

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

In the Matter of)))))
Intercontinental Exchange, Inc.,))))	ORDER TO MAINTAIN ASSETS
a corporation, and))))	Docket No. 9413
Black Knight, Inc.,))))	
a corporation.))))	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) issued its Complaint charging Respondent Intercontinental Exchange, Inc. (“ICE”) and Respondent Black Knight, Inc. (“Black Knight”) (collectively “Respondents”) with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The Commission served Respondents with a copy of that Complaint together with a notice of contemplated relief. Respondents answered the Complaint and denied the charges.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Complaint, (2) 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 the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. In further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Intercontinental Exchange, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 5660 New Northside Drive, Atlanta, Georgia 30328.

2. Respondent Black Knight, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 601 Riverside Avenue, Jacksonville, Florida 32204.
3. Constellation Software, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Province of Ontario, Canada with its executive offices and principal place of business located at 20 Adelaide Street East, Suite 12000, Toronto, Ontario, M5C 2T6, Canada.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents and the proceeding is in the public interest.

I. Definitions

IT IS ORDERED that the definitions used in the Consent Agreement and the Decision and Order shall be incorporated into this Order to Maintain Assets by reference and made a part hereof and, further, that the following definitions shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement.
- B. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that Respondents shall ensure that the Divestiture Assets are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divested Businesses and Divestiture Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear);
- B. Not sell, transfer, encumber, or otherwise impair the Divested Businesses and related Divestiture Assets (other than in the manner prescribed in the Orders) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of the Divested Businesses and related Divestiture Assets, and shall conduct or cause to be conducted the operations of the Divested Businesses and related Divestiture Assets in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Divested Businesses and related Divestiture Assets; and

- D. Use reasonable best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Divested Businesses and related Divestiture Assets. In Respondents' first 30-day Compliance Report under Paragraph XIV.B.1, they shall identify all confirmed terminations that occurred from when Respondents signed the Consent Agreement to the Divestiture Date.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Divestiture Assets and consistent with the purposes of the Orders.

III. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Divestiture Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Divestiture Assets to the Acquirer and (2) assist the Acquirer in operating the Divested Businesses in all material respects in accordance with the manner in which the Divested Businesses were operated prior to the Acquisition.
- C. Respondents shall provide Transitional Assistance:
 - 1. As set forth in the Divestiture Agreements, or as otherwise reasonably requested by the Acquirer (whether before or after the applicable Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreements, or if no price is set forth, at no more than Direct Cost; and
 - 3. For a time period sufficient to meet the requirements of this Section III.
- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance provisions of the Divestiture Agreements upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreements.

IV. Employees

IT IS FURTHER ORDERED that:

- A. Until 1 year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Divestiture Assets to evaluate independently and offer employment to any Relevant Employee.
- B. Until 1 year after the Divestiture Date, Respondents shall:
1. No later than 20 days after a request from the Acquirer, provide a list of all Relevant Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Relevant Employees outside the presence or hearing of any employee or agent of any Respondent;
 3. After the Acquirer informs Respondents in writing or a Relevant Employee informs Respondents orally or in writing that Constellation has made an offer to the Relevant Employee, remove any impediments within the control of Respondents that may deter such Relevant Employee from accepting employment with the Acquirer, including, but not limited to, removal of any noncompete provisions of employment or other contracts with Respondents that may affect the ability or incentive of such Relevant Employee to be employed by the Acquirer, and not make any counteroffer to such Relevant Employee,

Provided, however, that nothing in the Orders shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 4. Continue to provide Relevant Employees with compensation and benefits through the Divestiture Date, including regularly scheduled raises and bonuses and the vesting of benefits; and
 5. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Acquirer.
- C. Respondents shall not, for a period of 2 years following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any former Black Knight employee who is employed by the Acquirer to work in the Divested Businesses to terminate their employment with the Acquirer; *provided, however,* Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;

2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more such Persons employed by the Acquirer; or
 3. Hire any such Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section IV.
- D. Respondents shall not enforce any noncompete or non-solicit provision or agreement against any individual who seeks or obtains a position with the Divested Businesses.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not disclose Confidential Information to employees who have direct or supervisory responsibilities related to sales, marketing or development of any products that compete with the Divested Businesses,

Provided, however, Respondents may disclose Confidential Information under Sections 9.5(b) and 9.6 of Exhibit B to the Empower Divestiture Agreement, to employees who have supervisory responsibilities related to sales, marketing or developments of any products that compete with the Divested Businesses to the extent necessary to fulfill Respondents' obligations and exercise Respondents' rights under Sections 9.5(b) and 9.6.

- B. Respondents shall not (1) disclose (including to Respondents' employees) or (2) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to Divestiture Assets or Divested Businesses ("Confidential Divestiture Information"),

Provided, however,

1. Respondents may disclose or use such Confidential Information in the course of performing their obligations or as permitted under the Orders or a Divestiture Agreement, enforcing Respondents' rights under any Divestiture Agreement, complying with financial reporting requirements, obtaining legal advice, prosecuting, or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Assets or Divested Businesses, or as required by law or regulation, including any applicable securities exchange rules or regulations; and
 2. Respondents may use Confidential Information obtained pursuant to agreements between the parties and the Acquirer for the purposes permitted under those agreements and to enforce the parties' rights under those agreements.
- C. Respondents shall use reasonable best efforts to require all employees who possess Confidential Information to sign a non-disclosure agreement ("NDA") prohibiting the

disclosure or use of Confidential Divestiture Information except as permitted by the Orders. Further, if, despite Respondents' reasonable best efforts, an employee refuses to execute an NDA, Respondents will:

1. Within 30 days of first asking the employee to sign an NDA, prohibit the employee from working on an LOS or PPE product;
 2. Inform the employee of their confidentiality obligations to ensure ICE's compliance with the Orders; and
 3. Within 30 days of the employee's refusal to execute an NDA, provide to the Commission the employee's name, job title and responsibilities before the Acquisition date; job title and prospective responsibilities after the Acquisition Date; Respondents' efforts undertaken to have the employee sign the NDA; a copy of the NDA the employee was requested to sign; and verification that Respondents informed the employee of their confidentiality obligation under the Orders.
- D. If disclosure or use of any Confidential Information is made to Respondents' employees or to any other Person under Paragraph V.A or Paragraph V.B of this Order to Maintain Assets, Respondents shall limit such disclosure or use (1) only to the extent such information is required, and (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A.
- E. Respondents shall enforce the terms of this Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints William E. Berlin to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 1. Shall be subject to the approval of the Commission;
 2. Shall not limit, and the signatories shall not construe it to limit, the terms of Section VIII of the Decision and Order or Section VI of this Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement

varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and

3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff and communicate with staff as requested by Commission staff regarding Respondents' compliance with the obligations set forth in the Orders;
3. Serve as an independent third party and not as an employee or agent of Respondents, of the Acquirer or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional, or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with the Orders on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and

9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI of the Decision and Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing their duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including, as requested by the Monitor (a) ensuring the person designated to oversee the transition or their designee are available to the Monitor for weekly communications; (b) providing the Monitor full and complete access to personnel, information, and facilities; and (c) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform their duties pursuant to the Orders;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing their duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out their duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from fraud, gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.

F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission

shall select the substitute Monitor, subject to the consent of the Respondents.
Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VI.B; or (b) receives Commission approval.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

VII. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents cannot divest the Divested Businesses and Divested Assets to Constellation as required by the Decision and Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of the Decision and Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by the Decision and Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of the Decision and Order.

- D. If a Divestiture Trustee is appointed by the Commission pursuant to this Section VII, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets;
 2. The Divestiture Trustee shall have 6 months from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the 6-month period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission as necessary to achieve the divestiture;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets. Respondents shall develop such financial or other information as the Divestiture Trustee may reasonably request and cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section VII in an amount equal to the delay, as determined by the Commission;
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer that receives the prior approval of the Commission as required by the Decision and Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission, and

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;
 5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Divestiture Trustee shall have the authority to

employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order;

6. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by the Decision and Order; and
7. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

E. Respondents:

1. May require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;
2. Shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from fraud, gross negligence or willful misconduct by the Divestiture Trustee; and
3. Shall assist any potential Acquirer in conducting a due diligence investigation of the Divested Businesses and Divestiture Assets, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording each Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, Governmental Authorizations, Business Information, and other documents and data relating to the Divested Businesses, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section VII.
- H. The Commission may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by the Decision and Order.

VIII. Seller Note

IT IS FURTHER ORDERED that:

- A. The Commission will appoint a Seller Note Trustee no later than one day after the Divestiture Date to sell the Seller Note within 6 months after the Seller Note Trustee's appointment.
- B. The Commission shall select the Seller Note Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Seller Note Trustee shall be a Person with experience and expertise in buying and selling negotiable instruments. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Seller Note Trustee within 10 days after notice by the Commission to Respondents of the identity of any proposed Seller Note Trustee, Respondents shall be deemed to have consented to the selection of the proposed Seller Note Trustee.
- C. Not later than 10 days after the appointment of a Seller Note Trustee, Respondents shall transfer their rights, title, and interest in the Seller Note to the Seller Note Trustee in a manner consistent with the requirements of this Section VIII and execute a trust agreement that, subject to the prior approval of the Assistant Director of Compliance, transfers to the Seller Note Trustee all rights and powers necessary to permit the Seller Note Trustee to effect the sale of the Seller Note required by the Orders. Any failure by Respondents to comply with a trust agreement approved by the Assistant Director of Compliance shall be a violation of the Orders.
- D. Respondents shall consent to the following terms and conditions regarding the Seller Note Trustee's powers, duties, authority, and responsibilities:

1. The Seller Note Trustee shall have the exclusive power and authority to sell the Seller Note as required by the Orders;
2. The Seller Note Trustee shall have 6 months from the date the Assistant Director of Compliance approves the trustee agreement described herein to accomplish the sale of the Seller Note, which shall be subject to the prior approval of the Commission. If, however, at the end of the 6-month period, the Seller Note Trustee has submitted a plan of sale or the Director of the Bureau of Competition, or their designee, believes that the sale can be achieved within a reasonable time, the divestiture period may be extended by the Director of the Bureau of Competition;
3. Subject to any demonstrated legally recognized privilege, the Seller Note Trustee shall have full and complete access to the personnel, books, and records related to the Seller Note and to any other relevant information, as the Seller Note Trustee may reasonably request. Respondents shall develop such financial or other information as the Seller Note Trustee may reasonably request and reasonably cooperate with the Seller Note Trustee. Respondents shall take no action to interfere with or impede the Seller Note Trustee's accomplishment of the sale of the Seller Note;
4. The Seller Note Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Director of the Bureau of Competition, or their designee, or subject to Respondents' absolute and unconditional obligation to sell the Seller Note expeditiously and at no minimum price. The sale shall be made in the manner and to a buyer that receives the prior approval of the Commission as required by the Orders,

Provided, however, that the Seller Note Trustee shall not sell to any persons selling a PPE or LOS, in accordance with Section 5.17(a) of the Optimal Blue Divestiture Agreement;

Provided further, if the Seller Note Trustee receives bona fide offers from more than one buyer, and if the Director of the Bureau of Competition, or their designee, determines to approve more than one such buyer, the Seller Note Trustee shall sell to the buyer selected by Respondents from among those approved by the Commission within 5 days of receiving notification of the Director of the Bureau of Competition's or their designee's approval;

5. The Seller Note Trustee shall not, without the express consent of the Acquirer, disclose Business Information to the Respondents and shall use reasonable best efforts to prevent any third party to whom the Seller Note Trustee provides Business Information from disclosing it to Respondents;

6. The Seller Note Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Director of the Bureau of Competition, or their designee, may set. The Seller Note Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Seller Note Trustee's duties and responsibilities. The Seller Note Trustee shall account for all monies derived from the sale of the Seller Note and all expenses incurred. After approval by the Commission of the account of the Seller Note Trustee, including fees for the Seller Note Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Seller Note Trustee's power shall be terminated. The compensation of the Seller Note Trustee shall be based in whole or in part on a commission arrangement contingent on the sale of the Seller Note that is required to be sold by the Orders; and
7. The Seller Note Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Seller Note Trustee's efforts to accomplish the sale of the Seller Note.

E. Respondents:

1. Shall indemnify the Seller Note Trustee and hold the Seller Note Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Seller Note Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from fraud, gross negligence or willful misconduct by the Seller Note Trustee; and
2. May require the Seller Note Trustee and each of the Seller Note Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Seller Note Trustee from providing any information to the Commission.

F. Constellation, if reasonably requested by the Seller Note Trustee:

1. Shall provide information maintained in the ordinary course of business relating to the Optimal Blue Business to the Seller Note Trustee and prospective purchasers of the Seller Note of the type customarily made available to potential debt financing sources in connection with the potential sale of similar debt instruments, including historical financial statements, budgets and projections, basic corporate information regarding the legal entities operating the Optimal

Blue Business (including legal names, jurisdictions of organization and beneficial ownership information), description of material operating agreements, descriptions of any other indebtedness (including payor and payee, principal amount, collateral and maturity date); and descriptions of any material (potential) liabilities (including with respect to litigation and/or tax matters) (“customary due diligence information”);

2. Shall reasonably cooperate with the Respondents’ development of customary due diligence information in a manner that is consistent with Respondents’ confidentiality obligations under Section V of this Order to Maintain Assets;
 3. Shall reasonably cooperate with the Seller Note Trustee; and
 4. Shall take no action to interfere with or impede the Seller Note Trustee’s accomplishment of the sale of the Seller Note.
- G. The Assistant Director of Compliance may, among other things, require the Seller Note Trustee and each of the Seller Note Trustee’s consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Seller Note Trustee’s duties.
- H. If the Director of the Bureau of Competition, or their designee, determines that a Seller Note Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Seller Note Trustee in the same manner as provided in this Section VIII.
- I. The Commission may on its own initiative or at the request of the Seller Note Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the sale of the Seller Note and other obligations or action required by the Orders.

IX. Respondents Prior Approval

IT IS FURTHER ORDERED that:

- A. Respondents shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in the Divested Businesses.
- B. Respondents shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any business that owns or sells an LOS,

Provided, however, prior approval of the Commission is not required for an acquisition by a third party in which Respondents have an existing non-controlling interest so long as

Respondents give notice to the Commission of the acquisition within 30 days after the Respondents first learn of the acquisition or proposed acquisition.

X. Respondents Prior Notice

IT IS FURTHER ORDERED that:

- A. Respondents shall not, without prior notice, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any PPE business,

Provided, however, prior notice to the Commission is not required for an acquisition by a third party in which Respondents have an existing non-controlling interest if the acquisition was made without Respondents' knowledge so long as Respondents give notice to the Commission of the acquisition within 30 days after the Respondents first learn of the acquisition or proposed acquisition.

- B. Until the second anniversary of the date the Commission issued the Decision and Order, Respondents shall provide the notice required in Paragraph X.A at least 15 days before acquiring any PPE business and thereafter Respondents shall provide such notice at least 30 days prior to acquiring any PPE business. The notice must identify the person from whom Respondents are acquiring the PPE, the PPE being acquired and describe the transaction,

Provided, however, that nothing in this Section X will require the parties to delay the proposed transaction.

XI. Acquirer Prior Approval

IT IS FURTHER ORDERED that:

- A. For a period of 3 years after the Divestiture Date, the Acquirer shall not sell, license, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the Divestiture Assets divested pursuant to Section II of the Decision and Order to any Person; and
- B. For a period of 7 years after the term of Paragraph XI.A ends, Constellation or any other Acquirer shall not sell, license, or convey, through subsidiaries or otherwise, without the prior approval of the Commission, all or substantially all of the assets divested pursuant to Section II of the Decision and Order to any Person who competes in the LOS or PPE markets,

Provided, however, Constellation is not required to obtain prior approval of the Commission under this Section XI for a change of control, merger, reorganization, or sale of all or substantially all of its business.

XII. Compliance Reports

- A. Respondent ICE shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and
 2. Submit the complete Divestiture Agreements to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:
1. Respondent ICE shall file interim Compliance Reports 30 days after this Order to Maintain Assets is issued and every 60 days thereafter until the Commission issues the Decision and Order;
 2. Respondents shall file additional Compliance Reports as the Commission, or its staff may request;
 3. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Orders; and
 4. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in each Compliance Report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent’s obligations under the Orders during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.
- C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XIII. Change in Respondent ICE

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of Intercontinental Exchange, Inc.;
- B. The proposed acquisition, merger, or consolidation of Intercontinental Exchange, Inc.; or
- C. Any other changes in ICE including assignment and the creation, sale, or dissolution of subsidiaries, if such changes may affect compliance obligations arising out of the Orders.

XIV. Access

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in the Orders, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with the Orders, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XV. Purpose

IT IS FURTHER ORDERED that the purpose of the Orders is to remedy the harm to competition the Commission alleged in its Complaint and to ensure the Acquirer can operate the Divested Businesses in all material respects in accordance with the manner in which Respondents operated the Divested Businesses prior to the Acquisition.

XVI. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

April J. Tabor
Secretary

SEAL:

ISSUED: