

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8582 / June 14, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11950

In the Matter of

**FORD MOTOR CREDIT
COMPANY,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) against Ford Motor Credit Company (“Respondent” or “Ford Credit”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter concerns Ford Credit's public distribution of sales materials soliciting investment in certain of its debt securities marketed as alternatives to traditional money market investments. These sales materials failed to comply with the requirements of Section 5 of the Securities Act.

Respondent

2. Ford Credit is chiefly in the business of providing financing to purchasers and dealers of vehicles manufactured by its parent company, Ford Motor Company ("Ford Motor"). Ford Credit and Ford Motor are both Delaware corporations headquartered in Dearborn, Michigan. Ford Credit files periodic reports with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") and periodically conducts offerings of debt securities registered under the Securities Act. Ford Motor's common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

Background

3. For over a decade, Ford Credit has offered variable denomination floating rate demand notes (the "Notes") to the investing public through a program identified by the company as the "Ford Money Market Account." Those who invested in the offering ultimately purchased a single Note for each "account" they opened. Over time, Note holders could increase the principal amount of their investments in their individual Notes by sending more money to Ford Credit through an agent bank administering the program. Note holders could also decrease the size of their investments by redeeming principal and interest, which was paid at a rate set by Ford Credit but which was not to be less than one quarter of one percentage point higher than the average yield for all taxable money funds as reported weekly in the Money Fund Report.

4. Between January 2000 and December 2003, members of the public invested approximately \$22.9 billion in the Notes. During the same period, they redeemed approximately \$18.4 billion in previously invested funds and interest. As of December 2003, the amount invested in the Notes, net of the amount redeemed, was approximately \$7.3 billion. The money invested in the Notes was used by Ford Credit for general corporate purposes, including financing vehicles purchased by customers of Ford Motor

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

and Ford Motor-affiliated dealers. Ultimately, all persons who invested in the Notes were provided with a prospectus that had previously been filed with the Commission.

Sales Efforts

5. Since at least March 1999, Ford Credit has continuously advertised the Notes by means of solicitation materials that did not conform to the requirements of the Securities Act because they did not include the detailed information contained in the registration statement filed with the Commission, nor were they accompanied or preceded by a prospectus that conformed to those requirements. These non-conforming solicitation materials included advertisements and articles included in publications sponsored by Ford Motor, advertisements printed on Ford Motor and Ford Credit employee paycheck stubs, and business reply cards inserted in Ford Credit invoices and in Ford Motor's annual report.

6. Between March 1999 and March 2004, Ford Credit sent non-conforming solicitation materials to at least nine million prospective investors, including Ford Motor and Ford Credit employees and retirees, and customers financing their purchases of Ford Motor vehicles through Ford Credit. In these materials, Ford Credit marketed the "Ford Money Market Account" as offering interest rates incrementally higher than the average rates paid by bank money market accounts and money market mutual funds. For example, a March 2001 article in Ford's *Dealer World* magazine states that the "money market account is guaranteed to pay one-quarter of a percentage point over the average of all the taxable money market funds in America."

7. These solicitation materials also advertised various features of the Notes often present in checking and money market accounts offered by banks or mutual funds, including:

- the absence of fees or commissions;
- investors' ability to redeem invested funds by writing checks or paying bills online through the "Ford Financial Payment Center;"
- the ability to invest automatically through deductions from payroll, pension funds, and social security;
- the ability to obtain higher rates for higher "balances;"
- access to a 24 hour automated account information line; and
- free checks and free funds transfers to and from Note holders' checking accounts.

8. The solicitation materials, however, did not explain that the "Ford Money Market Account" was not a bank account or a money market mutual fund and did not have many of the significant protections of these traditional accounts. In particular, they failed to disclose that the Notes, unlike monies deposited in a bank checking account or bank money market account, were not insured by the Federal Deposit Insurance Corporation. In fact, investments in the "Ford Money Market Account" were backed only by the assets of Ford Credit, and most of the solicitation materials did not make sufficiently clear that the investment being promoted was the sale of unsecured corporate debt of Ford Credit. Similarly, most of the solicitation materials did not disclose that the Notes, unlike

investments in money market mutual funds, were not subject to the diversification and investment quality standards set forth by the Investment Company Act of 1940. For these reasons, the solicitation materials may have created confusion among investors familiar with money market accounts traditionally offered by banks and mutual funds.

9. After receiving the solicitation materials, but prior to investing, investors in the Notes were provided with a copy of the prospectus which had been filed with the Commission (the "Notes Prospectus") or checked a box on Ford Credit's website that represented that the investor had read the Notes Prospectus. The Notes Prospectus revealed important distinctions between the Notes and investments in traditional checking and money market accounts that were not made clear in the solicitation materials, namely, that the Notes: (1) were debt securities issued by Ford Credit rather than a bank account or money market mutual fund; (2) were not protected by the FDIC or any insurance; (3) were not diversified; and (4) were not protected by the Investment Company Act of 1940.

Legal Conclusion

10. Section 2(a) of the Securities Act defines "prospectus" to mean any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale, excluding any communication sent or given after the effective date of a registration statement, provided that it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of Section 10(a) of the Securities Act was sent or given to the person to whom the communication was made. Section 10(a) requires, among other things, that a conforming prospectus include the detailed information included in the registration statement filed with the Commission. The solicitation materials distributed by Ford Credit were prospectuses and did not meet the requirements of Section 10 of the Securities Act.

11. As a result of the conduct described above, Ford Credit violated Section 5(b)(1) of the Securities Act, which prohibits the interstate transportation or communication of any prospectus relating to any security with respect to which a registration statement has been filed, unless that prospectus meets the requirements of Section 10 of the Securities Act.

Undertakings

Ford Credit has undertaken to:

12. Within 30 days of the entry of this Order, unless otherwise extended by the staff of the Commission for good cause shown, file with the Commission a new Notes Prospectus revised in accordance with the undertakings set forth below and, within 30 days after filing, send a copy of the new Notes Prospectus to each current holder of the Notes. In each instance Ford Credit uses the unrevised Notes Prospectus, Ford Credit will, in a cover letter or front-cover attachment to such prospectus, disclose the existence of this Order and alert readers to a page on Ford Credit's website where this Order is prominently displayed.

13. In all sales and marketing materials concerning the Notes, inform potential investors that the securities are unsecured debt obligations of Ford Credit, that they are not insured by the Federal Deposit Insurance Corporation, and that they do not constitute a bank account.

14. In the new Notes Prospectus and in all sales and marketing materials comparing the rates paid on the Notes to the rates paid on money market funds registered under the Investment Company Act of 1940, disclose in substance that:

- the Notes are not money market mutual funds;
- as investments in the debt of one company, the Notes do not meet the diversification standards set forth for money market funds by the Investment Company Act of 1940; and
- the Notes are not subject to the investment quality standards set forth for money market funds by the Investment Company Act of 1940.

15. No longer refer to the program through which the Notes are offered and sold as the "Ford Money Market Account" and select for the program a name which does not include the term "money market" or otherwise suggest that the program is a type of money market bank account or money market fund. In making a transition to the new name, Ford Credit may, in its communication with current holders of the Notes: (1) refer to the "Ford Money Market Account" in periodic statements until a new Notes Prospectus has been filed as set forth in Paragraph 12, provided that those periodic statements disclose the existence of this Order; and (2) continue for a period of 180 days after the new Notes Prospectus has been filed to refer to the "Ford Money Market Account" as the former name of the program for offering and selling the Notes, in the context of introducing the new name of the program. Investors in the Notes may continue to use checks that they received before the entry of this Order even if those checks bear the name "Ford Money Market Account."

16. Disclose in the new Notes Prospectus that:

- the rates paid on the Notes are set solely by Ford Credit and do not necessarily bear any relation to the risks associated with or changes in the creditworthiness, credit rating, or financial condition of either Ford Credit or Ford Motor;
- because the Notes are not transferable, no secondary market for the Notes currently exists or will ever exist, and, consequently, there is no public market valuation of the Notes to assist investors in evaluating the Notes or their yield; and
- investors in the Notes may lose part or all of their investment, including accrued interest, should Ford Credit enter bankruptcy or seek creditor protection.

17. Deliver a copy of the Notes Prospectus most recently filed with the Commission to each Note holder within 30 days of effectiveness of any registration statement covering future offers and sales of the Notes.

18. On a yearly basis, deliver to each Note holder a copy of Ford Credit's most recent Form 10-K, which delivery may be made by way of e-mail or other electronic means to Note holders who have consented in writing to such means of delivery.

19. These undertakings shall also apply to any future offering by Ford Credit of variable denomination floating rate demand notes.

20. In determining whether to accept the Offer, the Commission has considered these undertakings, including any undertakings set forth above which were implemented prior to the date of this Order.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Ford Credit's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Ford Credit cease and desist from committing or causing any violations and any future violations of Section 5 of the Securities Act.

B. IT IS FURTHERED ORDERED that Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$700,000 and prejudgment interest thereon of \$64,282 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Ford Credit as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Peter Bresnan, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549.

By the Commission.

Jonathan G. Katz
Secretary