

Rule 9018-1 Exhibits; Documents under Seal; Confidentiality.

- (a) Retention of Exhibits. Unless otherwise ordered by the Court, exhibits admitted into evidence must be retained by the attorney or *pro se* party who offered them into evidence until the later of the closing of the main bankruptcy case or the entry of a final, non-appealable order regarding any pending adversary proceeding, contested matter or pending appeal to which such exhibit relates.

- (b) Access to Exhibits. Upon request, parties must make exhibits admitted into evidence (or copies thereof) available to any other party to copy at its expense, subject to any confidentiality, seal or other order or directive of the Court.

- (c) Removal of Exhibits from Court. Exhibits that are in the custody of the Clerk shall be removed by the party responsible for the exhibits (i) if no appeal has been taken, at the expiration of the time for taking an appeal, or (ii) if an appeal has been taken, within twenty-eight (28) days after the record on appeal has been returned to the Clerk. Parties failing to comply with this Local Rule shall be notified by the Clerk to remove their exhibits and, upon failure to do so within twenty-eight (28) days of such notification, the Clerk may dispose of the exhibits.

- (d) Documents under Seal.
 - (i) Except as otherwise ordered by the Court, any entity seeking to file a document (a "Proposed Sealed Document") under seal must file a motion requesting such relief (a "Sealing Motion") no later than three (3) business days after the filing of the Proposed Sealed Document. The Proposed Sealed Document shall be filed separately from the Sealing Motion as a restricted document in accordance with the Court's CM/ECF procedures.

 - (ii) The Sealing Motion (A) shall include a certification of counsel from Delaware counsel made in accordance with sub-part (d)(iv) hereof and (B) except as otherwise ordered by the Court or as provided in sub-part (d)(v) hereof, shall be accompanied by a separately filed proposed redacted version of the Proposed Sealed Document in a form suitable to appear on the Court's public docket (the "Proposed

Redacted Document"). The Proposed Redacted Document shall be filed.

- (iii) If the Proposed Sealed Document is known by the filer thereof to contain information that has been designated by another entity as confidential pursuant to a protective order, contract or applicable law or as otherwise requiring protection for the benefit of another entity pursuant to section 107 of the Bankruptcy Code (such rights, "Confidentiality Rights" and any such entity holding Confidentiality Rights, a "Holder of Confidentiality Rights"), the filer thereof, prior to the filing of the Sealing Motion, shall attempt to confer in good faith with the Holder of Confidentiality Rights in an effort to reach agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view.

- (iv) The certification of counsel contained in the Sealing Motion shall include the certification of Delaware counsel for the filer thereof as to one or more of the following, as appropriate: (a) that counsel for the filer of the Sealing Motion and the Holder of Confidentiality Rights (or counsel thereto) have conferred in good faith and reached agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view; (b) that counsel for the filer of the Sealing Motion and the Holder of Confidentiality Rights (or counsel thereto) have conferred in good faith and been unable to reach agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view; (c) that the filer of the Sealing Motion has been unable to confer with the Holder of Confidentiality Rights (or counsel thereto), with an explanation of the reason(s) no such conference could occur; (d) that it would be futile for the filer of the Sealing Motion to attempt to confer with the Holder of Confidentiality Rights (or counsel thereto), with an explanation of the reason(s) establishing such futility; (e) to the best of the knowledge, information and belief of counsel for the filer of the Sealing Motion, the Proposed Sealed Document does not contain information subject to Confidentiality Rights of another Holder of

Confidentiality Rights; and/or (f) that counsel for the filer of the Sealing Motion believes that the entire Proposed Sealed Document should be under seal, such that no Proposed Redacted Document can be filed with the Sealing Motion.

- (v) In the event that the filer of the Sealing Motion determines in good faith, after attempting to confer with the Holder of Confidentiality Rights as provided in sub-part (d)(iii) hereof (unless the filer of the Sealing Motion has certified that such attempt to confer is not possible or would be futile), that the entire Proposed Sealed Document should be placed under seal such that no Proposed Redacted Document can be filed with the Sealing Motion, then notwithstanding anything to the contrary in sub-part (d)(ii) hereof, the filer of the Sealing Motion shall be excused from the obligation to file a Proposed Redacted Document pending further order of the Court. For the avoidance of doubt, this sub-part (d)(v) does not excuse the filer of a Sealing Motion from the obligation to file a Proposed Redacted Document merely because of (A) the existence of a dispute with a Holder of Confidentiality Rights that involves less than the entire Proposed Sealed Document or (B) the inability of the filer of the Sealing Motion to determine whether a portion of the Proposed Sealed Document that is less than the entire Proposed Sealed Document is subject to Confidentiality Rights of another Holder of Confidentiality Rights. In either such event, the filer of the Sealing Motion shall use reasonable efforts to file a Proposed Redacted Document that leaves unredacted to the fullest extent possible those portions of the Proposed Sealed Document that the filer reasonably believes are not subject to Confidentiality Rights held or asserted by the filer or another Holder of Confidentiality Rights.

- (vi) In the event the Court grants relief concerning a Sealing Motion that requires redactions different from those contained in the Proposed Redacted Document (or if the Court grants relief requiring the filing of a redacted version of a Proposed Sealed Document where no prior Proposed Redacted Document was filed), counsel for the movant shall

file within one (1) business day after the Court's ruling is issued a final form of the publicly viewable version of the Proposed Sealed Document (the "Final Redacted Document") with the sealed portion(s) redacted consistent with the Court's ruling and filed in accordance with applicable CM/ECF procedures. The Final Redacted Document shall be filed and called Final Redacted Version of [Final Redacted Document title]".

- (vii) In the event the Court denies the Sealing Motion, the Clerk shall take such action as the Court may direct.
 - (viii) If a Sealing Motion is filed in connection with a motion or application or with an objection, reply or sur-reply related to any such motion or application, unless otherwise ordered by the Court, a motion to shorten notice shall not be required and the Court will consider the Sealing Motion at the applicable hearing date and any objections to the Sealing Motion may be presented at the hearing.
 - (ix) Except with respect to redactions subject to Local Rule 9037-1 or as otherwise ordered by this Court, no document containing any redaction(s) made by a filer of a Proposed Sealed Document may be filed with the Clerk's Office unless the filer has previously filed or simultaneously files an unredacted copy of the same under seal and follows all requirements of this subsection with respect to the same.
 - (x) For the avoidance of doubt, nothing in this sub-part 9018-1(d) is intended to or shall modify any rights or obligations any entity has in connection with confidential information or information potentially subject to protection under Section 107 of the Bankruptcy Code.
- (e) Order Authorizing Future Filing of Documents under Seal. If an order has been signed granting the filing of future documents under seal, the related docket number of the applicable order must also be included on the cover sheet. Any document filed under seal under a previously entered order of the Court shall be filed as a restricted document and electronically docketed in accordance with CM/ECF procedures.

- (f) Confidentiality. If any information or documents are designated confidential by the producing party at the time of production and the parties have not stipulated to a confidentiality agreement, until such an agreement has been agreed to by the parties or ordered by the Court, disclosure shall be limited to members and employees of the law firm representing the receiving party and such other persons as to which the parties agree. Such persons are under an obligation to keep such information and documents confidential and to use them only for purposes of the contested matter or the proceeding with respect to which they have been produced. Additionally, parties may stipulate to the application of this rule in connection with informal discovery conducted outside a contested matter or adversary proceeding (e.g., a statutory committee's investigation of the validity, perfection or amount of a secured creditor's prepetition lien), in which case the documents and information produced shall be used only for the purpose defined by the parties' stipulation.
- (g) Use of Sealed Documents. If a party intends to use a document which has been previously placed under seal at a hearing or in connection with briefing, a copy of the sealed document (in an envelope and prominently marked "CHAMBERS COPY") shall be provided to the Court in the binder delivered to Chambers. After the hearing is concluded or the motion is decided, the Court will, at its discretion, destroy or return the Chambers copy of the sealed document to the sender.
- (h) Approval of Confidentiality Agreements. If Court approval of a confidentiality agreement is sought other than through a motion, at least four (4) business days prior to the filing of a proposed form of order to approve a confidentiality agreement (the "Review Period"), the party or parties seeking entry of such an order must submit the proposed form of order and confidentiality agreement to counsel for the United States Trustee for review and comment. If the Office of the United States Trustee does not provide comments by the end of the Review Period or any extension thereof, or provides comments that have been resolved, the confidentiality agreement may be filed under certification of counsel with a representation by counsel that this Local Rule has been complied with and that the Office of the United States Trustee does not oppose approval of the confidentiality agreement. If the Office of the United States Trustee has comments to the

confidentiality agreement that cannot be resolved consensually within the Review Period (or any extension thereof), the parties may set the matter for the next-scheduled omnibus hearing date in the cases or, in instances where approval of the confidentiality agreement is time-sensitive, request a status conference with the Court.