

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

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

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**EXPEDITED TREATMENT
REQUESTED**

**RESPONDENT INTUIT’S EXPEDITED MOTION TO CONTINUE
ORAL ARGUMENT TO ACCOMMODATE THE IMPENDING
SENATE CONFIRMATION OF TWO COMMISSIONERS**

On October 31, 2023, the Commission scheduled oral argument in this matter for Monday, November 20, 2023. Pursuant to Rule 4.3(b) of the Commission’s Rules of Practice, 16 C.F.R. §4.3(b), Respondent Intuit Inc. respectfully seeks a continuance of oral argument until 30 days after the Senate confirms nominees Andrew Ferguson and Melissa Holyoak to fill the Commission’s remaining vacancies. If for some reason the nominees are not confirmed by December 31, 2023, Intuit requests that the Commission reschedule oral argument on a date convenient for the Commission in January 2024. Intuit conferred with Complaint Counsel, who were unable to provide their position at this time. Given the short time before oral argument is scheduled to occur, Intuit further requests that the Commission decide this motion on an expedited basis, consistent with Rule 3.22(d) and (f), 16 C.F.R. §3.22(d), (f).

On October 18, 2023, the Senate Commerce Committee voted to send Mr. Ferguson’s and Ms. Holyoak’s nominations (as well as Commissioner Slaughter’s renomination) out of committee, a procedural step that placed their nominations before the entire Senate for final confirmation. Reuters, *U.S. Senate Panel Sends Three FTC Nominations to Full Senate* (Oct. 18,

2023).¹ The nominations are currently listed on the Senate's Executive Calendar, *see* Senate of the United States, Executive Calendar: Monday, November 13, 2023,² meaning there is a strong likelihood that Mr. Ferguson and Ms. Holyoak will be confirmed in the coming days or weeks.

Good cause exists under Commission Rule 4.3(b), 16 C.F.R. §4.3(b), to reschedule oral argument to ensure both that the newly confirmed Commissioners are able to participate in oral argument and that they have sufficient time to prepare for that argument. As noted, absent an extension, there is a significant probability that Mr. Ferguson and Ms. Holyoak will be confirmed before oral argument or, at a minimum, before the Commission issues its final decision. Under those circumstances, the newly seated Commissioners will either need to attempt to digest the extensive record in this case in a matter of days to prepare for oral argument (if confirmed before November 20) or have to decide the case without the benefit of participating in the oral argument (if confirmed after November 20). Either of those scenarios would be a disservice both to those Commissioners as well as to Intuit, which should be allowed to present argument before all Commissioners who will be deciding this case. Thus, administrative efficiency and basic principles of fairness counsel in favor of a continuance.

Good cause further exists to reschedule oral argument to facilitate the Commission's functioning as a bipartisan body as Congress intended. Excluding Mr. Ferguson and Ms. Holyoak from participating in oral argument, either as a factual matter or practically by giving them limited time to prepare, would prevent the two appointees from a different party from meaningfully participating in this proceeding. As the Supreme Court has repeatedly recognized, the Commission was designed "to be nonpartisan," which helps to ensure that "[i]ts duties are neither political nor executive, but predominantly quasi judicial and quasi legislative." *Humphrey's Executor v. United States*, 295 U.S. 602, 624 (1935); *see also Seila Law LLC v.*

¹ <https://tinyurl.com/y2pcp6m8>.

² <https://tinyurl.com/yjruu7yn>.

CFPB, 140 S.Ct. 2183, 2199 (2020) (recognizing the “balance[] along partisan lines” as a key feature in ensuring the constitutionality of the Commissioners’ insulation from presidential removal). Granting a modest continuance will allow this case to be decided by a fully staffed, bipartisan Commission.

Intuit therefore requests that oral argument be continued until 30 days after Mr. Ferguson and Ms. Holyoak are confirmed or, in the event the nominees are not confirmed by December 31, 2023, a date and time convenient for the Commission.

Dated: November 10, 2023

Respectfully submitted,

By: /s/ David Z. Gringer

David Z. Gringer
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
David.Gringer@wilmerhale.com

Howard M. Shapiro
Jonathan E. Paikin
Jennifer Milici
Daniel S. Volchok
Derek A. Woodman
Wilmer Cutler Pickering
Hale and Dorr LLP
2100 Pennsylvania Ave NW
Washington, DC 20037
Telephone: (202) 663-6000
Howard.Shapiro@wilmerhale.com
Jonathan.Paikin@wilmerhale.com
Jennifer.Milici@wilmerhale.com
Daniel.Volchok@wilmerhale.com
Derek.Woodman@wilmerhale.com

Attorneys for Respondent Intuit Inc.

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

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

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

PROPOSED ORDER

Upon consideration of Intuit’s Expedited Motion to Continue Oral Argument to Accommodate the Impending Senate Confirmation of Two Commissioners:

IT IS HEREBY ORDERED, that the Motion is GRANTED.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: _____, 2023

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2023, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that on November 10, 2023, I caused the foregoing document to be served via email to:

Roberto Anguizola
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: ranguizola@ftc.gov
Tel: (202) 326-3284

Rebecca Plett
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: rplett@ftc.gov
Tel: (202) 326-3664

James Evans
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: jevans1@ftc.gov
Tel: (202) 326-2026

Sara Tonnesen
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: stonnesen@ftc.gov
Tel: (202) 326-2879

Counsel Supporting the Complaint

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

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

Dated: November 10, 2023

Respectfully submitted,

/s/ Derek Woodman
Derek Woodman
Counsel for Intuit Inc.