BETWEEN 1010.80 AND 1023.00 THEN: (48)
There is a 56 % Probability of a Higher Close
Projected Low = Open - 1.03 Projected High = Open +11.03
13 % Chance 1045.40 will be hit - Resistance 3
21 % Chance 1037.93 will be hit - Resistance 2
27 % Chance 1031.15 will be hit - Resistance 1
58 % Chance 1024.37 will be hit - Resistance 1
56 % Chance 1023.00 will be hit - Previous High
83 % Chance 1016.90 will be hit - Opening Resistance
92 % Chance 1010.80 will be hit - ***** Close *****
92 % Chance 1009.43 will be hit - *** Pivot Point ***
65 % Chance 1002.65 will be hit - Opening Support
42 % Chance 995.87 will be hit - Support 1
42 % Chance 994.50 will be hit - Previous Low
27 % Chance 988.40 will be hit - Support
17 % Chance 980.93 will be hit - Support 2
6 % Chance 974.15 will be hit - Support 3
Buy the Open; stop 4.30 points. Cover MOC

IF THE OPEN IS BETWEEN 994.50 AND 1010.80 THEN: (45)
There is a 67 % Probability of a Higher Close
Projected Low = Open - 1.88 Projected High = Open +13.21
9 % Chance 1045.40 will be hit - Resistance 3
11 % Chance 1037.93 will be hit - Resistance 2
27 % Chance 1031.15 will be hit - Resistance 1

Complaint Exhibits

4 % Chance 1024 37 will be hit - Resistance 1
 4 % Chance 1023 00 will be hit - Previous High
 30 % Chance 1016 80 will be hit - Opening Resistance
 30 % Chance 1016 80 will be hit - Previous High
 37 % Chance 1009 43 will be hit - *** Pivot Point ***
 75 % Chance 1002 65 will be hit - Opening Support
 53 % Chance 995 87 will be hit - Support 1
 53 % Chance 994 50 will be hit - Previous Low
 31 % Chance 988 40 will be hit - Support
 13 % Chance 980 93 will be hit - Support 2
 4 % Chance 974 15 will be hit - Support 3
Buy the Open: stop 4.30 points; Cover MOC

EXHIBIT C
Page 4

IF THE OPEN IS LESS THAN 994 50 THEN (0)

What happened October 15, 1998? The S&P opened at 1007.00 triggering our long position, and shot up over 20 full points before noon. It is my custom to take profits of 20 points when up that much by noon, so we made \$10,000.00 per 2 contracts very quickly. **This was not a hypothetical trade but was actually taken. And we had no slippage on this trade.** If you had followed the RPM rules however, you would have held until the close at 1064.00 for a profit of a whopping **\$28,250**. We specify profits per 2 contracts since the split of the S&P contract in November and as per 1 contract before that time to be consistent with previous results. Since slippage and commissions vary from person to person, they are not included.

Understanding the RPM printout:

Monitor the opening price of the day session. Take note of the 3 or 4 "if the open is ..." statements. Place a check mark by the scenario that occurs. Use the buy and sell recommendations that are at the bottom of each scenario. The additional information provided is not needed if you simply want to follow the RPM system. The numbers in parenthesis are the number of matches to the RPM paradigm found. If you are an active daytrader, you may wish to use the percentages as an aid in making additional trading decisions. Further information on this is included in the RPM trading manual.

Please note that if you are checking a past trade that the Wall Street Journal quotes the globex open. We do not trade globex. You must use the open of the day session for accurate records.

Results: Up \$151,500 per 2 contracts in 1997

Month	Results per 2 contracts
January 1998	\$ 2,550.00
February 1998	\$ 5,550.00
March 1998	\$ -500.00 Loss
April 1998	\$ 3,000.00
May 1998	\$21,600.00
June 1998	\$ 7,350.00

Complaint Exhibits

DAY TRADING RPM Day Trading

CHARTER
2008

July 1998	\$ 55,000.00	
August 1998	\$ 19,000.00	
September 1998	\$ 17,000.00	
October 1998	\$ 8,000.00	
November 1998	\$ 800.00	
December 1998	\$25,600.00	
January 1999	\$30,800.00	
February 1999	\$ 20,150.00	
March 1999	\$ -3,200.00	Loss
April 1999	\$ 10,950.00	
May 1999	\$ -24,400.00	Loss
June 1999	\$ 10,950.00	

Up \$140,750 per 2 contracts in 1998



You may charge your purchase on our secure server:

You will receive a \$250 discount by ordering direct, total \$2700. Your order will be shipped tomorrow. Offer expires July 31, 1999.

[Click Here for Secure Payment Form](#)

Or mail a check for \$2,950 to

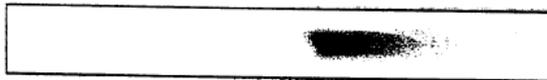
Ellery Coleman
133 Bunkers Trail
Warner Robins, GA 31088

or call 912-922-9019

Or, try it by fax for 3 months for only \$795 for a limited time.

Register for a free trial of RPM.

To see a trade by trade [click here](#).



Complaint Exhibits

DAY TRADING RPM Day Trading

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Page

Computer Software USA

Computers, software, peripherals, and training at low prices. Exceptional customer service. Free shipping.

Top of Page

Decision and Order

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated 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 of 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 respondent with violation of the Federal Trade Commission Act; and

Respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Act, 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 Ellery Coleman is the sole proprietor of Granite Investments, a Georgia company with its principal office or place of business at 133 Bunkers Trail, Warner Robins, GA

Decision and Order

31088. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the company.

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. "Clearly and conspicuously" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it.
 - B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
 - C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently

Decision and Order

noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. In the case of advertisements disseminated by means of an interactive electronic medium such as the Internet or other online services, "in close proximity" shall mean on the same Web page and proximate to the triggering representation, and not on other portions of the Web site, accessed or displayed through hyperlinks or other means.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Trading program" shall mean any program, service, course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, or other financial instruments or investments.

5. Unless otherwise specified, "respondent" shall mean Ellery Coleman, individually and doing business as Granite Investments, his successors and assigns and each of his officers, agents, representatives, and employees.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale,

Decision and Order

or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication:

- A. That users of respondent's S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis;
- B. That specific trades or investments were actually made and resulted in substantial profits;
- C. The amount of earnings, income, profit or the rate of return that a prospective user could reasonably expect to attain;
- D. The percentage, ratio, or number of trades that a prospective user of respondent's S&P futures trading programs could reasonably expect to be profitable; or
- E. Any financial benefit or other benefit of any kind from the purchase or use of such trading program;

unless respondent possesses and relies upon a reasonable basis substantiating the representation at the time it is made.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

- A. That users of respondent's trading programs can reasonably expect to trade profitably with little or no financial risk;

Decision and Order

- B. That respondent personally uses his trading programs to trade on his own behalf;
- C. Whether trades recommended by respondent's trading programs were actually made or were hypothetical;
- D. That any testimonial or endorsement of respondent's trading programs or training reflects the actual experience and current opinions, findings, beliefs, or experiences of the testimonialist or endorser; or
- E. The extent of risk to which users of respondent's trading programs are exposed.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the financial benefits of such program, unless he discloses, clearly and conspicuously, and in close proximity to the representation,

"FUTURES TRADING [or STOCK, CURRENCY, OPTIONS, ETC., as applicable] involves high risks and YOU can LOSE a lot of money."

Provided, the disclosure required by this Part is in addition to, and not in lieu of, any other disclosure that respondent may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The requirements of this Part are not intended to,

Decision and Order

and shall not be interpreted to, exempt respondent from making any other disclosure.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user, testimonial or endorsement of the trading program represents the typical or ordinary experience of members of the public who use the trading program unless:

- A. Respondent possesses and relies upon a reasonable basis substantiating the representation at the time it is made; or
- B. Respondent discloses, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either:
 - 1. what the generally expected results would be for users of the trading program, or
 - 2. the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

V.

IT IS FURTHER ORDERED that respondent Ellery Coleman, individually and doing business as Granite Investments, and his successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order,

Decision and Order

maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Ellery Coleman, individually and doing business as Granite Investments, and his successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers of Granite Investments, 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. Respondent shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after creation.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent Ellery Coleman, individually and doing business as Granite Investments, and his successors and assigns shall notify the Commission at least thirty (30) days prior to any change in Granite Investments that may affect compliance obligations arising under this order, including but not limited to the formation of a corporation, the proposed filing of a bankruptcy petition, or a change in the company name or address.

VIII.

IT IS FURTHER ORDERED that respondent Ellery Coleman, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Ellery Coleman, individually and doing business as Granite Investments, and his 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.

X.

This order will terminate on June 5, 2020, 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

Decision and Order

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.

XI.

All notices required to be sent to the Commission pursuant to this Order 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. Attn.: In the Matter of Ellery Coleman.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Ellery Coleman, individually and doing business as Granite Investments (“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 sells and distributes various computer software programs and training for buying and selling S&P futures contracts on a daily basis. Respondent advertises on his Internet Web site, www.choicedaytrades.com. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondent's trading methods.

The Commission's proposed complaint alleges that respondent made unsubstantiated claims that users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis (*e.g.*, \$25,000 per futures contract); that specific trades or investments enumerated in respondent's advertisements were actually made and resulted in the substantial profits stated in the advertisements; and that testimonials appearing in the advertisements for respondent's S&P futures trading programs reflect the typical or ordinary experience of members of the public who use the programs.

In addition, the complaint alleges that respondent misrepresented that users of his S&P futures trading programs can reasonably expect to trade profitably with little financial risk; that testimonials appearing in the advertisements for his S&P futures

Analysis to Aid Public Comment

trading programs reflect the actual experiences of consumers who have used the programs; that he personally uses his S&P futures trading programs to trade profitably on his own behalf; and that the trades recommended by his S&P futures trading programs, as enumerated in the advertisements, were actually made in many cases.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to have a reasonable basis substantiating any representation that users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis; that specific trades or investments were actually made and resulted in substantial profits; about the amount of earnings, income, profit or the rate of return that a prospective user of any trading program could reasonably expect to attain; about the percentage, ratio, or number of trades that a prospective user of respondent's S&P futures trading programs could reasonably expect to be profitable; or about any financial benefit or other benefit from any trading programs offered by respondent.

Part II of the proposed order prohibits respondent from misrepresenting that users of any trading program can reasonably expect to trade profitably with little or no financial risk; that respondent personally uses his trading programs to trade on his own behalf; whether trades recommended by respondent's trading programs were actually made or were hypothetical; that any testimonial or endorsement of respondent's trading programs or training reflects the testimonialist's or endorser's actual experience and current opinions, findings, beliefs, or experiences; or from misrepresenting the extent of risk to which users of any trading program are exposed.

Analysis to Aid Public Comment

Part III of the proposed order requires respondent to disclose, clearly and conspicuously, "FUTURES TRADING [or STOCK, CURRENCY, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation he makes about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondent may be required to make.

Part IV of the proposed order prohibits respondent from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondent must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V-XI of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain personnel; to notify the Commission of changes in Granite Investments that may affect the order; to notify the Commission of changes in respondent's employment status for a period of ten years; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. 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

COMPUTRADE LLC, ET AL.

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

*Docket C-3949; File No. 0023085
Complaint, June 5, 2000--Decision, June 5, 2000*

This consent order requires Respondent CompuTrade LLC to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn large profits: (1) of \$500 to \$750 or more per day; (2) of as much as six or even seven figures annually (i.e., more than \$1,000,000); or (3) even if they have no previous experience in currency trading, or claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents. The order also prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed. In addition, the order requires Respondent to disclose, clearly and conspicuously, "CURRENCY [or STOCK, FUTURES, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation he makes about the financial benefits of any trading program. Respondent is also prohibited from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondent must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Participants

For the Commission: *Michael Dershowitz, Jean Sullivan, C. Lee Peeler, and BE.*

For the Respondents: *Bernard Lewis, CompuTrade LLC.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that CompuTrade LLC, a corporation, and Bernard Lewis, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent CompuTrade LLC is a Nevada corporation with its principal office or place of business at 24591 Del Prado, Dana Point, CA 92629.
2. Respondent Bernard Lewis is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CompuTrade LLC.
3. Respondents have advertised, offered for sale, sold, and distributed a currency trading computer program and training to the public. Respondents advise their clients to buy and sell specific foreign currencies on a daily basis. Respondents sell their program and training through their Internet Web sites, www.computrades.com and www.computrader.net.
4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
5. Respondents have disseminated or have caused to be disseminated Internet advertisements for their currency trading program and training, including but not necessarily limited to the attached Exhibit A, pages 1 through 8. These advertisements contain the following statements:

Complaint

“Our software signals precisely when to buy and when to sell a particular currency allowing you the opportunity to make money regardless of the market going up or down.”

“Your [currency trading] business does not require much capital to get started, has the potential to make huge profits . . .”

“With the ability to connect to the Internet from just about anywhere, the average individual now has the opportunity to participate in this highly profitable [currency trading] business even if you have no previous experience at all.”

“The potential for profit exists as long as there is movement in the exchange rate (price). One of the sides of the pair is always gaining, and providing the investor picks the right side at the right time, money can ALWAYS be made.”

“What Are My Expected Financial Rewards

Our daily objective is to gain Pips (Points) on our trade . . . 100 Pips @ \$7.50 = \$750.00

As you progress in your trading skills becoming more experienced and skillful, the advanced techniques covered in training and outlined in your manual, will help you to acquire the know how to maximize and increase these amounts considerably.

The potential to make a SIX or SEVEN figure annual income from trading is at the end of your fingertips.”

“What Are My Financial Risks?

Our trading strategy and risk management technique, help you to maximize gains and minimize losses. Your computer and our conservative strategy helps to ensure that GAINS are maximized and losses are minimized.”

[consumer testimonial]

Complaint

“I have to tell you how dramatically the Forex trading system and formula have improved my trading. To give you some idea: I work full time in my contracting business during the day, at night I work with your trading system for a few hours and am averaging more than \$500 a day.”

6. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that:

- a. Users of respondents' currency trading program can reasonably expect to earn large profits, or as much as six or even seven figures annually (i.e., more than \$1,000,000).
- b. Users of respondents' currency trading program can reasonably expect to earn profits of \$500 to \$750 or more per day.
- c. Users of respondents' currency trading program can reasonably expect to earn huge profits even if they have no previous experience in currency trading.
- d. Testimonials appearing in the advertisements for respondents' currency trading program reflect the typical or ordinary experience of members of the public who use the program.

7. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

Complaint

9. Through the means described in Paragraph 5, respondents have represented, expressly or by implication that users of respondents' currency trading program can reasonably expect to trade with little financial risk.

10. In truth and in fact, users of respondents' currency trading program cannot reasonably expect to trade with little financial risk. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fifth day of June, 2000, has issued this complaint against respondents.

By the Commission.

Complaint Exhibits

Complaint Exhibits

CompuTrade Computerized Currency Trading Systems - Forex Market

EXHIBIT A
Page 1

CLICK HERE  **COMPUTRADE** *Computerised Trading Systems*
1-800-525-1090

Menu

CompuTrade are providers of a powerful CURRENCY TRADING software that shows you precisely how to make money Trading Currencies on your Computer.

What's New!

Our software signals precisely when to buy and when to sell a particular currency allowing you the opportunity to make money regardless of the market going up or down. CompuTrade gives you the tools and the know how to go out and *Do It!* Our techniques and strategies will help you take advantage of the profit opportunities that occur every single trading day. Trade from home or from anywhere in the world, all you need is a computer and a connection to the Internet.

Until recently the gates of the LARGEST FINANCIAL MARKET ON THE PLANET have been locked. Never before has the average individual had the opportunity to participate on an equal footing with that small percentage who always made "THE BIG MONEY" day after day, year after year. CompuTrade's software, methods and strategies have now leveled the playing fields.


A Member of the Better Business Bureau

We are committed to training and showing you how to trade on the worlds LARGEST FINANCIAL MARKET no matter what your background may be and take advantage of what has been billed "The ULTIMATE BUSINESS"

Complaint Exhibits

EXHIBIT A

Page 2

\$

COMPUTRADE *Computerised Trading Systems*
1-800-525-1090

"The Ultimate Business"
There are many questions one could ask when trying to evaluate this statement. If you have owned and operated your own business or have worked for a boss...

Consider The Following and Judge for Yourself:
You can operate your business from home, work, vacation or anywhere in the world; all you need is access to the Internet.

1. You never have to worry about job insecurity, harassment or any other employment related anxiety. **YOU ARE YOUR OWN BOSS!**
2. You never need to worry about employer payroll, strikes, theft, rent increases, health inspectors, lease problems, public liability insurance, being sued etc...
3. Your business does not require much capital to get started, has the potential to make huge profits and will never get billed for fees, licenses nor will you need to worry about complicated sales tax returns and lengthy forms.
4. You don't need to do any selling and of course that means no billing. In fact you don't even need any customers!
5. Your business can operate every single working day of the year. You decide which days you wish to work - You make the decision, take a vacation at a moment's notice and not a soul needs to know!
6. Your business can be registered in a state with attractive tax concessions (or even in a foreign country) and may be operated from your home state or out of the country, taking advantage of some of the out of state or out of country benefits. (This may differ from State to State and Country to Country)

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Complaint Exhibits

Currency Trading

EXHIBIT A
Page 3

http://www.comptrade.com

CLICK HERE  **COMPTRADE** *Computerized Trading Systems* 1-800-525-1090

Currency Trading

Currency day Trading is the process of attempting to take reasonable profits in a very short period of time from the constant price fluctuation of foreign currencies.

Currency Trading

Utilizing the help of your personal computer (PC) and our state of the art computer software, you will be able to determine precisely when to Buy or Sell a particular currency. The objective being to Buy Low/Sell High and Vice Versa = MAKING \$\$\$

With the ability to connect to the Internet from just about anywhere, the average individual now has the opportunity to participate in this highly profitable business even if you have no previous experience at all



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Complaint Exhibits

COMPUTRADE

EXHIBIT A
Page 4

WWW.COMPUTRADE.COM

BREAKING NEWS **COMPUTRADE** **Computerized Trading Systems**
1-800-525-1090

The Advantages of FOREX Trading

- Leverage.
- Open 24 hours
- Liquidity. Easy to buy and easy to sell.
- Two Way Market. Make money no matter if the market goes up or down.
- Information is Readily Available

Why Should I Trade?

- The main advantage of the FOREX market is that there is no bear market. Currencies are traded in pairs, for example Dollar/Yen or Dollar/Swiss Franc. Every position involves the selling of one currency and the buying of another. If one believes the Swiss Franc will appreciate against the Dollar, one can sell Dollars and buy Swiss Francs. Or if one holds the opposite belief, one can buy Dollars for Swiss Francs. The potential for profit exists as long as there is movement in the exchange rate (price). One of the sides of the pair is always gaining, and providing the investor picks the right side at the right time, money can ALWAYS be made.
- The four major currency pairs always have buyers and sellers. Many high-return investments are difficult to sell, once bought. FOREX investors never have to worry about being "stuck" in a position due to a lack of market interest. In this \$1.5 trillion dollar per day market. Major international banks are always willing to provide both a bid (selling) and ask (buying) price. Furthermore, the market is open 24 hours per day. High liquidity and 24 hour trading allow market participants to exit or take a new position regardless of the hour.

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Complaint Exhibits

EXHIBIT A

Page 5

covered in training is captured in detail and layed out for included are our successful training methods and fomulas, Trading software, traders tips, customized forms etc.etc and everything the new trader needs to know about their exciting new business, all clearly spelled out from A-Z.

What Are My Expected Financial Rewards

Our daily objective is to gain Pips (Points) on our trade. Every Pip made represents money. Let's say for example we are trading 4 Lots of British Pound, and we end our trading session making 25 Pips profit per Lot (Each Pip gain on the British Pound is worth \$7.50) That day's trading sheet would be as follows:

4 Lots @ 25 Pips = 100 Pips

100 Pips @ \$7.50 = \$750.00

As you progress in your trading skills becoming more experienced and skillful, the advanced techniques covered in training and outlined in your manual, will help you to acquire the know how to maximize and increase these amounts considerably.

The potential to make a SIX or even SEVEN figure annual income from trading is at the end of your fingertips. Once you have attained the skill it is with you forever – Just like learning to ride a bicycle!

What Are My Financial Risks?

Our trading strategy and risk management techniques help you to maximize gains and minimize losses. Your computer and our conservative strategy helps to ensure that Gains are maximized and losses are minimized!

We shall be delighted to show you our impressive and up to date trading records. We continuously strive to introduce new and progressive trading methods. They are thoroughly researched and back checked. Once we are satisfied with them they are made available to you through our member access web site, which is also filled with trader's tips, helpful links etc.

How Soon Can I Start Trading and Earning \$\$\$?

Complaint Exhibits

9/15/99

EXHIBIT A
Page 9





**Computerised
Trading Systems**
1-800-525-1090

ANALYSIS OF A SWISS FRANC TRADE

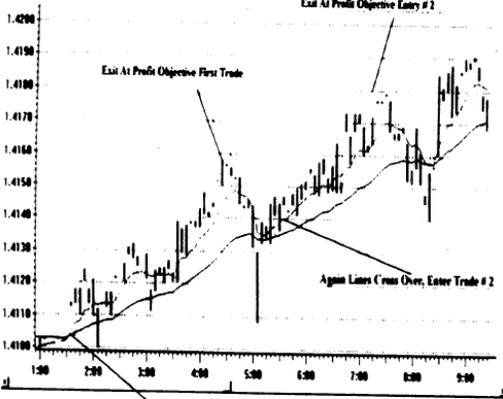
Trade # 1 - Our signal lines cross over, we enter with a profit target of 30 points.

Trade # 2 - An hour after achieving our profit objective the signal lines cross over again to give us entry point # 2. Less than 2 hours later we reach our profit objective.

Trade Summary:
Trade # 1 & 2 - Assuming only 2 Lots traded per trade
= 120 Pips (Points) x \$6.25 = \$750.00

Copyright CompuTrade LLC 1999

Monday 1:00 Swiss Franc / U.S. Spot





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Complaint Exhibits

EXHIBIT A
Page 7





**Computerised
Trading Systems**
1-800-525-1090

What Some Of Our Students Have To Say!
(Originals are on display at our offices)

You were right day trading truly is the ultimate business. No inventory, No employee headaches, No corporate office politics.

In the beginning I was skeptical. However as I became more experienced and confident that the CompuTrade formula really does work, I am now enjoying the success.

Testimonial
I will never forget my first 45 point gain - What a rush!!!! Most importantly, I would like to personally thank you for the continued support and guidance.

Brad E.
Riverside, CA

As you know, for many years now I have been the CEO of a communications company that employs several hundred people. I, of course, started my telecommunications business with the express purpose of earning a substantial income. Little did I know, however, of what I bargained for in the way of expenses and headaches.

Therein lies the beauty of the FOREX market. Huge, huge upside with very limited and controlled risk! ABSOLUTELY the most exceptional business opportunity I have ever seen!

It has been almost six months since you provided training to my group and I would like to express my sincere gratitude for delivering. Not just during training, but more importantly, for being available for each and every question thereafter.

In this day and time of empty promises, it is refreshing to interact with a company that truly delivers what they sell with honesty and sincerity.

Thanks for the pointed instructions. If any of your students will "listen and diligently apply the methods they're taught" they will discover the keys to the vault.

My hats off to you and your crew for a job well done!

Best Regards
JL
FLR Investments, Inc

With utmost confidence, I would like to share my success using CompuTrade's methods and training. As a recent college graduate I found CompuTrade through the process of putting currency schools and professional traders to the test. I interviewed with many others that claimed to have what it takes to turn the average person into a successful trader. I found that most other schools



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Complaint Exhibits

EXHIBIT A
Page 3

and professionals didn't even compare. CompuTrade rose to the top, offering one on one consultation, schooling and most importantly a system for capturing points successfully in a fast paced and exciting market.

It was evident from the beginning that CompuTrade and its staff had years of experience and a winning strategy. From the first transaction of my currency-trading career to my current financial independence, I can testify of real success. The right teaching coupled with a winning technique makes all the difference in the world.

Thank you CompuTrade for the excellent training and winning techniques.

Sincerely,

Rick S.
San Diego, CA

I just wanted to say thank you for all the time and effort you have invested in me over the last few months. I am enjoying the Forex system more than I ever thought was possible. Not only am I enjoying myself, but I love the Global Dealing Station system, too. The orders are executed so quickly that it is absolutely amazing. It's so much fun to watch the profits soar! I love it!

I am looking forward to a very prosperous 1999 and I wish you the same.

M. F.
Santa Fe, NM

P. S. Thanks for the help getting a new computer. It's perfect for trading!

I am very happy to inform you that my trading is going well after taking your day trading course 5 months ago. I was never successful with any other trading method or system until I started trading the Forex system with your powerful trading formula.

I have to tell you how dramatically the Forex trading system and formula have improved my trading. To give you some idea: I work full time in my contracting business during the day, at night I work with your trading system for a few hours and am averaging more than \$500 a day. I just wish that I learned about your trading method years ago. Now I truly do feel like I am on my way to financial freedom. I am also referring a friend to the CompuTrade trading program.

I truly do thank you for teaching me your trading methods, and for your support.

Sincerely,

Louie A. W. (CA)

The service and quality of training at CompuTrade is exceptional. I highly recommend CompuTrade if you are looking to learn more about computerized day trading.

T.A.
LakeForest,CA

Decision and Order

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Act, 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 CompuTrade LLC is a Nevada corporation with its principal office or place of business at 24591 Del Prado, Dana Point, CA 92629.

Decision and Order

2. Respondent Bernard Lewis is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of CompuTrade LLC.

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

ORDER

DEFINITIONS

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

1. "Clearly and conspicuously" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

Decision and Order

- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. In the case of advertisements disseminated by means of an interactive electronic medium such as the Internet or other online services, "in close proximity" shall mean on the same Web page and proximate to the triggering representation, and not on other portions of the Web site, accessed or displayed through hyperlinks or other means.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Trading program" shall mean any program, service, course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, or other financial instruments or investments.

5. Unless otherwise specified, "respondents" shall mean CompuTrade LLC, a corporation, its successors and assigns and its officers; Bernard Lewis, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

Decision and Order

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication:

- A. That users of respondents' currency trading program can reasonably expect to earn large profits, or as much as six or even seven figures annually (i.e., more than \$1,000,000);
- B. That users of respondents' currency trading program can reasonably expect to earn profits of \$500 to \$750 or more per day;
- C. That users of respondents' currency trading program can reasonably expect to earn large profits even if they have no previous experience in currency trading;
- D. The amount of earnings, income, or profit that a prospective user could reasonably expect to attain; or
- E. Any financial benefit or other benefit of any kind from the purchase or use of such trading program;

unless respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made.

Decision and Order

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication,

- A. That users of the program can reasonably expect to trade with little or no financial risk; or
- B. The extent of risk to which users of the program are exposed.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the financial benefits of such program, unless they disclose, clearly and conspicuously, and in close proximity to the representation,

"CURRENCY [or STOCK, COMMODITY FUTURES, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money."

Provided, the disclosure required by this Part is in addition to, and not in lieu of, any other disclosure that respondents may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The requirements of this Part are not intended to, and shall not be interpreted to, exempt respondents from making any other disclosure.

Decision and Order

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any trading program, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user, testimonial or endorsement of the trading program represents the typical or ordinary experience of members of the public who use the trading program unless:

- A. Respondents possess and rely upon a reasonable basis substantiating the representation at the time it is made; or
- B. Respondents disclose, clearly and conspicuously, and in close proximity to the endorsement or testimonial, either:
 - 1. what the generally expected results would be for users of the trading program, or
 - 2. the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

V.

IT IS FURTHER ORDERED that respondent CompuTrade LLC, and its successors and assigns, and respondent Bernard Lewis shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon

Decision and Order

request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials (including packaging) containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent CompuTrade LLC, and its successors and assigns, and respondent Bernard Lewis 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. Respondents 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. Respondents shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after creation.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent CompuTrade LLC, 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 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.

VIII.

IT IS FURTHER ORDERED that respondent Bernard Lewis, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

IX.

IT IS FURTHER ORDERED that respondent CompuTrade LLC, 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.

Decision and Order

X.

This order will terminate on June 5, 2020, 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 effect 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.

XI.

All notices required to be sent to the Commission pursuant to this Order shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20580. ATTN: In the Matter of CompuTrade LLC.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from CompuTrade LLC, a corporation, and Bernard Lewis, individually and as an officer of the corporation (together, “respondents”).

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.

Respondents sell and distribute computer software and training for buying and selling foreign currencies on a daily basis. They advertise on their Internet Web sites, www.computrades.com and www.computrader.net. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' trading methods.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' currency trading program could reasonably expect to earn large profits of \$500 to \$750 or more per day, and as much as six or seven figures annually (i.e., more than \$1,000,000); that users could reasonably expect to earn huge profits even if they had no previous experience in currency trading; and that testimonials appearing in the advertisements for respondents' currency trading program reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented

Analysis to Aid Public Comment

that users of their currency trading program could reasonably expect to trade with little financial risk.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn large profits: (1) of \$500 to \$750 or more per day; (2) of as much as six or even seven figures annually (i.e., more than \$1,000,000); or (3) even if they have no previous experience in currency trading. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "CURRENCY [or STOCK, COMMODITY FUTURES, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation they make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any

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trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires CompuTrade to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Part VIII requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part IX requires CompuTrade to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. 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**R.N. MOTORS, INC.**

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

Docket C-3947; File No. 9923246
Complaint, June 5, 2000--Decision, June 5, 2000

This consent order prohibits Respondent R.N. Motors, Inc., in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The order also prohibits Respondent, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and as follows: 1) that the transaction advertised is a lease; 2) the total amount due at lease signing or delivery; 3) whether or not a security deposit is required; 4) the number, amounts, and timing of scheduled payments; and 5) that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle. Respondent is also prohibited from stating a percentage rate in an advertisement or in documents evidencing the lease transaction, unless respondent also states the notice required by Regulation M that "this percentage may not measure the overall cost of financing this lease." All disclosure required in advertising must be made clearly and conspicuously in all forms of advertising in all forms of media.

Participants

For the Commission: *Carole Reynolds, Michelle Chua, Jessica Rich, David Medine, and BE.*

For the Respondents: *James T. Flynn, Flynn, McKenna, Wright, & Karsh.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that R. N. Motors, Inc., a corporation, and its subsidiary, Red Noland Cadillac, Inc., a corporation, and Nelson B. Noland, individually and as an officer of the corporations, ("respondents"), have violated the provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent R.N. Motors is a Colorado corporation with its principal office or place of business at 990 Motor City Drive, Colorado Springs, Colorado 80906. Respondent R.N. Motors controls the policies, acts or practices of its wholly-owned subsidiary, Red Noland Cadillac, Inc., including the acts or practices alleged in this complaint.
2. Respondent Red Noland Cadillac, Inc. is a Colorado corporation and a wholly-owned subsidiary of R.N. Motors with its principal office or place of business at 990 Motor City Drive, Colorado Springs, Colorado. Respondent Red Noland Cadillac, Inc. offers automobiles for sale or lease to consumers.
3. Respondent Nelson B. Noland is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporate respondents, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondents.

Complaint

4. Respondents have disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.

5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. Respondents have disseminated or have caused to be disseminated consumer lease advertisements ("lease advertisements") for automobiles, including but not necessarily limited to the attached Red Noland Exhibit A. Red Noland Exhibit A is an electronic advertisement. This lease advertisement contains the following statements:

A.

Current Lease Specials

	1999 Deville	1999 Seville STS	1999 Eldorado
Monthly Payment	\$535	\$649	\$529
# Months	36	36	36
GMAC Smart Lease Rates	2.5%	4.1%	2.6%
Down Payment	\$1,800	\$1,800	\$1,800
Security Deposit	\$575	\$700	\$575

(Red Noland Exhibit A)

Complaint

FEDERAL TRADE COMMISSION ACT VIOLATIONS**COUNT I: Failure to Disclose, and Failure to Disclose Adequately, Lease Terms**

7. In lease advertisements, including but not necessarily limited to Red Noland Exhibit A, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount, the downpayment, and the security deposit.

8. These lease advertisements have failed to disclose, and failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether or not third-party fees, such as taxes, licenses, and registration fees, are required as part of the total amount due at lease inception. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The failure to disclose, and failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

9. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

Complaint

**CONSUMER LEASING ACT AND REGULATION M
VIOLATIONS****COUNT II: Failure to Disclose, and Failure to Disclose
Clearly and Conspicuously, Required Lease Information**

10. Respondents' lease advertisements, including but not necessarily limited to Red Noland Exhibit A, state the monthly payment amount, the downpayment, and the security deposit, but fail to disclose, and fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, as amended, including one or more of the following terms:

- a. that the transaction advertised is a lease;
- b. the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: (1) exclude third-party fees that vary by state or locality, such as taxes, licenses and registration fees, and disclose that fact, or (2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed;
- c. whether or not a security deposit is required;
- d. the number, amounts, and timing of scheduled payments; and
- e. that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

11. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

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COUNT III: Failure to Disclose, and Failure to Disclose Clearly and Conspicuously, Required Lease Rate Information

12. Respondents' lease advertisements, including but not necessarily limited to Red Noland Exhibit A, state specific lease rates for each of certain advertised vehicles, but fail to disclose, and fail to disclose clearly and conspicuously, the following notice concerning lease rates required by Regulation M:

This percentage may not measure the overall cost of financing this lease.

13. Respondents' practices have violated Section 213.4(s) of Regulation M, 12 C.F.R. § 213.4(s), as amended.

THEREFORE, the Federal Trade Commission this fifth day of June, 2000, has issued this complaint against respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Consumer Leasing Act, 15 U.S.C. § 1667 *et seq.*, and its

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implementing Regulation M, 12 C.F.R. § 213, and the Federal Trade Commission Act, 15 U.S.C. § 45 et seq.; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, 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 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 Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the said Acts and Regulation, and that a 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 described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent R. N. Motors, Inc. is a Colorado corporation with its principal office or place of business at 990 Motor City Drive, Colorado Springs, Colorado 80906.
2. Respondent Red Noland Cadillac, Inc. is a Colorado corporation with its principal office or place of business at 990 Motor City Drive, Colorado Springs, Colorado 80906.
3. Respondent Nelson B. Noland is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporate respondents. His principal office or place of business is the same as that of the corporate respondents.

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

ORDER**DEFINITIONS**

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

1. "Clearly and conspicuously" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, a disclosure shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "Equal prominence" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the

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same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

- b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

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

3. "Total amount due at lease signing or delivery" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, as required by Regulation M, 12 C.F.R. § 213, as amended. The total amount due at lease signing or delivery may (1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact, or (2) provide a total that includes third-party fees based on a particular state or locality, as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)
4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. Unless otherwise specified, "respondents" shall mean R.N. Motors, Inc., and Red Noland Cadillac, Inc., corporations, their successors and assigns and their officers; Nelson B. Noland, individually and as an officer of the corporations; and each of the above's agents, representatives, and employees.

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I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.
- B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with equal prominence the total amount due at lease signing or delivery.
- C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as amended, as follows:
 1. that the transaction advertised is a lease;
 2. the total amount due at lease signing or delivery;
 3. whether or not a security deposit is required;
 4. the number, amounts, and timing of scheduled payments;
and

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- E. that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667c(a), as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

For radio advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. § 1667c(C), and Section 213.7(f) of Regulation M, 12 C.F.R. § 213.7(f), as amended. For television advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

- F. State a percentage rate in an advertisement or in documents evidencing the lease transaction without stating that "this percentage may not measure the overall cost of financing this lease."

(Section 213.4(s) of Regulation M, 12 C.F.R. § 213.4(s), as amended.)

- G. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667f, as amended.

II.

IT IS FURTHER ORDERED that respondents R. N. Motors, Inc. and Red Noland Cadillac, Inc., and each of their successors and assigns, and respondent Nelson B. Noland, 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

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that will demonstrate compliance with the requirements of this order.

III.

IT IS FURTHER ORDERED that respondents R. N. Motors, Inc. and Red Noland Cadillac, Inc., and each of their successors and assigns, and respondent Nelson B. Noland, 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. Respondents shall deliver this order to such current personnel within thirty (30) days 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 respondents R. N. Motors, Inc. and Red Noland Cadillac, Inc., and each of their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not necessarily 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part

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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 Nelson B. Noland, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, as amended. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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.

VI.

IT IS FURTHER ORDERED that respondents R. N. Motors, Inc. and Red Noland Cadillac, Inc., and each of their successors and assigns, and respondent Nelson B. Noland, 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.

VII.

This order will terminate on June 5, 2020, 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

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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 respondents 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 of Proposed Consent Orders to Aid Public Comment

Summary: The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from respondents: 1) R.N. Motors, Inc., Red Noland Cadillac, Inc., and Nelson B. Noland ("Red Noland"); and 2) Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., Don Simmons, Inc., and Donald M. Simmons, II and Richard

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L. Rockwell (“Simmons Rockwell”). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have 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 agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements’ proposed orders.

The Red Noland and Simmons Rockwell complaints allege that these respondents disseminated automobile lease advertisements that violate the Federal Trade Commission Act (“FTC Act”), the Consumer Leasing Act (“CLA”), and Regulation M. The Simmons Rockwell complaint also alleges that it disseminated automobile credit advertisements that violate the Truth in Lending Act (“TILA”) and Regulation Z.

Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §1667 et seq.; 15 U.S.C. § 1601 et seq.; 12 C.F.R. § 213; 12 C.F.R. § 226.

I. The Complaints

A. FTC Act Violations

The Red Noland complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, the downpayment, and the security deposit, respondent failed to disclose, and failed to disclose adequately, additional terms

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pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees such as taxes, licenses, and registration fees are required as part of the total amount due at lease inception. The Simmons Rockwell complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, respondent failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees, such as taxes, licenses, and registration fees, are required as part of the total amount due at lease inception. The Red Noland and Simmons Rockwell complaints allege that the required information does not appear at all or appears in fine print and/or is illegible in the advertisements and that this information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to both complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The Red Noland and Simmons Rockwell complaints also allege that respondents' lease advertisements have violated the CLA and Regulation M. The Red Noland complaint alleges that respondent's ads state the monthly payment amount, the downpayment, and the security deposit; the Simmons Rockwell complaint alleges that respondent's ads state the monthly payment amount -- all "triggering" terms under these laws. The Red Noland and Simmons Rockwell complaints allege that respondents failed to disclose, and/or fail to disclose clearly and conspicuously, certain additional "triggered" terms, as applicable and as follows: the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation, and that

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such amount: 1) excludes third-party fees, such as taxes, licenses and registration fees; and discloses that fact; or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; and the number, amounts, and timing of scheduled payments.

According to the complaints, Red Noland's lease disclosures are omitted altogether and are not clear and conspicuous. Simmons Rockwell's lease disclosures, if provided, are not clear and conspicuous because they appear in fine print and/or are illegible.

The Red Noland and Simmons Rockwell complaints, therefore, allege that these practices violate Section 184 of the CLA, 15 U.S.C. § 1667c, as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

In addition, the Red Noland complaint alleges that respondent's lease advertisements state specific lease rates for each of certain advertised vehicles, but fail to disclose, and fail to disclose clearly and conspicuously, the following notice concerning lease rates required by Regulation M: "This percentage may not measure the overall cost of financing this lease."

The Red Noland complaint, therefore, alleges that this practice violates Section 213.4(s) of Regulation M, 12 C.F.R. § 213.4(s).

C. TILA and Regulation Z Violations

The Simmons Rockwell complaint alleges that respondent's credit advertisements have violated the TILA and Regulation Z. It alleges that respondent's credit ads state the number of payments required to finance the transaction and an annual percentage rate (expressed as an "APR"), but failed to disclose, and/or failed to disclose clearly and conspicuously, certain additional terms required by Regulation Z, including the amount

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of the downpayment and the full terms of repayment, such as the amount of the monthly payment.

According to the complaint, Simmons Rockwell's credit disclosures, if provided, are not clear and conspicuous because they appear in blurred print.

The Simmons Rockwell complaint, therefore, alleges that these practices violate Section 144 of the 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.

II. Proposed Consent Orders

The Red Noland and Simmons Rockwell proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, Paragraph I.A. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from misrepresenting, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.

Paragraph I.B. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The "prominence" requirement prohibits respondents from running deceptive advertisements that highlight low amounts due at lease inception with inadequate disclosure of the actual total lease inception fees.

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This "prominence" requirement for lease inception fees is also found in Regulation M.

Paragraph I.C. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and as follows: 1) that the transaction advertised is a lease; 2) the total amount due at lease signing or delivery; 3) whether or not a security deposit is required; 4) the number, amounts, and timing of scheduled payments; and 5) that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

Furthermore, Paragraph I.D. of the Red Noland proposed order prohibits this respondent from stating a percentage rate in an advertisement or in documents evidencing the lease transaction, unless respondent also states the notice required by Regulation M that "this percentage may not measure the overall cost of financing this lease."

Paragraph I.D. of the Simmons Rockwell proposed order, and paragraph I.E. of the Red Noland proposed order, prohibit respondents from engaging in any other violation of Regulation M, as amended.

In addition, Paragraph II. A. of the Simmons Rockwell proposed order enjoins respondent, in any credit advertisement, from stating 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 Regulation Z, as follows: 1) the amount or percentage of the downpayment; 2) the terms of repayment; and 3) the annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit

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transaction, that fact must also be disclosed. Paragraph II.B. of this proposed order also prohibits Simmons Rockwell from stating a rate of finance charge unless respondents state the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Paragraph III.C. of this proposed order also enjoins Simmons Rockwell from engaging in any other violation of Regulation Z, as amended.

The information required by Paragraph I of the Red Noland proposed order (lease advertisements), and Paragraphs I and II of the Simmons Rockwell proposed order (lease and credit advertisements), must be disclosed "clearly and conspicuously." Both proposed orders define the term "clearly and conspicuously" for Red Noland's and Simmons Rockwell's advertisements in all media. In a television, video, radio or Internet or other electronic advertisement, the required disclosures made in the audio portion of the advertisement must be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend.

The required disclosures in the video portion of the advertisement must be of a size and shade, and must appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend. In a print advertisement, the required disclosures must be in a type size and location sufficient for an ordinary consumer to read and comprehend, in print that contrasts with the background against which it appears. Additionally, the required disclosures must be in understandable language and syntax. Further, nothing contrary to, inconsistent with, or in mitigation of the required disclosures shall be used in any advertisement.

Analysis to Aid Public Comment

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

Complaint

IN THE MATTER OF

**SIMMONS ROCKWELL FORD MERCURY, INC.,
ET AL.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT,
THE CONSUMER LEASING ACT, AND THE TRUTH IN LENDING ACT

*Docket C-3950; File No. 9923247
Complaint, June 6, 2000--Decision, June 6, 2000*

This consent order prohibits Respondent Simmons Rockwell Ford Mercury, Inc., in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The order also prohibits Respondent, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and as follows: 1) that the transaction advertised is a lease; 2) the total amount due at lease signing or delivery; 3) whether or not a security deposit is required; 4) the number, amounts, and timing of scheduled payments; and 5) that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle. The order further enjoins Respondent, in any credit advertisement, from stating 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 Regulation Z, as follows: 1) the amount or percentage of the downpayment; 2) the terms of repayment; and 3) the annual percentage rate, using that term or the abbreviation "APR" or stating a rate of finance charge unless respondents state the rate as an "annual percentage rate" or the abbreviation "APR," using that term. All disclosure required in advertising must be made clearly and conspicuously in all forms of advertising in all forms of media.

Complaint

Participants

For the Commission: *Carole Reynolds, Michelle Chua, Jessica Rich, David Medine, and BE.*

For the Respondents: *Jeffrey M. Fetter, Scolaro, Schulman, Cohen, Lawler, & Burstein, P.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., corporations, and Donald M. Simmons, II and Richard L. Rockwell, individually and as officers of the corporations, ("respondents") have violated the provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and 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 Simmons Rockwell Ford Mercury, Inc. is a New York corporation with its principal office or place of business at 105 Seneca Street, Hornell, New York 14843. Respondent offers automobiles for sale or lease to consumers.
2. Respondent Simmons Rockwell Autoplaza, Inc. is a New York corporation with its principal office or place of business at 784 County Route 64, Elmira, New York 14903. Respondent offers automobiles for sale or lease to consumers.
3. Respondent Don Simmons, Inc. is a Pennsylvania corporation with its principal office or place of business at 300 North Elmira Street, Sayre, Pennsylvania 18840, and 7327 Hammondsport Road, Bath, New York 14810. Respondent offers automobiles for

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sale or lease to consumers.

4. Respondent Donald M. Simmons, II is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondents.

5. Respondent Richard L. Rockwell is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondents.

6. Respondents have disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.

5. Respondents have disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

6. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

7. Respondents have disseminated or have caused to be disseminated consumer lease and/or credit advertisements ("lease and/or credit advertisements") for automobiles, including but not

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necessarily limited to the attached Simmons Rockwell Exhibits A and B. Simmons Rockwell Exhibit A is an electronic advertisement. Simmons Rockwell Exhibit B is a print advertisement. These lease and/or credit advertisements contain the following statements:

A.

[Simmons Rockwell Exhibit A states several lease offers, including:]

**'99 SUBARU LEGACY
OUTBACK WAGON AWD**

* * *

**You Pay or Lease For
\$22,399 \$289*/mo.**

[A fine print, illegible disclosure near the bottom of the advertisement states: "* 36 month lease . . . \$1,000 down payment, 1st month payment, security deposit, acquisition, tax, and license fees due at delivery . . .*"]

* * *

**"'99 FORD RANGER 4 DR.
EXT. CAB XLT 4X4 FLARESIDE**

**You pay or Lease for
\$19,999* . . . \$325*/mo."**

[A fine print, illegible disclosure near the bottom of the advertisement states: "*36 month lease, \$1,000 cash or trade equity, 1st mo. security dep., acquisition fee, tax and license due at delivery . . . "]

(Simmons Rockwell Exhibit A)

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B.

[Simmons Rockwell Exhibit B contains the following lease and credit offer:]

**"99 FORD RANGER 4 DR.
EXT. CAB XLT 4X4 FLARESIDE**

...

**2.9%
APR up to
48 mo.**

**YOU PAY OR LEASE FOR
\$18,999* \$209*/MO."**

[A fine print disclosure near the bottom of the advertisement states: "* 48 month lease, \$1,000 cash or trade equity, 1st mo. security dep., acquisition fee, tax and license due at delivery . . ."]

(Simmons Rockwell Exhibit B)

FEDERAL TRADE COMMISSION ACT VIOLATIONS**COUNT I: Failure to Disclose, and/or Failure to
Disclose Adequately, Lease Terms**

10. In lease advertisements, including but not necessarily limited to Simmons Rockwell Exhibits A and B, respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the

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advertisements, including but not necessarily limited to the monthly payment amount.

11. These lease advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees, such as taxes, licenses and registration fees, are required as part of the total amount due at lease inception. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The failure to disclose, and/or failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

12. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

**CONSUMER LEASING ACT AND REGULATION M
VIOLATIONS**

**COUNT II: Failure to Disclose, and/or Failure to Disclose
Clearly and Conspicuously, Required Lease Information**

13. Respondents' lease advertisements, including but not necessarily limited to Simmons Rockwell Exhibits A and B, state the monthly payment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, as amended, including one or more of the following terms:

- a. that the transaction advertised is a lease;
- b. the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: (1) exclude third-party fees that vary by state or locality, such as taxes, licenses and registration fees,

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and disclose that fact, or (2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed;

- c. whether or not a security deposit is required;
- d. the number, amounts, and timing of scheduled payments; and
- e. that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

14. The lease disclosures required by Regulation M, if provided, are not clear and conspicuous because they appear in fine print and/or are illegible.

15. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

TRUTH IN LENDING ACT AND REGULATION Z VIOLATIONS

COUNT III: Failure to Disclose, and/or Failure to Disclose Clearly and Conspicuously, Required Credit Information

16. In credit advertisements, including but not necessarily limited to Simmons Rockwell Exhibit B, respondents have stated the number of payments required to finance the transaction and an annual percentage rate (expressed as an "APR"), but have failed to disclose, and/or have failed to disclose clearly and conspicuously, certain additional terms required by the Truth in Lending Act and

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Regulation Z, including the amount of the downpayment and the full terms of repayment, such as the amount of the monthly payment.

17. The credit disclosures required by Regulation Z, if provided, are not clear and conspicuous because they appear in blurred print.

18. Respondents' practices have violated Section 144 of the TILA, 15 U.S.C. §§ 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.24(c), as amended.

THEREFORE, the Federal Trade Commission this sixth day of June, 2000, has issued this complaint against Respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Consumer Leasing Act, 15 U.S.C. § 1667 et seq., and its implementing Regulation M, 12 C.F.R. § 213, the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and its implementing Regulation Z, 12 C.F.R. § 226, and the Federal Trade Commission Act, 15 U.S.C. § 45 et seq.; and

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The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, 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 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.

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the said Acts and Regulations, and that a 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 described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdiction findings and enters the following order:

1. Respondent Simmons Rockwell Ford Mercury, Inc. is a New York corporation with its principal office or place of business at 105 Seneca Street, Hornell, New York 14843.
2. Respondent Simmons Rockwell Autoplaza, Inc. is a New York corporation with its principal office or place of business at 784 County Route 64, Elmira, New York 14903.
3. Respondent Don Simmons, Inc. is a Pennsylvania corporation with its principal office or place of business at 300 North Elmira Street, Sayre, Pennsylvania 18840 and 7327 Hammondsport Road, Bath, New York 14810.

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4. Respondent Donald M. Simmons, II is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as those of the corporate respondents.
5. Respondent Richard L. Rockwell is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as those of the corporate respondents.
6. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

1. "Clearly and conspicuously" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, a disclosure shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

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The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "Equal prominence" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.
 - b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

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

3. "Total amount due at lease signing or delivery" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, as required by Regulation M, 12 C.F.R. § 213, as amended. The total amount due at lease signing or delivery may (1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact, or (2) provide a total that includes third-party fees based on a particular state or locality, as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

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4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. Unless otherwise specified, "respondents" shall mean Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., corporations, their successors and assigns and their officers; Donald M. Simmons, II, and Richard L. Rockwell, individually and as officers of the corporations; and each of the above's agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. Misrepresent, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.
- B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with equal prominence the total amount due at lease signing or delivery.
- C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as amended, as follows:
 1. that the transaction advertised is a lease;

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2. the total amount due at lease signing or delivery;
3. whether or not a security deposit is required;
4. the number, amounts, and timing of scheduled payments;
and
5. that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667c(a), as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

For radio advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. § 1667c(C), and Section 213.7(f) of Regulation M, 12 C.F.R. § 213.7(f), as amended. For television advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

- B. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667f, as amended.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit in or affecting

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commerce, as "advertisement" and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R.

§ 226.2, as amended, 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 Regulation Z, as follows:

1. the amount or percentage of the downpayment;
2. the terms of repayment; and
3. the annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144(d) of the TILA, 15 U.S.C. §1664(d), as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended.)

B. State a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term.

(Section 144(c) of the TILA, 15 U.S.C. § 1664(c), as amended, and Section 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b), as amended.)

C. Fail to comply in any other respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

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III.

IT IS FURTHER ORDERED that respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, and respondents Donald M. Simmons, II and Richard L. Rockwell, 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.

IV.

IT IS FURTHER ORDERED that respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, and respondents Donald M. Simmons, II and Richard L. Rockwell, 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. Respondents shall deliver this order to such current personnel within thirty (30) days 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.

V.

IT IS FURTHER ORDERED that respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, shall notify the Commission at least thirty (30) days prior

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to any change in the corporations that may affect compliance obligations arising under this order, including but not necessarily 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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.

VI.

IT IS FURTHER ORDERED that respondents Donald M. Simmons, II and Richard L. Rockwell, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of each of their current business or employment, or of their affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, as amended, or the advertising and/or extension of "consumer credit," as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondents' new business address and telephone number and a description of the nature of the business or employment and each of their duties and responsibilities. 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.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondents Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., and Don Simmons, Inc., and each of their successors and assigns, and respondents Donald M. Simmons, II and Richard L. Rockwell, 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.

VIII.

This order will terminate on June 6, 2020, 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 respondents 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

Analysis to Aid Public Comment

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 Proposed Consent Orders to Aid Public Comment

Summary: The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from respondents: 1) R.N. Motors, Inc., Red Noland Cadillac, Inc., and Nelson B. Noland ("Red Noland"); and 2) Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., Don Simmons, Inc., and Donald M. Simmons, II and Richard L. Rockwell ("Simmons Rockwell"). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have 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 agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Red Noland and Simmons Rockwell complaints allege that these respondents disseminated automobile lease advertisements that violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The Simmons Rockwell complaint also alleges that it disseminated automobile credit advertisements that violate the Truth in Lending Act ("TILA") and Regulation Z.

Analysis to Aid Public Comment

Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §1667 et seq; 15 U.S.C. § 1601 et seq; 12 C.F.R. § 213; 12 C.F.R. § 226.

I. The Complaints

A. FTC Act Violations

The Red Noland complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, the downpayment, and the security deposit, respondent failed to disclose, and failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees such as taxes, licenses, and registration fees are required as part of the total amount due at lease inception. The Simmons Rockwell complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, respondent failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees, such as taxes, licenses, and registration fees, are required as part of the total amount due at lease inception. The Red Noland and Simmons Rockwell complaints allege that the required information does not appear at all or appears in fine print and/or is illegible in the advertisements and that this information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from

Analysis to Aid Public Comment

respondents. These practices, according to both complaints, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The Red Noland and Simmons Rockwell complaints also allege that respondents' lease advertisements have violated the CLA and Regulation M. The Red Noland complaint alleges that respondent's ads state the monthly payment amount, the downpayment, and the security deposit; the Simmons Rockwell complaint alleges that respondent's ads state the monthly payment amount -- all "triggering" terms under these laws. The Red Noland and Simmons Rockwell complaints allege that respondents failed to disclose, and/or fail to disclose clearly and conspicuously, certain additional "triggered" terms, as applicable and as follows: the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation, and that such amount: 1) excludes third-party fees, such as taxes, licenses and registration fees; and discloses that fact; or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; and the number, amounts, and timing of scheduled payments.

According to the complaints, Red Noland's lease disclosures are omitted altogether and are not clear and conspicuous. Simmons Rockwell's lease disclosures, if provided, are not clear and conspicuous because they appear in fine print and/or are illegible.

The Red Noland and Simmons Rockwell complaints, therefore, allege that these practices violate Section 184 of the CLA, 15 U.S.C. § 1667c, as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

Analysis to Aid Public Comment

In addition, the Red Noland complaint alleges that respondent's lease advertisements state specific lease rates for each of certain advertised vehicles, but fail to disclose, and fail to disclose clearly and conspicuously, the following notice concerning lease rates required by Regulation M: "This percentage may not measure the overall cost of financing this lease."

The Red Noland complaint, therefore, alleges that this practice violates Section 213.4(s) of Regulation M, 12 C.F.R. § 213.4(s).

C. TILA and Regulation Z Violations

The Simmons Rockwell complaint alleges that respondent's credit advertisements have violated the TILA and Regulation Z. It alleges that respondent's credit ads state the number of payments required to finance the transaction and an annual percentage rate (expressed as an "APR"), but failed to disclose, and/or failed to disclose clearly and conspicuously, certain additional terms required by Regulation Z, including the amount of the downpayment and the full terms of repayment, such as the amount of the monthly payment.

According to the complaint, Simmons Rockwell's credit disclosures, if provided, are not clear and conspicuous because they appear in blurred print.

The Simmons Rockwell complaint, therefore, alleges that these practices violate Section 144 of the 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.

Analysis to Aid Public Comment

II. Proposed Consent Orders

The Red Noland and Simmons Rockwell proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, Paragraph I.A. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from misrepresenting, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.

Paragraph I.B. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The "prominence" requirement prohibits respondents from running deceptive advertisements that highlight low amounts due at lease inception with inadequate disclosure of the actual total lease inception fees. This "prominence" requirement for lease inception fees is also found in Regulation M.

Paragraph I.C. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and as follows: 1) that the transaction advertised is a lease; 2) the total amount due at lease signing or delivery; 3) whether or not a security deposit is required; 4) the number, amounts, and timing of scheduled payments; and 5) that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

Analysis to Aid Public Comment

Furthermore, Paragraph I.D. of the Red Noland proposed order prohibits this respondent from stating a percentage rate in an advertisement or in documents evidencing the lease transaction, unless respondent also states the notice required by Regulation M that "this percentage may not measure the overall cost of financing this lease."

Paragraph I.D. of the Simmons Rockwell proposed order, and paragraph I.E. of the Red Noland proposed order, prohibit respondents from engaging in any other violation of Regulation M, as amended.

In addition, Paragraph II. A. of the Simmons Rockwell proposed order enjoins respondent, in any credit advertisement, from stating 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 Regulation Z, as follows: 1) the amount or percentage of the downpayment; 2) the terms of repayment; and 3) the annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed. Paragraph II.B. of this proposed order also prohibits Simmons Rockwell from stating a rate of finance charge unless respondents state the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Paragraph III.C. of this proposed order also enjoins Simmons Rockwell from engaging in any other violation of Regulation Z, as amended.

The information required by Paragraph I of the Red Noland proposed order (lease advertisements), and Paragraphs I and II of the Simmons Rockwell proposed order (lease and credit advertisements), must be disclosed "clearly and conspicuously." Both proposed orders define the term "clearly and conspicuously"

Analysis to Aid Public Comment

for Red Noland's and Simmons Rockwell's advertisements in all media. In a television, video, radio or Internet or other electronic advertisement, the required disclosures made in the audio portion of the advertisement must be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend. The required disclosures in the video portion of the advertisement must be of a size and shade, and must appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend. In a print advertisement, the required disclosures must be in a type size and location sufficient for an ordinary consumer to read and comprehend, in print that contrasts with the background against which it appears. Additionally, the required disclosures must be in understandable language and syntax. Further, nothing contrary to, inconsistent with, or in mitigation of the required disclosures shall be used in any advertisement.

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