

As of September 23, 2024

**HON. ANAR RATHOD PATEL**  
**Part 45 Practices and Procedures**

**Supreme Court of the State Of New York**  
**Commercial Division**

60 Centre Street, Courtroom 428  
New York, New York 10007  
Part Clerk/Courtroom: (646) 386-3632

Chambers: [sfc-Part45@nycourts.gov](mailto:sfc-Part45@nycourts.gov); (646) 386-3234  
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**I. General Practices**

- A. Counsel are expected to be familiar with the Rules of the Commercial Division, [22 NYCRR § 202.70](#), and comply therewith. In the event that this Court's Practices and Procedures are silent, the Rules of the Commercial Division control.
- B. Appearances: The presumption is that counsel will appear in person. If one of more of the attorneys seek(s) to appear remotely for health, long distance travel, or other valid reasons, please contact Part Clerk Lisa Morisi *via* e-mail ([sfc-Part45-Clerk@nycourts.gov](mailto:sfc-Part45-Clerk@nycourts.gov)) and a Microsoft Teams link will be provided.

**II. Scheduling**

- A. Inquiries regarding scheduling and calendar matters should be directed to the Part Clerk.
- B. Requests to Adjourn an Appearance: A request for an adjournment of an appearance shall be made in writing at least forty-eight (48) hours prior to the appearance on notice to the other parties and filed on NYSCEF. Any party seeking an adjournment must attempt to obtain consent from all other parties. Applications for adjournments must state: (1) the appearance date, (2) three (3) proposed adjourned dates/times on consent, (3) the reason for the request, (4) the number of prior adjournments, and (5) whether the opposing party(ies) consent(s) or object(s).
- i. Absent explicit approval from the Court, the adjournment is not deemed granted, including an adjournment on consent.
- C. Requests to Adjourn a Motion: Adjournments of motions are governed by Commercial Division Rule 16(c). Requests for an adjournment of a dispositive motion shall be made in writing at least forty-eight (48) hours prior to the return date on notice to the other parties and filed on NYSCEF. Any party seeking an adjournment must attempt to obtain consent from all other parties. Applications for adjournments must state: (1)

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the return date, (2) the proposed amended briefing schedule, (3) the reason for the request, (4) the number of prior adjournments, and (5) whether the opposing party(ies) consent(s) or object(s).

- i. Absent explicit approval from the Court, the adjournment of the return date of a dispositive motion is not deemed granted, including an adjournment on consent.

### **III. Communications with the Court**

- A. Letters: All communications with the Court shall be in writing and filed on NYSCEF, with copies simultaneously delivered to all counsel or self-represented parties. All correspondence sent to the Court must bear the full title and index number of the action, indicate that a copy was sent to all counsel or self-represented parties, and state the relief sought or action requested to be taken by the Court.
- B. Telephone Calls and E-mails: Telephone calls and e-mails to Chambers are permitted only in situations requiring immediate attention that cannot otherwise be obtained by written correspondence. Any *ex parte* communication is strictly prohibited. Self-represented parties must direct all communications through the Part Clerk.
- C. Notification of Settlements and Discontinuances: If an action or motion is settled, discontinued, disposed, or withdrawn in any manner, the parties must immediately inform the Court by letter, filed on NYSCEF. As soon as is practicable, the parties shall file on NYSCEF a fully executed stipulation of settlement or discontinuance.

### **IV. E-Filing and Working Copies**

- A. All parties in matters subject to e-filing rules are expected to be familiar with the [E-Filing Protocol](#). All documents in e-filing cases must be filed on NYSCEF. All submissions to the Court, including motion papers, letters, proposed orders, and proposed judgments must be electronically filed on NYSCEF.
- B. Absent a specific request, the Court does not require working copies of documents.

### **V. Requests for Admission Pro Hac Vice**

- A. Requests for admission *pro hac vice*, including requests by stipulation, shall be accompanied by an affirmation in support by a member of the Bar of the State of New York, an affirmation from the applicant, and a recent certificate of good standing for the applicant. The affirmation must also disclose whether the applicant has ever been, or is presently, subject to disciplinary proceedings. See Addendum 2 attached to these Practices and Procedures (Proposed Order for Requests for Admission *Pro Hac Vice*).

### **VI. Confidentiality Orders**

- A. Parties are directed to Commercial Division Rule 11-g and [Appendix B](#) thereto for the form Stipulation and Order for the Production and Exchange of Confidential Information. If the parties propose to deviate from the form Stipulation, the parties

shall file (1) a copy of the parties' proposed confidentiality order; (2) a redline of the parties' proposed order to the form Stipulation; and (3) a letter to the Court articulating the reasons for such deviations.

## **VII. Document Sealing and Redacting Procedures**

- A. General: Parties may not stipulate to seal or redact documents or information. Motions to seal and/or redact must be made by order to show cause.
- B. Motions to Seal and/or Redact: A movant must submit a memorandum of law stating the basis of the purported good cause to seal or redact each document or piece of information. A movant must also submit a sealing/redacting spreadsheet that clearly identifies: (1) each document sought to be sealed or redacted with the corresponding NYSCEF Docket Number; (2) the categorization of each document; (3) whether movant seeks to seal or redact the document; (4) the proposed good faith basis to seal or redact; and (5) citations to applicable authority supporting good cause to seal/redact.
1. A movant should identify specific proposed categories in the spreadsheet and legal memoranda to facilitate issuance of a workable and efficient order. Vague categories, such as "confidential business information" or "proprietary trade information," are inadequate. Examples of specific categories include "third-party borrower personal identifying information," "pricing terms for nonparty customers," "investment methodologies," "capital contribution information of private entities," and "strategies for structuring, collateralizing, and marketing structured products."
- C. Proposed Sealed or Redacted Documents: A movant must file documents to be sealed or redacted on NYSCEF in compliance with [New York County Protocol at Section K](#) and as follows: (1) counsel must file every document sought to be sealed or redacted on NYSCEF under temporary seal in completely unredacted form (Confidential Chamber's Copy) with all proposed redactions highlighted in yellow; (2) counsel must also e-file a public copy of each document on NYSCEF with the proposed redactions; and (3) for all motions to seal/redact, counsel must deliver courtesy copies of the unredacted documents on a flash drive (labeled with caption and index number) and in hard copy to Courtroom 428.
- D. Opposing Motions to Seal/Redact: The parties must meet and confer to resolve any disputes before filing opposition to an application to seal/redact. If the disputes cannot be resolved, the parties must file a joint letter on NYSCEF requesting a conference.
- E. Good Cause Found: Upon a finding of good cause, the Court will issue a written order directing the party(ies) to seal or redact documents and/or specific information in the documents filed with the motion. The Court will further order the party(ies) to apply those written findings of good cause to any documents containing the same specific categories of information if or when other documents are later filed in the same action to reduce or eliminate the need for future motions to seal or redact.

### **VIII. Motions**

- A. General: All motions shall be made in accordance with Commercial Division Rules 16, 17, and 18. Absent permission from the Court, sur-reply and post-submission papers are not permitted. All motion papers and accompanying documents, including exhibits and unpublished opinions, must be uploaded to NYSCEF.
- B. Pre-Motion Conference Required: Pursuant to Commercial Division Rule 24, any party seeking to make a motion, except as allowed by Rule 24, must file a written letter request for a pre-motion conference on notice to all other parties and upload the letter to NYSCEF. The letter request should state the basis of the anticipated motion and may not exceed two (2) pages. All parties so served may serve and file a letter response, not to exceed two (2) pages, *via* NYSCEF, within two (2) business days from service of the notification letter.
- C. Return Date: Personal appearances are not required on the return date unless directed by the Court.
- D. Oral Argument: All motions are by submission only unless otherwise advised by the Court. Parties may request oral argument by stating “Oral Argument Requested” on the first page of the papers submitted.
- E. Orders to Show Cause: Pursuant to Commercial Division Rule 19 and 22 NYCRR § 202.8-d, an Order to Show Cause shall be brought only when there is genuine urgency, a stay is required, it is mandated by statute, or by leave of Court. The length of papers submitted regarding Orders to Show Cause shall conform to 22 NYCRR § 202.8-b. Proposed Orders to Show Cause submitted for signature must be uploaded to NYSCEF.
- F. Memoranda of Law: All motion papers (in support, opposition, and reply), whether by notice of motion or order to show cause, must include a Memorandum of Law subject to the word limits set forth in Commercial Division Rule 17.
- G. Motions for Summary Judgment: All motions for summary judgment shall be accompanied by a Statement of Undisputed Facts that comply with Commercial Division Rule 19-a. All opposing papers shall include a response to the Statement of Undisputed Facts that comply with Commercial Division Rule 19-a. The Rule 19-a Statement is to be submitted separate from the Statement of Facts (with citations to the record) in the Memorandum of Law. Motions for summary judgment must be served/ filed within forty-five (45) days of the service/ filing of the Note of Issue. Cross-motions for summary judgment are not permitted.

### **IX. Discovery**

- A. Rule 14 Conference: Pursuant to Commercial Division Rules 14 and 14-a, discovery motions are discouraged, and the parties shall meet and confer in good faith to resolve discovery disputes prior to seeking judicial intervention. The Court endeavors to resolve discovery disputes promptly, generally by virtual conference.

- i. For cases already assigned to this Court at the time that a discovery dispute arises, no motion with respect to the dispute shall be made without a prior conference with the Court, pursuant to Section VI.B. herein. For cases in which a discovery motion accompanies the Request for Judicial Intervention, no opposition papers shall be served until there has been a prior conference with the Court, pursuant to Section VI.B. herein.
- B. E-Discovery: Pursuant to Commercial Division Rule 11-c and [Appendix A](#) thereto, parties and non-parties are advised to consult the Commercial Division’s Guidelines for Discovery of Electronically Stored Information (“ESI”). Parties are encouraged to execute a stipulation for the exchange of ESI at the outset of litigation.
- C. Stays of Discovery: There is no automatic stay of discovery absent the death or bankruptcy of a party. The parties shall immediately notify the Court in the event of the death or bankruptcy of a party.
- D. Discovery Responses and Certifications: The parties must serve privilege logs and Commercial Division Rule 11-b Certifications with all document productions, and compliance with Commercial Division Rule 11-e is mandatory. The parties must verify their satisfaction of Rule 11-e (d) by providing a Certification of the Responsible Attorney at least thirty (30) days prior to the close of fact discovery.
- E. Documents Not Produced: Absent compelling circumstances, documents not produced during discovery will not be admitted as evidence at trial.

**X. Conferences**

- A. Preliminary Conference: Pursuant to Commercial Division Rules 8 and 11, prior to the scheduled Preliminary Conference, the parties shall meet and confer to jointly prepare a brief statement—not to exceed two (2) pages—describing the facts of the case and the contentions of the parties and a proposed Preliminary Conference Order, using this Court’s form Preliminary Conference Order. The parties shall submit the joint statement, proposed Preliminary Conference Order, and Commercial Division Rule 10 Certification at least two (2) days prior to the date of the scheduled preliminary conference *via* NYSCEF.
  - i. Parties are advised that the Court will consider the amount of discovery anticipated (*e.g.*, number of potential witnesses, volume of discovery) in scheduling the discovery deadlines. Pursuant to Commercial Division Rule 13, interim discovery dates may be adjusted without further order of the Court, however the date for completion of discovery, the Trial Readiness Conference, and filing the Note of Issue may not be modified without the Court’s prior written approval.
- B. Trial Readiness Conference: At the Trial Readiness Conference, the Court will expect that the parties report that all discovery is complete so that the Court may certify that the case is ready for trial through the issuance of a Trial Readiness Order, which will also direct that Plaintiff serve and file the Note of Issue within ten (10) days of the Trial Readiness Order.

- i. If the parties have not apprised the Court of any discovery issues and/or disputes since the Preliminary Conference, the Court may determine at the Trial Readiness Conference that all discovery not completed has been waived.
  - ii. The parties shall be prepared to address whether they intend to file summary judgment motions or proceed directly to trial, in which case the Court will schedule the Pre-Trial Conference date. Absent unusual circumstances, the Court will direct in the Trial Readiness Order that all motions (no cross-motions for summary judgment will be permitted) for summary judgment must be served/ filed within forty-five (45) days of the service/filing of the Note of Issue.
- C. Settlement Conferences and Mediation: At any time, the parties may, on consent, request referral to Alternative Dispute Resolution (ADR) or other mediation, or a settlement conference with the Court *via* joint letter to the Court filed on NYSCEF.
- D. Transcripts: Following all appearances conducted on the record, the parties are directed to obtain a copy of the transcript and file it on NYSCEF within thirty (30) day of the appearance date.

## **XI. Trials and Hearings**

- A. Scheduling: Parties are referred to Commercial Division Rules 25 and 36. Generally, a trial date will not be set until after the Pre-Trial Conference is held.
- B. Virtual Evidence Courtroom: A [Virtual Evidence Courtroom](#) will be set up in NYSCEF for each trial/hearing. The Court will address the schedule for filing all exhibits on the Virtual Evidence Courtroom at the Pre-Trial Conference.
- C. Pre-Trial Conference
- i. Prior to the Pre-Trial Conference: The parties shall exchange: (1) witness lists; (2) deposition designations; and (3) proposed exhibits. The parties are expected to meet and confer concerning the deposition designations so that they may be jointly submitted with each side's designations to follow the other side's designations in page order. The parties are further expected to have resolved all non-substantive issues concerning the admissibility of the proposed exhibits such as extraneous writings found on such exhibits.
  - ii. At the Pre-Trial Conference: the parties must submit: (1) pre-trial memoranda of law; (2) a copy of all expert reports; (3) marked pleadings; (4) a joint statement of stipulated facts and procedural history; (5) exhibit charts and proposed exhibits as described below; (6) proposed witness lists; and (7) for jury trials, proposed jury charges and verdict sheets (both in hard copy and electronic form).
    1. Proposed jury instructions, including the text of relevant PJI instructions, should be submitted by e-mail to Chambers ([sfc-Part45@nycourts.gov](mailto:sfc-Part45@nycourts.gov)) in Word format. The submissions should designate the instructions to which the parties have stipulated. If a deviation from PJI instructions is sought, the parties

must submit the full text of the proposed charge, together with a legal memorandum supported by case law.

2. Exhibits: Each side is expected to provide an exhibit chart that conforms to Addendum 1 attached to these Practices and Procedures (Template for Exhibit Chart). If a party does not designate a document as disputed as admissible evidence, the party will not be permitted to oppose its use at trial. Wholesale objections to evidence without specificity are insufficient and will be deemed waived. The parties are further directed to provide a flash drive (labeled with caption and index number) containing copies of proposed exhibits for the Court and one (1) hard copy exhibit binder for the witness. The proposed exhibits may be pre-marked for identification (Plaintiff's exhibits labeled numerically; Defendant's exhibits labeled alphabetically).

iii. All *motions in limine* shall be made in accordance with Commercial Division Rule 27, and returnable by no later than the date scheduled for the Pre-Trial Conference.

- D. Post-Trial: In accordance with the schedule set by the Court, the parties must submit and upload to NYSCEF: (1) a consolidated transcript of the proceeding; (2) a list of exhibits admitted into evidence; (3) a flash drive (labeled with caption and index number) containing copies of admitted exhibits, identified by exhibit number/letter; (4) closing memoranda; and (5) and any other document required to complete the record for purposes of any appeal.

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**ADDENDUM 1**  
 Template for Exhibit Chart

<b>Exhibit</b>	<b>Description</b>	<b>Stipulated</b>	<b>Objection</b>	<b>Ruling</b>	<b>Admitted at Trial</b>
[Plaintiff – 1,2, 3 ...] [Defendant – A, B, C ...]	[Description]	<input type="checkbox"/> Stipulated  [check if the parties have stipulated to the admission of the exhibit]	[state the basis of the objection with a sufficient explanation for the Court to make a ruling]	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled  [Court will complete]	<input type="checkbox"/> Admitted  [Court will complete]



**ADDENDUM 2**

Form of Proposed Order for Requests for Admission *Pro Hac Vice*

\_\_\_\_\_, Esq., having applied to this court for admission *pro hac vice* to represent [plaintiff/defendant] \_\_\_\_\_ in this action, and said applicant having submitted in support thereof a stipulation of all parties dated \_\_\_\_\_, an affirmation, of \_\_\_\_\_, Esq., a member of the Bar of the State of New York and attorney of record herein for \_\_\_\_\_, an affirmation of the applicant dated \_\_\_\_\_, and a Certificate of Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted on consent and \_\_\_\_\_, Esq. is permitted to appear and to participate in this action on behalf of \_\_\_\_\_; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the court shall be signed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her/their participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction which affects his/her/their standing as a member of the Bar.

Date: \_\_\_\_\_  
New York, New York

**ENTER:** \_\_\_\_\_  
**Hon. Anar Rathod Patel, A.J.S.C**