

COMMERCIAL DIVISION PART 48 RULES & PROCEDURES

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Justice Andrea Masley

Supreme Court of the State of New York
County of New York, Commercial Division Part 48
60 Centre Street, Courtroom 242, New York, NY 10007

<https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>

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Introduction

All matters before Part 48 are governed by the Rules of the Commercial Division, 22 NYCRR 202.70, except as supplemented, modified, and/or superseded by the Part 48 Rules & Procedures (Part Rules).¹ The Part Rules address only matters that differ from the Commercial Division Rules.

Contacting Part 48, Adjournments, and General Matters

1. Mandatory E-Filing: All submissions to Part 48 shall be filed electronically in the New York State Courts Electronic Filing system (NYSCEF); please contact the NYSCEF Resource Center.²

¹ The Commercial Division Rules are available online at <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70> (updated there when those Rules are modified). An OCR-searchable, .PDF copy of the Commercial Division Rules (current through the last update of these Part Rules), and copies of all forms/materials referenced in these Part Rules, are available on the New York County Commercial Division website at https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

² For assistance with e-filing, the NYSCEF Resource Center is open weekdays from 8:00 a.m. to 5:00 p.m. and can be reached by telephone at (646) 386-3033, fax at (212) 401-9146, email at efile@nycourts.gov, and in person at 25 Beaver Street, 8th Floor. For emergencies after hours, please contact the Technical Help Desk: (800) 622-2522.

2. Communications, Deliveries, and Scheduling:

(A) Contacting Part 48: Except as otherwise directed in the Part Rules or by the court, all communication with Part 48 shall be sent by email, copying all counsel, to both Part 48 (sfc-part48@nycourts.gov) and the Part Clerk (bhanson@nycourts.gov).

(B) Documents submitted to be so-ordered: All documents submitted with a request to be so-ordered shall be filed to NYSCEF and sent by email, copying all counsel, to sfc-part48@nycourts.gov.

Where the Part Rules direct correspondence under this Part Rule 2 (B), copy all counsel and email sfc-part48@nycourts.gov. Under Part Rule 2 (B), you need not copy the Part Clerk.

(C) No ex parte contact: Always copy/include all counsel (no matter what method of communication) unless expressly directed by the court in writing.

(D) Paper copies: Part 48 accepts paper copies for motions, orders to show cause, and other applications. Hand deliver all papers to the Part Clerk in Room 242 during open courtroom hours.³

(E) Motion/conference days: There are no dedicated motion or conference days; appearances are scheduled, as the court's calendar permits, during normal open courthouse hours, Monday to Friday.

3. General Adjournments:

(A) Appearances in Part 48: Submit requests to adjourn⁴ on consent by e-filing and sending the parties' stipulation pursuant to Part Rule 2 (A); absent consent, send a brief statement (500 words or less) by email pursuant to Part Rule 2 (A). Please confirm with the Part Clerk all adjournment requests and dates.

(B) Appearances in the Submission Part: Requests to adjourn appearances in the Submission Part shall be directed to the Submission Part, Room 130, pursuant to 22 NYCRR 202.8 (e) (1),⁵ unless the original return date has been adjourned three or more times and/or for more than 60 days; if the latter, the requesting party shall e-file and send to Part 48 pursuant to Part Rule 2 (A) or 2 (B) a proposed order (if the request is unilateral) or the parties' stipulation (if on consent) with a brief (500-word) statement for the request.

³ See e.g. Part Rules 5, 8, and 31 for the procedures regarding submissions for motions on notice (Part Rule 5), orders to show cause (Part Rule 8), and pre-trial materials (Part Rule 31), and additional Part Rules applicable in other contexts.

⁴ See Part Rule 28 for the procedures to request trial-related adjournments.

⁵ See https://www.nycourts.gov/courts/1jd/supctmanh/motions_on_notice.shtml for all Submission Part matters, including the procedures for adjournments with or without consent.

4. Letters: Part 48 does not accept Commercial Division Rule 24 letters; however, the following letters are pre-authorized and shall be e-filed and sent pursuant to Part Rule 2 (B):

(A) Joint pre-conference statement: the parties may jointly submit a letter identifying discovery or other issue(s) ahead a scheduled conference; at least three business days prior to the conference, e-file and email to sfc-part48@nycourts.gov the joint letter (1,500 words or less, excluding signature blocks and heading). No exhibits or attachments may be included.⁶

(B) Commercial Division Rule 2 and Rule 3 letters, and letters or stipulations informing the court that the parties have agreed to engage in private ADR. Such letters/stipulations shall be e-filed and sent to sfc-part48@nycourts.gov pursuant to Part Rule 2 (B).

(C) Commercial Division Rule 18 letters are permitted as modified: the letter may only identify, with full/complete citations, any relevant post-submission decisions. No substantive arguments are allowed in Rule 18 letters; however, the parties may request an opportunity to file post-submission briefs. E-file and send Rule 18 letters to sfc-part48@nycourts.gov pursuant to Part Rule 2 (B).

Motions and Applications⁷

5. Submission Part (Motions on Notice): All motions on notice shall be e-filed to NYSCEF and identify the return date for the motion in the Submission Part, Room 130; however, paper copies of motion papers shall be delivered to only the Part Clerk in Courtroom 242 on the return date (do not deliver motion papers to the Submission Part/Room 130 at any time⁸).

On the return date, each party shall deliver a single, complete, unredacted set of its own motion papers/submissions to Courtroom 242 pursuant to Part Rule 2 (D).⁹

6. Formatting: All motion submissions shall be filed to NYSCEF under the applicable index number(s) and motion sequence number(s). Further, every motion or other application, whether brought by order to show cause or notice of motion, shall include a memorandum of law, paper copies of which shall be bound separately from all other papers, including affidavits and exhibits.

(A) Paper copies: Parties shall list the motion sequence number(s) on the cover of each paper submission. Paper copies may use only single-sided documents, shall use exhibit tabs with clear labels, and, when necessary, split affidavits and accompanying exhibits with tabs into multiple, 2" thick, consecutively-paginated volumes/binders which are clearly labeled on each cover and spine.

⁶ See Part Rule 14 for information regarding discovery conferences and procedures for requesting individual pre-conference letters.

⁷ For motions and other filings in pending New York County actions, specifically, please contact the General Clerk's Office, Room 119, (646) 386-3030.

⁸ Generally, a party need only appear in the Submission Part, Room 130, to request an adjournment without consent.

⁹ See Part Rule 13 (C) requiring submission of paper copies with proposed redactions for motions to redact specific information.

Prior to the return date, the parties shall meet and confer to reduce/eliminate the submission of duplicated paper copies; i.e., if a document is included with movant's papers as well as the opposition papers, the opposing party should use a placeholder identifying with specificity (i) the document and (ii) where in the adversary's papers the actual document is located.¹⁰

(B) E-Filed documents: Parties shall clearly label/describe with specificity all documents in NYSCEF; e.g., describing a document as "Exhibit #_" or "Exhibit #_ to [Person's] Affidavit" is unhelpful. Every document shall have a description that identifies exactly what it is: if "Exhibit 1" is a deposition, for example, label/describe the document "Tr of [Entity/Person's] 6/21/18 Dep"; if it is an allonge to a loan document, label it "[1/2/92 Allonge to 8/9/90 Loan]."

(C) Limited use of placeholders in NYSCEF: A party may only use a placeholder filing which identifies with specificity which previously-filed document it stands for, the NYSCEF Document Number for the original document, and the number of pages in the original filing where the original document was filed to NYSCEF in the same action, bearing the same index number, and under the same motion sequence number.

(D) Word limits: All memoranda are limited pursuant to the Commercial Division Rules; however, memoranda and affidavits shall be formatted with a standard 12-point font, double spaced, with one-inch margins on all sides; footnotes shall also be formatted in 12-point font.

Requests to extend word-count limits shall include a brief statement (500 words or less) of the request and shall be sent to sfc-part48@nycourts.gov pursuant to Part Rule 2 (B) at least five business days prior to the filing deadline for the applicable document.

(E) All referenced authorities shall have full, accurate, and complete citations to accessible reporters (e.g., provide both Westlaw and Lexis cites where applicable). If authorities cited are not widely-available or are only summarized in a news publication (i.e., NY Law Journal), include copies of the full decisions with the motion papers in both NYSCEF in separately-bound paper copies.

(F) NYSCEF citations: All citations to the record in all motion papers require NYSCEF Document Numbers with pin-point citations and, where possible, hyperlinks to the actual Document.

(G) Deposition transcripts: Only full-length mini-script transcripts with indexes shall be filed (no excerpts); however, parties shall digitally bookmark all transcript pages cited and file to NYSCEF bookmarked, OCR-searchable .PDF files.

(H) Exhibits to all motions should be identified with numbers, not letters, regardless of which party or nonparty files the document; for example, use "Exhibit 27" as opposed to "Exhibit AA."

¹⁰ Placeholders eliminating duplicates may be used within a single sequence number; placeholders may not incorporate or reference documents submitted under a different sequence number than that under which the placeholder is being filed.

7. Pro Hac Vice Applications:

(A) Motions: Motions for admission pro hac vice shall be made by order to show cause, or on consent by ex parte application,¹¹ and be accompanied by a recent certificate of applicant's good standing and the applicant's affirmation identifying how many times, if any, the applicant has been admitted pro hac vice in New York, whether any such admission was vacated, and whether the applicant is or ever was subject to a disciplinary proceeding in any jurisdiction.

(B) Limitations on counsel admitted pro hac vice: Only the Sponsoring New York State Attorney may e-file documents to NYSCEF; counsel admitted pro hac vice are prohibited from e-filing.

Additionally, New York Counsel shall be present at every appearance in Part 48, regardless whether out-of-state counsel will appear.

(C) The accepted Part 48 Proposed Order form shall be included with every application for admission pro hac vice.¹²

(D) No appearance is required on the return date for unopposed pro hac vice applications.

8. Orders to Show Cause: Parties shall file a proposed order to show cause to NYSCEF and the movant shall collect the file(s) from the Commercial Division Office¹³ and deliver those files with all moving papers to the Part Clerk in Room 242 pursuant to Part Rule 2 (D).

(A) Notice: When movant notifies any adversaries of the proposed order to show cause, movant shall also notify Part 48 pursuant to Part Rule (2) (A).

(B) Delivery: If signed, all papers related to the motion shall be filed to NYSCEF and the parties shall deliver a single, complete, and unredacted set of their own motion papers pursuant to Rule 2 (D) no later than Noon on the business day preceding the scheduled argument unless the court orders otherwise.

(C) Service: The method of service of an order to show cause, regardless what method of service of the order to show cause is provided for in the motion, is not a substitute for service of pleadings consistent with the CPLR and does not obviate a party's obligations to properly serve, under the CPLR and other applicable law, an adversary for the purposes of jurisdiction.

9. Dispositive Motions:

(A) Pre-joinder dispositive motions: Discovery is stayed automatically only when a party has completely filed a dispositive motion prior to joining issue (i.e., pre-answer motion to dismiss all

¹¹ Please contact the Ex Parte Office, Room 315, at (646) 386-3125 for assistance.

¹² The Part 48 Pro Hac Vice Proposed Order Form is available at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

¹³ Commercial Division Support Office, Room 119A, (646) 386-3020.

causes of action); however, any party may seek to stay or compel discovery pending resolution of any motion by requesting a discovery conference pursuant to Part Rule 2 (B).¹⁴

(B) Summary judgment motions shall be made no more than 30 days after the Note of Issue has been filed or after the deadline to file the Note of Issue has expired unless otherwise ordered. The 30-day deadline also applies to cross motions for summary judgment, for which no extension beyond the prescribed 30-day period is given absent court order expressly stating otherwise.

Pursuant to Part Rule 6, all exhibits submitted with a summary judgment motion—as with all motions—shall be given descriptive labels on NYSCEF and cited in legal memoranda with applicable NYSCEF Document Numbers.

(C) Optional Commercial Division Rule 19-A Statements are helpful for all summary judgment motions if every fact in the Statement is supported by pin-point citation(s) to the corresponding NYSCEF Document Numbers for the party’s submissions in support or opposition to the applicable motion sequence.

Rule 19-A Statements may not be cited as authority in a party’s memorandum of law or other motion papers: citations in all legal memoranda and motion papers (i.e., affidavits, attorney’s affirmations) must use pin-cites to the appropriate NYSCEF Document Numbers.

(D) Joint statements: The court encourages the use of stipulated Joint Statements of Undisputed Fact(s) to reduce duplicated and/or unnecessary submissions and to narrow the scope of the issues/facts in dispute. Accordingly, the parties are required to meet and confer, prior to filing any motion for summary judgment (other than those pursuant to CPLR 3213), to attempt in good faith to reach and memorialize in a Joint Statement the agreed-upon facts. A Joint Statement of Undisputed Fact(s) may be cited in the parties’ legal memoranda.

10. Oral Argument: See the Rules of the Commercial Division, Preamble § 3.

Expanded opportunities for speaking roles: The court is aware that in this century very few cases go to trial and, as a result, there are fewer speaking opportunities in court, particularly for less experienced lawyers (i.e., lawyers practicing for less than seven years). The court is also cognizant of the virtual absence historically of lawyers from diverse backgrounds and women appearing in such roles in commercial cases. The court strongly encourages litigants to be mindful of opportunities for less experienced lawyers, lawyers from diverse backgrounds, and lawyers who are women to conduct proceedings before the court, particularly where such members of the legal team drafted or significantly contributed to the underlying matter (i.e., the motion papers for oral argument; witness preparation for a hearing).

¹⁴ See Part Rule 14 for the procedures concerning discovery disputes and expedited discovery conferences.

11. Discovery Motions: Part 48 comports with the Commercial Division Rules pertaining to discovery disputes/conferences; however, Rule 24 letters are not permitted. To the extent the Part Rules further depart from the Commercial Division Rules for discovery disputes and conferences, the modified procedures are addressed in Part Rule 14 below.

12. Amending any Pleading: For all pleadings, motions/stipulations to amend or seeking leave to amend, and/or any submission to amend as of right, shall be accompanied by a copy of the original pleading, a clean copy of the proposed amended pleading, a red-line copy identifying all modifications/additions, and a cover letter stating the basis for the changes.

Procedures for Sealing and/or Redacting

13. Motions to Seal and/or Redact Documents/Information: Documents or information may not be sealed or redacted by stipulation. Parties seeking to seal and/or redact shall move, by order to show cause, for the appropriate relief and the following procedures are implemented to streamline the process.¹⁵

Sealing entire documents or categories of documents is typically a drastic remedy; the courts are obligated to fashion narrowly-tailored orders to seal or redact certain highly-sensitive information to maintain the transparency of the court's affairs and to balance the public's interests with those of the parties. The court strongly encourages parties to consider, either as an alternative request in a motion to seal whole documents or in the original instance, motions to redact specific, protectable information from the applicable documents.

(A) Motions to seal and/or redact shall be made by order to show cause and shall include a spreadsheet as follows: Movant's memorandum of law shall set forth the basis of the purported good cause to seal or redact each document or piece of information and movant's papers shall include a spreadsheet/chart that clearly and specifically identifies: (1) each document, by bates stamp or similar; (2) the categorization of each document (see below); (3) the good faith basis to seal or redact the particular document/information; and (4) citation(s) to applicable law or authority supporting movant's good cause to seal/redact the document/information.

Movant's proposed categories shall be identified with specificity in the spreadsheet and legal memoranda to facilitate issuance of a workable and efficient order; for instance, vague categories such as "confidential business information" or "proprietary trade information" are not generally adequate; examples of specifically-identified categories include "third-party borrower personal

¹⁵ For general information, please see "PROTOCOL ON COURTHOUSE AND COUNTY CLERK PROCEDURES FOR ELECTRONICALLY FILED CASES" in New York County: [\(Revised January 23, 2019; Explaining how customary courthouse and County Clerk procedures are applied in e-filed cases\)](#). For assistance with procedural e-filing issues, please contact the County Clerk's Office E-File Department, Room 141B, (646) 386-3737, cc-nyef@nycourts.gov, or the General Clerk's Office, Room 119, (646) 386-3030. Further, no motion is necessary to redact "Confidential Personal Information," including social security numbers and investment account numbers, as set forth in 22 NYCRR 214.12.

identifying information," "pricing terms for international customers," "investment methodologies," "capital contribution information of private entities," and "strategies for structuring, collateralizing, and marketing structured products." A carefully-tailored list of categories incorporated into movant's spreadsheet that articulate precise categories of information—as opposed to merely vague statements—allows the court to expeditiously resolve these motions and makes the process laboriously and financially economical for the parties as generic categories may not establish the requisite good cause to seal or redact and necessitate successive/further motion practice.

(B) Proposed sealed or redacted documents filed in connection with any motion shall be submitted to NYSCEF as follows:

(i) Every document sought to be sealed or redacted shall be filed on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber's Copy) along with the mandatory spreadsheet outlined in Part Rule 13 (A);

(ii) Every motion which seeks to redact information shall include a public copy of the document, filed on NYSCEF, containing movant's proposed redactions;

(iii) Motions to seal an entire document and seek, alternatively, to redact specific information in that document shall also file to NYSCEF a copy of the document with movant's proposed redactions; the proposed redacted copy may be filed to NYSCEF under temporary seal.

(C) A single set of all moving papers required under Part Rule 13 (A)-(B) shall be delivered to Part 48 in Room 242 on the return date: unredacted paper copies shall state "Confidential Chamber's Copy" and "UNREDACTED" on each cover page confidential submission, and all confidential copies will be enclosed in envelopes or boxes stating "Confidential" on all sides. Delivery shall be pursuant to Part Rule 8.

Motions which seek to redact information are an exception to Part 48's general rule that only one complete and unredacted set of all motion papers be delivered to Courtroom 242 on the return date: if redaction is sought, movant shall deliver one set of papers that includes both the unredacted paper copies and the paper copies containing the proposed redactions.

(E) Good cause found: Upon a finding of good cause, the court will issue a written order directing the party or parties to seal or redact documents or specific information in the documents filed in connection with the motion and to apply those written findings of good cause to any documents containing the same specific categories of highly-sensitive information for which good cause has been found, if or when other documents are later filed in connection with other motions or applications and reducing or eliminating the need for further motions to seal and/or redact.

Discovery, Conferences, and General Appearances

14. Discovery Disputes and Expedited Discovery Conferences:

(A) Commercial Division Rule 14 applies as modified: To request an advanced/expedited discovery conference after the parties have met and conferred under Commercial Division Rule 14, a party shall send the request by email, pursuant to Part Rule 2 (B), including only:

-- *Subject Line*: "Discovery Conference Request: [Index number, case name]";

-- *Email Body*: A statement, not more than 500 words, identifying the unresolved dispute(s) and, if the party believes it would be helpful, requesting authorization to submit individual pre-conference letters (see Part Rule 14 [D] below);

(B) Responses to conference requests: A non-requesting party may respond, within 24 hours of the requesting email, by replying all and indicating, in 500 words or less, whether the party (1) objects to scheduling the advanced discovery conference and/or (2) requests authorization for individual pre-conference letters.

(C) Court review: The court will review and inform all parties, at its earliest convenience, whether and when an expedited discovery conference is scheduled, whether individual letters are authorized, and/or what, if any, additional information the parties shall provide to the court before or at the conference (to be held in-person or telephonically at the court's discretion).

(D) Individual pre-conference letters: If authorized or directed, individual pre-conference letters, 1,300 words or less, shall be filed to NYSCEF and emailed pursuant to Part Rule 2 (B) at least three business days before the conference.

15. Settlement Conferences: The parties may, on consent, request a settlement conference at any time by email pursuant to Part Rule 2 (A). The parties will be informed whether the request is granted, whether any additional information is sought, and whether clients shall be present for a scheduled conference.

16. Pro Se Litigants, Language Interpreters, and Accessibility Accommodations: The court greatly appreciates at least 72-hours' notice that a pro se litigant will appear before Part 48.

If any individual appearing in Part 48 requires a language interpreter or accessibility accommodations, the party or counsel shall notify Part 48, by email pursuant to Part Rule 2 (A), at least five business days before the appearance and indicate precisely for which language (including, where applicable, regional distinctions) an interpreter is needed and/or what accessibility accommodation(s) are sought.¹⁶

¹⁶ See Part Rule 36 for procedures to request language interpreter/accessibility accommodations for hearings, trials, and other proceedings at which witnesses may testify.

17. Confidentiality Stipulation and Proposed Order: The form Confidentiality Stipulation and [Proposed] Order accepted in Part 48 is available online¹⁷ and/or by email pursuant to Part Rule 2 (B).

The parties shall file to NYSCEF and send pursuant to Part Rule 2 (B): (i) the executed stipulation and proposed order; (ii) a red-line copy demonstrating any/all additions, subtractions, or modifications made to the Part 48 Form; and (iii) a cover letter explaining all substantive changes.

18. Exchange of Electronically Stored Information (ESI): Prior to the preliminary conference, the parties shall discuss with their clients then meet and confer with counsel as to the matters memorialized in the Commercial Division Rules ESI Guidelines. The parties shall attempt, in good faith, to reach an agreement regarding the scope of ESI to be sought, the location, format, and custodians of such information, the burden of bearing costs for collecting/reviewing such information, and the amount of time anticipated to obtain, review, and produce such information. If no agreement can be reached prior to the preliminary conference, a party may email pursuant to Part Rule 2 (B) a request for an ESI conference. A sample Stipulation for the Exchange of Electronically-Stored Information is available online¹⁸ or by email pursuant to Part Rule 2 (B).

19. Preliminary Conferences: The Commercial Division Rules apply except as modified by these Part Rules. The parties are encouraged to use the Part 48 PC Order form, available online¹⁹ or by email pursuant to Part Rule 2 (B).

20. Document Discovery and Privilege Logs: Commercial Division Rule 11-b Certifications²⁰ (privilege logs) are required with every production and privilege log served. Sworn statements (affidavits or affirmations) pursuant to Commercial Division Rule 11-e (discovery responses, generally), likewise, shall be served with each response to a document demand and as otherwise required by Rule 11-e. Neither obligation may be waived or modified absent an express order of the court.

21. Note of Issue: Note of Issue deadlines will not be extended, adjourned, or otherwise stayed absent extraordinary circumstances. If the Note of Issue is not timely filed, the court may reduce the parties' time to file dispositive motions by the number of days that pass following expiration of the deadline.

Proposed Orders/Judgments and Inquests

22. Proposed Orders and Judgments: All proposed/counter-proposed orders and/or judgments shall be settled on notice pursuant to 22 NYCRR 202.48. All proposed orders/judgments shall be filed to NYSCEF and sent directly to Part 48 by email pursuant to Part Rule 2 (B). Opposing parties are invited to submit, under 22 NYCRR 202.48, a counter-proposal in the same manner.

¹⁷ Confidentiality Stipulation and [Proposed] Order Form: <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml>.

¹⁸ Sample ESI Exchange Form: <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml><http://www.nycourts.gov/courts/comdiv/ny/>.

¹⁹ The Part 48 PC Order Form: <http://www.nycourts.gov/courts/comdiv/ny/newyork.shtml><http://www.nycourts.gov/courts/comdiv/ny/>.

²⁰ See 22 NYCRR 1200.41-a.

23. Inquests: Inquests are conducted pursuant to the CPLR, Uniform Rules, and other applicable authority.

Where an inquest on damages is requested or directed, the requesting or directed party shall e-file and deliver to Part 48, pursuant to Part Rule 2 (B) and (D), the following: (a) an affidavit from a person with knowledge of the facts setting forth the computation of damages; (b) an attorney's affirmation briefly reciting the facts and basis of liability and damages; (c) any necessary exhibits and expert affidavits; (d) a list of proposed witnesses in the event there is a hearing; and (e) proof of service of all filed papers upon opposing parties.²¹ Where an inquest concerns attorneys' fees, an affirmation of services and resumes for all attorneys/other staff are expected.

Transcripts and Other Rules

24. Transcripts: All transcripts, including trial transcripts and transcripts of other non-motion proceedings, shall be e-filed and hand delivered to the Part Clerk in certified form (signed by court reporter) not more than 30 days after conclusion of the applicable proceeding. Parties can obtain the court reporter's name and contact information by email request sent pursuant to Part Rule 2 (A).

(A) Transcripts of argument on motion(s): Movants are responsible for the costs, e-filing, and hand delivery of certified transcripts; paper copies shall include a cover letter identifying the case name, index number(s), motion sequence number(s), and proceeding date(s) and be delivered pursuant to Part Rule 2 (D). Motions will not be marked fully submitted until the certified transcript has been properly submitted.

(B) Errata sheet/application for corrections: An errata sheet stipulation shall be e-filed and emailed pursuant to Part Rule 2 (B) within 20 days of filing of the certified transcript. Absent consent to changes, the requesting party shall notice the record for settlement pursuant to CPLR 5525 (c) within 20 days from the date the certified transcript was filed on NYSCEF.

25. Commissions: Requests for commissions shall be made by stipulation, if the parties agree, and application via the Ex Parte Office or Commercial Division Office or else by order to show cause.

26. Gender-Neutral Language and the Standards of Civility: Fair speech shall be employed in all proceedings and submissions²² and counsel shall comply with the Standards of Civility.²³

²¹ See Part Rules 29 and 31-37 for the procedures that apply to exhibits, exhibit charts, witness lists, and other hearing materials.

²² See "Fair Speech: Gender Neutral Language in the Courts," New York State Judicial Committee on Women in the Courts, available at <http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/fair-broch2.pdf>.

²³ See 22 NYCRR 1200 Appendix A, available at https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.

Trial Dates, Trial Adjournments, and Other Trial Matters²⁴

27. Trial Rules: Commercial Division Rules 25, 26, 28, 29, 30, 31, 32, and 33 apply except as supplemented or modified by the Part Rules.

28. Trial Dates: Trial dates are assigned by only order of this court or other written communication from this court.

(A) Adjournments: Trial dates are firm and will not be adjourned absent a showing of extraordinary circumstances and formally requested pursuant to Part Rule 2 (A) and (C) not less than 60 days prior to the scheduled date of commencement. Requests to adjourn trial dates shall state, in 500 words or less, the basis of the request. Trial dates are not adjourned absent court order or written authorization confirming the court has granted the request.

(B) Continuances: There will be no continuances granted if a witness is unavailable to testify at the pre-determined time absent a demonstration of extraordinary circumstances. See Commercial Division Rule 25.

29. Pre-Trial Conference and Time Limits:

(A) Trial limits: Unless the court directs otherwise, the parties shall agree to time estimates and hard limits anticipated for all aspects of trial²⁵ and submit their agreed-upon estimates and limits to the court pursuant to Part Rule 2 (B) at least 10 days before the pre-trial conference. If the parties cannot reach an agreement, all Commercial Division Rule 26 estimates are compulsory and shall be exchanged and submitted to the court pursuant to Part Rule 2 (B) at least 10 days prior to the pre-trial conference. Unless previously directed by the court, or stipulated by the parties and so-ordered, time limits for witnesses, opening and closing statements, and the total duration of the trial will be resolved at the pre-trial conference.

(B) Commercial Division Rule 30 (c): At least 10 days prior to the pre-trial conference, counsel for the parties shall consult in good faith and file to NYSCEF a stipulation reflecting the aspects of their respective experts' anticipated testimony, if any, that are not disputed.

30. Motions in Limine: Motions in limine shall be filed by order to show cause no more than 30 days after assignment of trial date(s) or 30 days after the court's entry on NYSCEF of all final orders resolving all post-NOI summary judgment motions. Motions in limine shall not, under any circumstance, be filed fewer than 60 days before commencement of trial unless so directed by court order. Failure to timely file motions in limine constitutes waiver of those motions.

²⁴ The below trial procedures also apply to all exhibits, exhibit charts, witness lists, and other submissions in non-trial proceedings/hearings at which witnesses may testify or exhibits are intended to be introduced.

²⁵ The parties shall agree to a "realistic estimate of the length of the trial," "the total number of hours . . . necessary for its direct examination, cross-examination, redirect examination, and argument during the trial" (see Commercial Division Rule 26).

Court orders entered during any pre-trial phase which seal or redact any documents or information will not apply to any documents or information introduced at trial absent further order of the court following a timely motion to seal or redact information made in limine. Unless otherwise ordered, the courtroom is open to the public and will not be closed for any portion of the trial.

31. Exchange and Filing of Trial Materials: The parties shall meet and confer on all matters relating to the exchange and filing of trial materials, as set forth in the Commercial Division Rules, not less than 30 days before commencement of trial, to minimize/eliminate duplication of exhibits intended to be offered at trial.

(A) Exchanging trial materials, including but not limited to exhibit books, exhibit charts,²⁶ witness lists, marked pleadings, joint statements of undisputed fact, direct testimony affidavits, and pre-trial memoranda of law, shall be completed at least 20 days before commencement of trial.

(i) Exhibit books shall contain only single-sided pages and be bound in consecutively-paginated, clearly-labeled volumes not exceeding two inches in thickness.

(ii) Any deposition transcripts intended to be introduced at trial shall be in OCR-searchable mini-script format with index(es) and shall otherwise comport with Commercial Division Rule 29.

(B) Filing and delivering trial materials to Part 48: Not less than 7 days prior to commencement of trial, all trial materials (except for exhibits intended to be used at trial, proposed jury instructions, proposed verdict sheets, and the materials required in connection with instructions/verdict sheets²⁷) shall be filed to NYSCEF and delivered in one full set of paper copies pursuant to Part Rule 2 (D).

All digital trial materials on NYSCEF or otherwise sent to the court shall be OCR searchable unless extraordinarily impracticable. Descriptive names for each trial document, including exhibits, shall be used: identify exhibits by pre-marked number and explain what each exhibit is; i.e., "P001 - P's Dep Tr, 01.01.2001."

(C) Delivery of materials not filed to NYSCEF: Exhibits intended to be used at trial, proposed jury instructions, proposed verdict sheets, and related materials shall be delivered to the Part Clerk in a single set of paper copies pursuant to Part Rule 2 (D) and digitally sent to the court pursuant to Part Rule 2 (B) at least 7 days before trial. Every digital document or trial material shall be in an individual, OCR-searchable file with specific, descriptive filenames.

(D) Direct testimony affidavits: Commercial Division Rule 32-a is mandatory in non-jury trials.

²⁶ The Part 48 Exhibit Chart is available online at <https://www.nycourts.gov/courts/comdiv/ny/newyork.shtml> and by email pursuant to Part Rule 2 (B).

²⁷ Delivery to Part 48 of pre-trial materials excepted from e-filing are set forth in Part Rule 31 (C).

(E) Proposed jury charges and proposed verdict sheets: The parties must exchange proposed charges and verdict sheets no fewer than 20 days prior to commencement of a jury trial and counter proposals must be exchanged and no less than 10 days prior to commencement of the trial. Where a proposed jury instruction is verbatim from the most current edition of the Pattern Jury Instructions, PJI citations are sufficient; if a proposed instruction modifies any PJI instruction, the submitting party must include a cover letter providing appropriate authority for the proposed modifications and a red-line version demonstrating all changes to the PJI language. All documents above shall be delivered digitally and in paper copies pursuant to Part Rule 2 (B) and (D) not less than 7 days before trial.

32. Trial Exhibits and Exhibits Charts: Counsel shall comport with Commercial Division Rule 28 and all exhibits, in exhibit books complete with the Part 48 Exhibit Chart, shall be exchanged and sent pursuant to Part Rule 2 (B) at least 20 days prior to commencement of trial. Exhibits shall be pre-marked using only numbers: e.g., Plaintiff's Exhibit 1 = P001; Defendants' Exhibit 99 = D099; where there are numerous parties, identify party names with abbreviations, i.e., ABC001, XYZ199. Exhibit Charts shall identify whether admissibility of each exhibit intended to be used is disputed, as determined by the parties at their required Commercial Division Rule 28 meet and confer.

The parties shall have additional copies of all trial materials to provide to witnesses during examination at trial.

33. Filing Entered Exhibits After Trial: Only exhibits introduced at trial and entered into evidence during trial are deemed admitted for any purpose; exhibits not used and/or not entered into evidence at trial will not be considered by the fact finder. Only admitted exhibits, not proposed exhibits, are filed to NYSCEF after trial pursuant to Part Rule 39 (C).

34. Pre-Trial Memoranda and Joint Statements of Undisputed Fact: At least 30 days prior to trial, the parties must meet and confer to attempt to reach an agreement as to facts that are not in dispute. Not less than 20 days prior to commencement of trial, the parties shall exchange and e-file all pre-trial memoranda, formatted in accordance with the Commercial Division Rules and Part Rule 6, and any Joint Statement of Undisputed Fact(s); paper copies and digital copies shall also be sent to the court Pursuant to Part Rule 2 (B) and (D).

35. Witness Lists: Parties must exchange and e-file a list of witnesses intended to be called in a chart/spreadsheet identifying whether each witness is a fact and/or expert witness and whether expert status, if any, is disputed. For expert witnesses, a brief explanation of the anticipated testimony shall be included (see also CPLR 3101 [d]). The parties, after meeting and conferring as required by the Part Rules and Commercial Division Rules, shall submit a proposed schedule for the examination of witnesses at the pre-trial conference; in no instance will the proposed schedule be filed and delivered to the court pursuant to Part Rule 2 (B) and (D) fewer than five business days prior to trial.

36. Language Interpreters and Accessibility/Accommodations: As set forth in Part Rule 16; however, where a translator is needed for foreign or sign language interpretation, or where accessibility or other accommodations may be necessary, the requesting party shall notify the Part Clerk at least 10

days prior to the commencement of trial and include all pertinent information, including: the witness's name, date(s) of anticipated testimony, language and dialect spoken; and/or all other accommodations requested. Notice shall be sent pursuant to Part Rule 2 (A).

37. Demonstrative Evidence, Electronic Media, and Trial Tools: Part 48 strongly encourages the use of new media and technology—i.e., real-time transcription—to expedite and streamline trials; however, the parties shall provide their own courtroom technology. Requests for permission to use demonstrative evidence or other trial tools shall be made pursuant to Part Rule 2 (B) at least 10 days prior to commencement of trial. The court is willing to consider all trial-facilitating media or devices if the deadline above has been satisfied. Parties are responsible for providing equipment and staff to operate the equipment, if necessary.

38. Court Reporters: Prior to commencement of trial, the parties shall provide the Court Reporter(s) with contact information, witness lists, pre-marked exhibit lists and exhibit charts, and a glossary of names, unusual words, and/or acronyms that may be used during the trial. Court Reporters require notice of at least 15 days where real-time transcription of trial proceedings will be implemented. The parties may contact the Court Reporters' Office at Room 420, (646) 386-3050, and email the court pursuant to Part Rule 37.

Post-Trial Matters

39. Post-Trial Submissions and Filings: Within 30 days of the conclusion of trial, or as directed by the court, the parties shall exchange and file to NYSCEF all post-trial memoranda (limited as set forth in the Commercial Division Rules and formatted in accordance with the Part Rules), Mandatory Statements of Proposed Factual Findings, copies of all Exhibits Admitted at Trial, and a Joint Chart of Admitted Exhibits. All filings shall be OCR-searchable and the court's paper copies shall be submitted, pursuant to Part Rule 2 (D), in consecutively-paginated, clearly labeled, two-inch thick volumes containing only single-sided pages.

(A) Post-trial memoranda shall include proposed conclusions of law supported by citations to only evidence admitted at trial. Do not cite to Statements of Proposed Factual Findings as support for any fact or conclusion in legal memoranda. Reply Memoranda shall be served and filed not more than 45 days after the conclusion of trial (or as directed by the court) and are limited as set forth in the Commercial Division Rules and the Part Rules. Word limit extension requests shall be emailed pursuant to Part Rule 6 not more than seven days after the conclusion of trial.

(B) Mandatory statements of proposed factual findings: There is no word limit for proposed factual findings; however, every proposed factual finding shall be supported by citation(s) to evidence (exhibits and/or testimony) admitted and used at trial, with pin-point citations to the applicable NYSCEF Document Numbers for each exhibit or trial transcript.

(C) Admitted/entered exhibits: Following trial, all exhibits entered into evidence must be jointly prepared by the parties and filed to NYSCEF with a Joint Exhibit Chart (in the form accepted by Part 48) identifying each exhibit by its pre-marked number, the date on which it was admitted into

evidence, and whether it was admitted into evidence over objection or otherwise. Admitted/entered exhibits shall be filed to NYSCEF within 30 days of the conclusion of trial. For inquiries as to non-traditional exhibits (i.e., large-format prints, models, etc.), email the court pursuant to Part Rule 2 (B).

40. Trial Transcripts: Shall be filed and delivered pursuant to Part Rule 24 within 30 days of the conclusion of trial.

41. Removing Trial Materials: All physical trial exhibits/copies used during trial shall be removed from Part 48 within 48 hours of the trial's conclusion or else they will be destroyed or discarded.

42. Index of Online Materials: For the convenience of all parties, .PDF copies of the below-listed Rules, proposed order forms, templates, samples, and other materials are available online in addition to these Part Rules.²⁸

- The Rules of the Commercial Division (22 NYCRR 202.70) (current through 6/16/19 update);
- The Part 48 PC Order Form;
- The Part 48 Pro Hac Vice Proposed Order Form;
- The Part 48 Confidentiality Stipulation and Proposed Order Form;
- The Part 48 Exhibit Chart;
- The Standards of Civility (22 NYCRR 1200 Appendix A); and
- A Sample Stipulation for the Exchange of ESI.

Copies of those documents may be available in an alternative format (i.e., .DOC/.DOCX or .XLS files); to request another format, please email Part 48 pursuant to Part Rule 2 (B).

²⁸ Please visit https://www.nycourts.gov/courts/comdiv/ny/newyork_judges_links.shtml#masley.