

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Intercontinental Exchange, Inc.,
a corporation;

and

Black Knight, Inc.,
a corporation.

Docket No. 9413

JOINT MOTION TO MODIFY PREHEARING SCHEDULE

Intercontinental Exchange, Inc. and Black Knight, Inc. (together, “Respondents”), joined by Complaint Counsel (together with Respondents, the “Parties”), submit this joint motion to modify certain prehearing deadlines in the Part 3 scheduling order, dated March 29, 2023 (the “Part 3 Schedule”), to conform those deadlines to deadlines in the schedule in the parallel Section 13(b) proceeding in the United States District Court for the Northern District of California (the “Section 13(b) Schedule”).¹ The Parties jointly propose the changes to the Part 3 Schedule reflected in the Proposed Amended Scheduling Order, attached at Exhibit A, to avoid or limit duplication between the actions.² Aligning those deadlines will promote “the just and expeditious disposition of the proceeding” and “avoid unnecessary cost.” *See* 16 C.F.R. § 3.21(f).

¹ A copy of the Section 13(b) Schedule was attached as Exhibit A to Respondents’ Motion to Set Status Conference, dated May 24, 2023.

² The attached joint submission is limited to the pre-hearing deadlines. As to the hearing itself, the parties submitted briefing related to the July 12 hearing date last week. Specifically, Respondents contend there is now a conflict with the hearing date, and Complaint Counsel contends there is no conflict.

PUBLIC

For the foregoing reasons, Intercontinental Exchange, Black Knight, and Complaint Counsel respectfully request that this court GRANT their joint motion and ENTER the proposed amended scheduling order at Exhibit A.

Dated: May 31, 2023

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/ John C. Dodds

John C. Dodds
Zachary M. Johns
1701 Market Street
Philadelphia, PA 19103-2921
Tel: (215) 963-5000
Fax: (215) 963-5001
john.dodds@morganlewis.com
zachary.johns@morganlewis.com

J. Clayton Everett
Ryan M. Kantor
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
Tel: (202) 739-3000
Fax: (202) 739-3001
clay.everett@morganlewis.com
ryan.kantor@morganlewis.com

Harry T. Robins
Susan Zhu
101 Park Avenue
New York, NY 10178-0060
Tel: (212) 309-6000
Fax: (212) 309-6001
harry.robins@morganlewis.com
susan.zhu@morganlewis.com

Kenneth M. Kliebard
110 North Wacker Drive
Chicago, IL 60606-1511
Tel: (312) 324-1000
Fax: (312) 324-1001
kenneth.kliebard@morganlewis.com

WACHTELL, LIPTON, ROSEN & KATZ

/s/ Jonathan M. Moses

Jonathan M. Moses
Sarah K. Eddy
Nelson O. Fitts
Adam L. Goodman
51 West 52nd Street
New York, NY 10019
Tel: (212) 403-1000
JMMoses@wlrk.com
SKEddy@wlrk.com
NOFitts@wlrk.com
ALGoodman@wlrk.com

KEKER, VAN NEST & PETERS LLP

Elliot R. Peters
Steven K. Taylor
Khari J. Tillery
633 Battery Street
San Francisco, CA 94111
Tel: (415) 391-5400
epeters@keker.com
staylor@keker.com
ktillery@keker.com

Counsel for Respondent Black Knight, Inc.

PUBLIC

SUSMAN GODFREY LLP

Kalpana Srinivasan
Michael Gervais
Jesse-Justin Cuevas
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067-6029
Tel: (310) 789-3100
Fax: (310) 789-3150
ksrinivasan@susmangodfrey.com
mgervais@susmangodfrey.com
jcuevas@susmangodfrey.com

Adam Carlis
Alexander L. Kaplan
Michael C. Kelso
Abigail Noebels
Shawn L. Raymond
Alejandra C. Salinas
Krisina Zuñiga
1000 Louisiana Street, Suite 5100
Houston, TX 77002-5096
Tel: (713) 651-9366
Fax: (713) 654-6666
acarlis@susmangodfrey.com
akaplan@susmangodfrey.com
mkelso@susmangodfrey.com
anoebels@susmangodfrey.com
sraymond@susmangodfrey.com
asalinas@susmangodfrey.com
kzuniga@susmangodfrey.com

*Counsel for Respondent
Intercontinental Exchange, Inc.*

FEDERAL TRADE COMMISSION

/s/ Ashley Masters
Ashley Masters
Abby L. Dennis
Daniel Aldrich
Laura Antonini
Catharine Bill
Steven Couper
Caitlin Cipicchio
Xuan Gong
Kurt Herrera-Heintz
Janet J. Kim
Laura Krachman
Christopher Lamar
Peter Richman
Lauren Sillman
Neal Perlman
Nicolas Stebinger
Nina Thanawala
Kurt Daniel Walters
Taylor Weaver
Abigail Wood
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Counsel Supporting the Complaint

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to the following:

Lee Van Voorhis
Ian R. Dickinson
Womble Bond Dickinson LLP
2001 K Street, NW
Suite 400 South
Washington, DC 20006

Counsel for Constellation Web Solutions, Inc.

Tammy A. Tsournas
Kirkland & Ellis LLP
2049 Century Park East, Suite 3700
Los Angeles, CA 90067

Counsel for Sagent M&C, LLC (d/b/a Sagent Lending Technologies)

Thomas N. Abbott
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209

Tiffany Lee
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

PUBLIC

Counsel for Newrez LLC

Steve Albertson
Fenwick & West LLP
733 10th Street NW, Suite 400
Washington, DC 20001

Erica R. Sutter
Fenwick & West LLP
902 Broadway, Suite 18
New York, NY 10010

Counsel for PollyEx, Inc.

By: /s/ John C. Dodds
John C. Dodds

*Counsel for Respondent Intercontinental
Exchange, Inc.*

PUBLIC

EXHIBIT A

PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

| | | |
|----------------------------------|---|-----------------|
| In the Matter of |) | |
| |) | |
| Intercontinental Exchange, Inc., |) | |
| a corporation, and |) | |
| Black Knight, Inc., |) | Docket No. 9413 |
| a corporation, |) | |
| Respondents. |) | |

[PROPOSED] AMENDED SCHEDULING ORDER

Having found that amendments to certain pretrial deadlines are warranted to promote efficient and just administration of this proceeding, this Court GRANTS the Joint Motion to Amend Prehearing Schedule filed jointly by Intercontinental Exchange, Inc., Black Knight, Inc., and Complaint Counsel. *See, e.g.,* 16 C.F.R. § 3.21(f). The Court modifies the prehearing deadlines in this proceeding as set forth below. All other provisions of the Court’s March 29, 2023, Scheduling Order remain in effect.

- | | | |
|---------------|---|--|
| April 7, 2023 | - | Complaint Counsel provides preliminary list of witnesses that Complaint Counsel may call to testify at the Hearing (not including experts), which will include no more than 35 persons (including no more than 20 non-party witnesses) with a brief summary of the proposed testimony. |
|---------------|---|--|
- | | | |
|----------------|---|---|
| April 14, 2023 | - | Respondents’ Counsel provides preliminary list of witnesses that Respondents may call to testify at the Hearing (not including experts), which will include no more than 35 persons (including no more than 20 non-party witnesses) with a brief summary of the proposed testimony. |
|----------------|---|---|
- | | | |
|----------------|---|---|
| April 21, 2023 | - | Complaint Counsel provides expert witness list. |
|----------------|---|---|
- | | | |
|----------------|---|--|
| April 28, 2023 | - | Respondents’ Counsel provides expert witness list. |
|----------------|---|--|

PUBLIC

- May 5, 2023 - Complaint Counsel and Respondents to provide updated may call fact witness lists, which will include no more than 30 persons total with no more than 7 witnesses who did not appear on that side's preliminary list, with a brief summary of the proposed testimony.
- May 12, 2023 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity of documents.
- Deadline for issuing document requests, interrogatories and subpoenas, except for discovery for purposes of authenticity of exhibits.
- May 23, 2023 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity of exhibits; provided that this deadline will not preclude the parties from completing discovery of third-parties pursuant to timely served subpoenas whose document productions have not been completed by May 23, 2023 and/or who did not make themselves reasonably available for deposition pursuant to a timely subpoena within the fact discovery period.
- May 30, 2023 - Deadline for Complaint Counsel and Respondents' Counsel to provide expert witness reports and all material required to be produced pursuant to Additional Provision 21 of this Order.
- June 8, 2023 Complaint Counsel provides to Respondents' Counsel final proposed witness list, comprised of no more than 25 witnesses that Complaint Counsel anticipates will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Complaint Counsel's preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.
- Complaint Counsel provides courtesy copies to ALJ of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- June 15, 2023 Respondents' Counsel provides to Complaint Counsel final proposed witness list, comprised of no more than 25 witnesses that Respondents anticipate will be called to testify at the Hearing, with

PUBLIC

no more than 5 witnesses who did not appear on Respondents' Counsel's preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondents' Counsel provides ALJ with final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

- June 16, 2023 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).³
- June 23, 2023 - Complaint Counsel and Respondents' Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s) and all material required to be produced pursuant to Additional Provision 21 of this Order. Any such reports are to be limited to rebuttal of matters set forth in Complaint Counsel's expert reports and Respondents' expert reports, respectively. If material outside the scope of fair rebuttal is presented, the parties will have the right to seek appropriate relief (such as striking the other side's rebuttal expert reports or seeking leave to submit surrebuttal expert reports).
- June 26, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- June 29, 2023 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- June 29, 2023 - Exchange and serve courtesy copy on ALJ of objections to final proposed witness lists and exhibit lists. The parties are directed to

³ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

PUBLIC

review the Commission's Rules on admissibility of evidence before filing objections to exhibits and raise only objections that are necessary and valid.

- June 30, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence.
- June 30, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- June 30, 2023 Complaint Counsel and Respondents' Counsel file pretrial briefs supported by legal authority.
- July 6, 2023 Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- July 7, 2023 Exchange proposed stipulations of law, facts, and authenticity.
- July 11, 2023 - Final prehearing conference to begin at 1:00 p.m. EDT.
- The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.
- Counsel may present any objections to the final proposed witness lists and exhibits. All trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.
- July 12, 2023 - Commencement of Hearing, to begin at 10:00 a.m. EDT.

PUBLIC

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: May __, 2023