Section 202.70 Rules of the Commercial Division of the Supreme Court

(a) Monetary thresholds

Except as set forth in subdivision (b), the monetary thresholds of the Commercial Division, exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed, are established as follows:

Albany County	$50,000
Bronx County	$75,000
Eighth Judicial District	$100,000
Kings County	$150,000
Nassau County	$200,000
New York County	$500,000
Onondaga County	$50,000
Queens County	$100,000
Seventh Judicial District	$50,000
Suffolk County	$100,000
Westchester County	$100,000

(b) Commercial cases

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

(1) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

(2) Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units);

(3) Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only;

(4) Shareholder derivative actions -- without consideration of the monetary threshold;

(5) Commercial class actions -- without consideration of the monetary threshold;

(6) Business transactions involving or arising out of dealings with commercial banks and other financial institutions;

(7) Internal affairs of business organizations;

(8) Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters;

(9) Environmental insurance coverage;

(10) Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage);

(11) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures -- without consideration of the monetary threshold; and

(12) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues. Where the applicable arbitration agreement provides for the arbitration to be heard outside the United States, the monetary threshold set forth in section 202.70(a) shall not apply.

(c) Non-commercial cases

The following will not be heard in the Commercial Division even if the monetary threshold is met:

(1) Suits to collect professional fees;

(2) Cases seeking a declaratory judgment as to insurance coverage for personal injury or property damage;

(3) Residential real estate disputes, including landlord-tenant matters, and commercial real estate disputes involving the payment of rent only;

(4) Home improvement contracts involving residential properties consisting of one to four residential units or individual units in any residential building, including cooperative or condominium units;

(5) Proceedings to enforce a judgment regardless of the nature of the underlying case;

(6) First-party insurance claims and actions by insurers to collect premiums or rescind non-commercial policies; and

(7) Attorney malpractice actions except as otherwise provided in paragraph (b)(8).

(d) Assignment to the Commercial Division

(1) Within 90 days following service of the complaint, any party may seek assignment of a case to the Commercial Division by filing a Request for Judicial Intervention (RJI) that attaches a completed Commercial Division RJI Addendum certifying that the case meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section. Except as provided in subdivision (e) below, failure to file an RJI pursuant to this subdivision precludes a party from seeking assignment of the case to the Commercial Division.

(2) Subject to meeting the jurisdictional requirements of subdivisions (a), (b) and (c) of this section and filing an RJI in compliance with subsection (d)(l) above, the parties to a contract may consent to the exclusive jurisdiction of the Commercial Division of the Supreme Court by including such consent in their contract. A sample choice of forum provision can be found at Appendix C to these Rules of the Commercial Division. Alternatively, subject to meeting the jurisdictional and procedural requirements applicable to the Commercial Division and the federal courts, the parties to a contract may consent to the exclusive jurisdiction of either the Commercial Division of the Supreme Court or the federal courts in New York State by including such consent in their contract. An alternative sample choice of forum provision to that effect can also be found at Appendix C to these Rules of the Commercial Division. In addition, the parties to a contract may consent to having New York law apply to their contract, or any dispute under the contract. A sample choice of law provision can be found at Appendix D to these Rules of the Commercial Division.

(e) Transfer into the Commercial Division

If an RJI is filed within the 90-day period following service of the complaint and the case is assigned to a noncommercial part because the filing party did not designate the case as "commercial" on the RJI, any other party may apply by letter application (with a copy to all parties) to the Administrative Judge, within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division. Further, notwithstanding the time periods set forth in subdivisions (d) and (e) of this section, for good cause shown for the delay a party may seek the transfer of a case to the Commercial Division by letter application (with a copy to all parties) to the Administrative Judge. In addition, a non-Commercial Division justice to whom a case is assigned may sua sponte request the Administrative Judge to transfer a case that meets the jurisdictional requirements for Commercial Division assignment set forth in subdivisions (a), (b) and (c) of this section to the Commercial Division. The determinations of the Administrative Judge with respect to any letter applications or requests under this subdivision shall be final and subject to no further administrative review or appeal.

(f) Transfer from the Commercial Division

(1) In the discretion of the Commercial Division justice assigned, if a case does not fall within the jurisdiction of the Commercial Division as set forth in this section, it shall be transferred to a non-commercial part of the court.

(2) Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the Administrative Judge within ten days of receipt of the designation of the case to a non-commercial part. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal.

(g) Rules of practice for the Commercial Division

Unless these rules of practice for the Commercial Division provide specifically to the contrary, the rules of Part 202 also shall apply to the Commercial Division, except that Rules 7 through 15 shall supersede section 202.12 (Preliminary Conference) and Rules 16 through 24 shall supersede section 202.8 (Motion Procedure).

Preamble

Created in 1995, today's Commercial Division of the New York State Supreme Court is an efficient, sophisticated, up-to-date court dealing with challenging commercial cases. From its inception, the Commercial Division has had as its primary goal the cost-effective, predictable and fair adjudication of complex commercial cases. By virtue of its specialized subject matter jurisdiction, exceptional judicial expertise, rules and procedures dedicated to commercial practice, and commitment to high standards of attorney professionalism, the Division has established itself at the forefront of worldwide commercial litigation in the twenty-first century.

(1) Jurisdiction and Judiciary

The subject matter jurisdiction of the Commercial Division – including both substantial monetary thresholds and carefully chosen case types (see §202.70[a] and [b]) – is designed to ensure that it is the forum of resolution of the most complex and consequential commercial matters commenced in New York's courts. Accordingly, the Division's judges are chosen for their extensive experience in resolving sophisticated commercial disputes. Unlike jurists in other civil parts in New York's court system, Commercial Division justices devote themselves almost exclusively to these complex commercial matters.

(2) Rules and Procedures

Since its inception, the Commercial Division has implemented rules, procedures and forms especially designed to address the unique problems of commercial practice. Such rules have addressed a wide range of matters such as proportionality in discovery, optional accelerated adjudication, robust expert disclosure, limits on depositions and interrogatories, streamlined privilege logs, special rules concerning entity depositions, model forms to facilitate discovery, expedited resolution of discovery disputes, simplification of bench trials, time limits on all trials, streamlined presentation of evidence at trials, and a strong commitment to early case disposition through the Division's alternative dispute resolution program. Equally important, through the work of the Commercial Division Advisory Council – a committee of commercial practitioners, corporate in-house counsel and jurists devoted to the Division's excellence – the Commercial Division has become a recognized leader in court system innovation, demonstrating an unparalleled creativity and flexibility in development of rules and practices.

(3) The Commercial Division Bar

Finally, the work of the Commercial Division has prospered through the strong cooperative spirit of the bar practicing before it. The subject matter jurisdiction of the court, the pace of high-stakes commercial practice, the sophistication of the judiciary and the specialized rules of the Division require that the practicing bar be held rigorously to a standard of commitment and professionalism of the highest caliber. For example, the failure to appear (or the appearance without proper preparation) at scheduled court dates, depositions or hearings is generally viewed as highly improper in the Commercial Division, and can readily result in the imposition of sanctions and penalties as permitted under statute and court rule (see, e.g., CPLR 3126; see also 22 NYCRR Part 130). At the same time, the Commercial Division's judiciary is strongly committed to the ongoing development of New York's commercial bar and, in that spirit, has instituted practices encouraging the participation of less experienced members of that bar in substantive and meaningful ways (including presentation of motions or examination of witnesses) in matters before

it. In this manner, the Division seeks to ensure the continued development of the highest quality of commercial bar in New York State.

(4) Conclusion

“New York is the center of world commerce, the headquarters of international finance, the home of America’s leading businesses. As such, it strongly needs a modern, well-staffed, properly equipped forum for the swift, fair and expert resolution of significant commercial disputes.” In 1995, those words introduced the New York State Bar Association’s report proposing the creation of the Commercial Division (N.Y. St. Bar Ass’n, A Commercial Court For New York [Jan. 1995]). Since then, they have served as the central rationale for the Division’s commitment to excellence in the administration of the rule of law in business in New York. The practice rules of the Commercial Division, set forth below, are a crucial component of that commitment, and are designed to be a dynamic counterpart to the innovative and efficient business practices which are so essential to the economic health of our State and nation.

Rule 1. Appearance by Counsel with Knowledge and Authority.

(a) Counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately. See Rule 12.

(b) Consistent with the requirements of Rule 11-c, counsel for all parties who appear at the preliminary conference shall be sufficiently versed in matters relating to their clients’ technological systems to discuss competently all issues relating to electronic discovery. Counsel may bring a client representative or outside expert to assist in such discussions.

(c) It is important that counsel be on time for all scheduled appearances.

(d) Counsel may request the court’s permission to participate in court conferences and oral arguments of motions from remote locations through use of videoconferencing or other technologies. Such requests will be granted in the court’s discretion for good cause shown; however, nothing contained in this subsection (d) is intended to limit any rights which counsel may otherwise have to participate in court proceedings by appearing in person.

Rule 2. Settlements and Discontinuances. If an action is settled, discontinued, or otherwise disposed of, counsel shall immediately inform the court by e-filing a copy of the stipulation and by a letter directed to the clerk of the part along with notice to chambers via telephone or e-mail. This notification shall be made in addition to the filing of a stipulation with the County Clerk. The parties need not reveal the terms of a settlement, but must notify the court that a resolution has been reached and that both sides have agreed to discontinue the case. In addition to notifying the court of a settlement or discontinuance, counsel shall withdraw any pending motions and any pending appeals.

Rule 3. Alternative Dispute Resolution (ADR); Settlement Conference Before a Justice Other Than the Justice Assigned to the Case.

(a) At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator or neutral evaluator for the purpose of helping to achieve a resolution of all or some of the issues presented in the litigation. Counsel are encouraged to work together to select a mediator or neutral evaluator that is mutually acceptable and may wish to consult any list of approved neutrals in the county where the case is pending. Additionally, counsel for all parties may stipulate to having the case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

(b) Should counsel wish to proceed with a settlement conference before a justice other than the justice assigned to the case, counsel may jointly request that the assigned justice grant such a separate settlement conference. This request may be made at any time in the litigation. Such request will be granted in the discretion of the justice assigned to the case upon finding that such a separate settlement conference would be beneficial to the parties and the court and would further the interests of justice. If the request is granted, the assigned justice shall make appropriate arrangements for the designation of a “settlement judge.”

Rule 4. Electronic Submission of Papers.

In cases not pending in the New York State Courts Electronic Filing System, the court may permit counsel to communicate with the court and each other by e-mail. In the court's discretion, counsel may be requested to provide a copy of any submitted papers as the court directs.

Rule 5. Information on Cases. Information on future court appearances and case developments can be found at the court system's eCourts site (www.nycourts.gov/ecourts). Neither the court nor the court clerk will be responsible for notifying the parties of scheduled court appearances, although the court or the court clerk may do so at their discretion.

Rule 6. Form of Papers.

(a) All papers submitted to the Commercial Division shall not be inconsistent with CPLR 2101and section 202.5(a). Papers shall be double-spaced and contain print no smaller than twelve-point, or 8½ x 11 inch paper, bearing margins no smaller than one inch. Unless otherwise directed by the Court or provided in the Court's individual rules, all text in briefs and affidavits, including footnotes, shall use proportionally spaced 12-point serif typeface. Papers also shall comply with Part 130 of the Rules of the Chief Administrator. Each electronically-submitted memorandum of law and, where appropriate, affidavit and affirmation shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.

(b) For purposes of this Rule, a hyperlink means an electronic link between one document and another, and a bookmark means an electronic link permitting navigation among different parts of a single document. Material made accessible by hyperlinking does not thereby become part of the record, and citations to authorities shall appear in standard citation form, even if also hyperlinked.

(c) Each electronically submitted memorandum of law or other document that cites to another document previously filed with NYSCEF shall include a hyperlink to the NYSCEF docket entry for the cited document enabling access to the cited document through the hyperlink. Hyperlinks may not provide access to documents filed under seal or otherwise not in the public record. Cited documents filed with NYSCEF that are accessible through bookmarks in the electronically submitted document need not also be hyperlinked.

(1) The Court may require that electronically submitted memoranda of law include hyperlinks to cited court decisions, statutes, rules, regulations, treatises, and other legal authorities in either legal research databases to which the Court has access or in state or federal government websites. If the Court does not require such hyperlinking, parties are nonetheless encouraged to hyperlink such citations unless otherwise directed by the Court.

(2) If a party certifies in good faith that it cannot include hyperlinks as required by this Rule or the Court without undue burden, due to limitations in its office technology or other showing of good cause, the Court may excuse the party from any otherwise applicable hyperlinking requirement.

(d) Interlineation of Responsive Pleadings

(1) For every responsive pleading, the party preparing the responsive pleading shall interlineate each allegation of the pleading to which it is responding with the party's response to that allegation, and in doing so, shall preserve the content and numbering of the allegation.

(2) The party who prepared a pleading to which a responsive pleading is required shall, upon request, promptly provide a copy of its pleading in the same word processing software application in which the pleading was prepared to the party preparing the responsive pleading.

Rule 7. Preliminary Conference; Request. A preliminary conference shall be held within 45 days of assignment of the case to a Commercial Division justice, or as soon thereafter as is practicable. Except for good cause shown, no preliminary conference shall be adjourned more than once or for more than 30 days. If a Request for Judicial Intervention is accompanied by a dispositive motion, the preliminary conference shall take place within 30 days

following the decision of such motion (if not rendered moot) or at such earlier date as scheduled by the justice presiding. Notice of the preliminary conference date will be sent by the court at least five days prior thereto.

Rule 8. Consultation prior to Preliminary and Compliance Conferences.

(a) Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery and any other topics to be discussed at the conference, including electronic discovery, as set forth in Rule 11-c, and the timing and scope of expert disclosure under Rule 13(c); (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

Rule 9. Accelerated Adjudication Actions.

(a) This rule is applicable to all actions, except to class actions brought under Article 9 of the CPLR, in which the court by written consent of the parties is authorized to apply the accelerated adjudication procedures of the Commercial Division of the Supreme Court. One way for parties to express their consent to this accelerated adjudication process is by using specific language in a contract, such as: “Subject to the requirements for a case to be heard in the Commercial Division, the parties agree to submit to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court, and to the application of the Court’s accelerated procedures, in connection with any dispute, claim or controversy arising out of or relating to this agreement, or the breach, termination, enforcement or validity thereof.”

(b) In any matter proceeding through the accelerated process, all pre-trial proceedings, including all discovery, pre-trial motions and mandatory mediation, shall be completed and the parties shall be ready for trial within nine (9) months from the date of filing of a Request of Judicial Intervention (RJI).

(c) In any accelerated action, the court shall deem the parties to have irrevocably waived:

(1) any objections based on lack of personal jurisdiction or the doctrine of forum non conveniens;

(2) the right to trial by jury;

(3) the right to recover punitive or exemplary damages;

(4) the right to any interlocutory appeal; and

(5) the right to discovery, except to such discovery as the parties might otherwise agree or as follows:

(i) There shall be no more than seven (7) interrogatories and five (5) requests to admit;

(ii) Absent a showing of good cause, there shall be no more than seven (7) discovery depositions per side with no deposition to exceed seven (7) hours in length. Such depositions can be done either in person at the location of the deponent, a party or their counsel or in real time by any electronic video device; and

(iii) Documents requested by the parties shall be limited to those relevant to a claim or defense in the action and shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain.

(d) In any accelerated action, the description of custodians shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute. In other respects, electronic discovery shall proceed as set forth in Rule 11-c.

(i) the production of electronic documents shall normally be made in a searchable format that is usable by the party receiving the e-documents;

(ii) the description of custodians from whom electronic documents may be collected shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute; and

(iii) where the costs and burdens of e-discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the court will either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final judgment.

Rule 9-a. Immediate Trial or Pre-Trial Evidentiary Hearing. Subject to meeting the requirements of CPLR 2218, 3211(c) or 3212(c), parties are encouraged to demonstrate on a motion to the court when a pre-trial evidentiary hearing or immediate trial may be effective in resolving a factual issue sufficient to effect the disposition of a material part of the case. Motions where a hearing or trial on a material factual issue may be particularly useful in disposition of a material part of a case, include, but are not limited to:
(a) Dispositive motions to dismiss or motions for summary judgment;
(b) Preliminary injunction motions, including but not limited to those instances where the parties are willing to consent to the hearing being on the merits;
(c) Spoliation of evidence motions where the issue of spoliation impacts the ultimate outcome of the action;
(d) Jurisdictional motions where issues, including application of long arm jurisdiction, may be dispositive;
(e) Statute of limitations motions; and
(f) Class action certification motions.
In advance of an immediate trial or evidentiary hearing, the parties may request, if necessary, that the court direct limited expedited discovery targeting the factual issue to be tried.

Rule 10. Submission of Information; Certification Relating to Alternative Dispute Resolution

At the preliminary conference, counsel shall be prepared to furnish the court with the following: (i) a complete caption, including the index number; (ii) the name, address, telephone number, e-mail address and fax number of all counsel; (iii) the dates the action was commenced and issue joined; (iv) a statement as to what motions, if any, are anticipated; and (v) copies of any decisions previously rendered in the case. Counsel for each party shall also submit to the court at the preliminary conference and each subsequent compliance or status conference, and separately serve and file, a statement, in a form prescribed by the Office of Court Administration, certifying that counsel has discussed with the party the availability of alternative dispute resolution mechanisms provided by the Commercial Division and/or private ADR providers, and stating whether the party is presently willing to pursue mediation at some point during the litigation. In addition, the statement to be submitted by counsel shall contain categories of information about the case prescribed by the Office of Court Administration which may assist the court, counsel and the parties in considering the role mediation might play in the resolution of the case.

Preamble to Rule 11. Acknowledging that discovery is one of the most expensive, time-consuming aspects of litigating a commercial case, the Commercial Division aims to provide practitioners with a mechanism for streamlining the discovery process to lessen the amount of time required to complete discovery and to reduce the cost of conducting discovery. It is important that counsel's discovery requests, including depositions, are both proportional and reasonable in light of the complexity of the case and the amount of proof that is required for the cause of action.

Rule 11. Discovery.

(a) The court may direct plaintiff to produce a document stating clearly and concisely the issues in the case prior to the preliminary conference. If there are
counterclaims, the court may direct the party asserting such counterclaims to produce a document stating clearly and concisely the issues asserted in the counterclaims. The court may also direct plaintiff and counterclaim plaintiff to

each produce a document stating each of the elements in the causes of action at issue and the facts needed to establish their case.

(b) The court may further direct, if a defendant filed a motion to dismiss and the court dismissed some but not all of the causes of action, plaintiff and counterclaim plaintiff to revisit the documents to again state, clearly and concisely, the issues remaining in the case, the elements of each cause of action and the facts needed to establish their case.

(c) Any written description of a party's claims/defenses provided under this Rule is not binding and does not limit the scope of a party's pleadings.

(d) The preliminary conference will result in the issuance by the court of a preliminary conference order. Where appropriate, the order will contain specific provisions for means of early disposition of the case, such as (i) directions for submission to the alternative dispute resolution program, including, in all cases in which the parties certify their willingness to pursue mediation pursuant to Rule 10, provision of a specific date by which a mediator shall be identified by the parties for assistance with resolution of the action; (ii) a schedule of limited-issue discovery in aid of early dispositive motions or settlement; and/or (iii) a schedule for dispositive motions before disclosure or after limited-issue disclosure.

(e) The order will also contain a comprehensive disclosure schedule, including dates for the service of third-party pleadings, discovery, motion practice, a compliance conference, if needed, a date for filing the note of issue, a date for a pre-trial conference and a trial date.

(f) The preliminary conference order may provide for such limitations of interrogatories and other discovery as may be necessary to the circumstances of the case. Additionally, the court should consider the appropriateness of altering prospectively the presumptive limitations on depositions set forth in Rule 11-d.

(g) The court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion.

Rule 11-a. Interrogatories.

(a) Interrogatories are limited to 25 in number, including subparts, unless another limit is specified in the preliminary conference order. This limit applies to consolidated actions as well.

(b) Unless otherwise ordered by the court, interrogatories are limited to the following topics: name of witnesses with knowledge of information material and necessary to the subject matter of the action, computation of each category of damage alleged, and the existence, custodian, location and general description of material and necessary documents, including pertinent insurance agreements, and other physical evidence.

(c) During discovery, interrogatories other than those seeking information described in paragraph (b) above may only be served (1) if the parties consent, or (2) if ordered by the court for good cause shown.

(d) At the conclusion of other discovery, and at least 30 days prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served unless the Court has ordered otherwise.

Rule 11-b. Privilege Logs.

(a) Meet and Confer: General. Parties shall meet and confer at the outset of the case, and from time to time thereafter, to discuss the scope of the privilege review, the amount of information to be set out in the privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, and any other issues pertinent to privilege review, including the entry of an appropriate

non-waiver order. To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.

(b) Categorical Approach or Document-By-Document Review.

(1) The preference in the Commercial Division is for the parties to use categorical designations, where appropriate, to reduce the time and costs associated with preparing privilege logs. The parties are expected to address such considerations in good faith as part of the meet and confer process (see paragraph (a) above) and to agree, where possible, to employ a categorical approach to privilege designations. The parties are encouraged to utilize any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that may be established, the producing party shall provide a certification, pursuant to 22 NYCRR § 130-1.1a, setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including but not limited to whether each document was reviewed or some form of sampling was employed, and if the latter, how the sampling was conducted. The certification shall be signed by the Responsible Attorney, as defined below, or by the party, through an authorized and knowledgeable representative.

(2) In the event the requesting party refuses to permit a categorical approach, and instead insists on a document-by-document listing on the privilege log, then unless the Court deems it appropriate to issue a protective order pursuant to CPLR 3103 based upon the facts and circumstances before it, the requirements set forth in CPLR 3122 shall be followed. In that circumstance, however, the producing party, upon a showing of good cause, may apply to the court for the allocation of costs, including attorneys' fees, incurred with respect to preparing the document-by-document log. Upon good cause shown, the court may allocate the costs to the requesting party.

(3) To the extent that a party insists upon a document-by-document privilege log as contemplated by CPLR 3122, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include the following: (i) an indication that the e-mails represent an uninterrupted dialogue; (ii) the beginning and ending dates and times (as noted on the e-mails) of the dialogue; (iii) the number of e-mails within the dialogue; and (iv) the names of all authors and recipients – together with sufficient identifying information about each person (e.g., name of employer, job title, role in the case) to allow for a considered assessment of privilege issues.

(c) Special Master. In complex matters likely to raise significant issues regarding privileged and protected material, parties are encouraged to hire a Special Master to help the parties efficiently generate privilege logs, with costs to be shared.

(d) Responsible Attorney. The attorney having supervisory responsibility over the privilege review shall be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that reasonable, good faith efforts are undertaken to ensure that responsive, non-privileged documents are timely produced.

(e) Court Order. Agreements and protocols agreed upon by parties should be memorialized in a court order.

Rule 11-c. Discovery of Electronically Stored Information.

(a) Parties and nonparties should consult the Commercial Division's Guidelines for Discovery of Electronically Stored Information ("ESI") (the "ESI Guidelines"), which can be found in Appendix A to these Rules of the Commercial Division. The ESI Guidelines are advisory and should be applied to the extent appropriate under the circumstances.

(b) Prior to the preliminary conference, counsel shall confer with regard to electronic discovery topics, including those set forth in the ESI Guidelines. Topics on which the parties cannot agree shall be addressed with the court at

the preliminary conference.

(c) Requests for the production of ESI may specify the format in which ESI shall be produced, to which the responding party may object. In the absence of such specification, or agreement among the parties or court order, the production of electronic documents shall be in the form in which it is ordinarily maintained, or in a searchable format that is usable by the party receiving the ESI.

(d) The costs and burdens of discovery of ESI shall be proportionate to its benefits, considering the nature of the dispute, the amount in controversy, and the importance of the materials requested to resolving the dispute. A court may deny or modify disproportionate requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to the allocation of costs in the final judgment.

(e) The requesting party shall promptly defray the reasonable expenses associated with a non-party's production of ESI, in accordance with CPLR 3111 and 3122(d).

(f) The parties are encouraged to use efficient means to identify ESI for production, which may include technology-assisted review in appropriate cases. The parties shall confer, at the outset of discovery and as needed throughout the discovery period, about technology-assisted review mechanisms they propose to use in document review and production.

(g) Inadvertent or unintentional production of ESI or documents containing information that is subject to the attorney-client privilege, work product protection, or other generally recognized privilege shall not be deemed a waiver in whole or in part of such privilege if the producing party (i) took reasonable precautions to prevent disclosure, and (ii) after learning of the inadvertent disclosure, promptly gave notice either in writing, or later confirmed in writing, to the receiving party or parties that such information was inadvertently produced and requests that the receiving party or parties return or destroy the produced ESI. Upon such notice, or as otherwise required, the receiving party or parties shall promptly return or destroy all such material, including copies, except as may be necessary to bring a challenge before the Court. The parties may extend or modify the protections and duties of this provision by written agreement, as provided in Rule 11-g(c), which shall be submitted to the Court to be ordered. Nothing in this rule shall abridge a lawyer's obligations under Rule 4.4(b) of the New York Rules of Professional Conduct concerning a lawyer's receipt of documents that appear to have been inadvertently sent.

(h) Consistent with CPLR 3126, a party should take reasonable steps to preserve ESI that it has a duty to preserve.

Rule 11-d. Limitations on Depositions.

(a) Unless otherwise stipulated to by the parties or ordered by the court:
(1) the number of depositions taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and
(2) depositions shall be limited to 7 hours per deponent.

(b) Notwithstanding subsection (a)(1) of this Rule, the propriety of and timing for depositions of non-parties shall be subject to any restrictions imposed by applicable law.

(c) For the purposes of subsection (a)(1) of this Rule, the deposition of an entity through one or more representatives shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf.

(d) For the purposes of this Rule, each deposition of an officer, director, principal or employee of an entity who is also a fact witness, as opposed to an entity representative pursuant to CPLR 3106(d), shall constitute a separate deposition.

(e) For the purposes of subsection (a)(2) of this Rule, the deposition of an entity shall be treated as a single deposition even though more than one person may be designated to testify on the entity's behalf. Notwithstanding the foregoing, the cumulative presumptive durational limit may be enlarged by agreement of the parties or upon application for leave of Court, which shall be freely granted.

(f) For good cause shown, the court may alter the limits on the number of depositions or the duration of an examination.

(g) Nothing in this Rule shall be construed to alter the right of any party to seek any relief that it deems appropriate under the CPLR or other applicable law.

Rule 11-e. Responses and Objections to Document Requests

(a) For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the "Responses"), either:

i. state that the production will be made as requested; or

ii. state with reasonable particularity the grounds for any objection to production.

(b) By a date agreed to by the parties or at such time set by the Court, the responding party shall serve the Responses contemplated by Rule 11-e(a)(ii), which shall set forth specifically: (i) whether the objection(s) interposed pertains to all or part of the request being challenged; (ii) whether any documents or categories of documents are being withheld, and if so, which of the stated objections forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents; and (iii) the manner in which the responding party intends to limit the scope of its production.

(c) By agreement of the parties to a date no later than the date set for the commencement of depositions, or at such time set by the Court, a date certain shall be fixed for the completion of document production by the responding party.

(d) By agreement of the parties to a date no later than one (1) month prior to the close of fact discovery, or at such time set by the Court, the responding party shall state, for each individual request: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual request, as propounded or modified, is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to the individual request as propounded or modified.

(e) Nothing contained herein is intended to conflict with a party's obligation to supplement its disclosure obligations pursuant to CPLR 3101(h).

Rule 11-f. Depositions of Entities; Identification of Matters.

(a) A notice or subpoena may name as a deponent a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(b) Notices and subpoenas directed to an entity may enumerate the matters upon which the person is to be examined, and if so enumerated, the matters must be described with reasonable particularity.

(c) If the notice or subpoena to an entity does not identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then no later than ten days prior to the scheduled deposition:

(1) the named entity must designate one or more officers, directors, members or employees, or other individual(s) who consent to testify on its behalf;

(2) such designation must include the identity, description or title of such individual(s); and

(3) if the named entity designates more than one individual, it must set out the matters on which each individual will

testify.
(d) If the notice or subpoena to an entity does identify a particular officer, director, member or employee of the entity, but elects to set forth the matters for examination as contemplated in section (b) of this Rule, then:
(1) pursuant to CPLR 3106(d), the named entity shall produce the individual so designated unless it shall have, no later than ten days prior to the scheduled deposition, notified the requesting party that another individual would instead be produced and the identity, description or title of such individual is specified. If timely notification has been so given, such other individual shall instead be produced;
(2) pursuant to CPLR 3106(d), a notice or subpoena that names a particular officer, director, member, or employee of the entity shall include in the notice or subpoena served upon such entity the identity, description or title of such individual; and
(3) if the named entity, pursuant to subsection (d)(1) of this Rule, cross-designates more than one individual, it must set out the matters on which each individual will testify.
(e) A subpoena must advise a nonparty entity of its duty to make the designations discussed in this Rule.
(f) The individual(s) designated must testify about information known or reasonably available to the entity.
(g) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent provided in CPLR 3117(2) and the applicable rules of evidence.
(h) This Rule does not preclude a deposition by any other procedure allowed by the CPLR.

Rule 11-g. Proposed Form of Confidentiality Order.

The following procedure shall apply in those parts of the Commercial Division where the justice presiding so elects:

(a) For all commercial cases that warrant the entry of a confidentiality order, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix B to these Rules of the Commercial Division.

(b) In the event the parties wish to deviate from the form set forth in Appendix B, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(c) In the event the parties wish to incorporate a privilege claw-back provision into either (i) the confidentiality order to be utilized in their commercial case, or (ii) another form of order utilized by the Justice presiding over the matter, they shall utilize the text set forth in Appendix B, Paragraph 18 to these Rules of the Commercial Division. In the event the parties wish to deviate from the language in Appendix B, Paragraph 18, they shall submit to the Court a red-line of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(d) In the event the parties wish to incorporate Attorney's Eyes-Only protection, the parties shall submit to the Court for signature the proposed stipulation and order that appears in Appendix F to these Rules of the Commercial Division. Appendix F provides both a clean form of order as well as a redline, which illustrates how it differs from the confidentiality order without Attorney's Eyes-Only protection and referenced in Rule 11-g(a) above. In the event the parties wish to deviate from the Attorney's Eyes-Only form set forth in Appendix F, they shall submit to the Court a redline of the proposed changes and a written explanation of why the deviations are warranted in connection with the pending matter.

(e) Nothing in this rule shall preclude a party from seeking any form of relief otherwise permitted under the Civil Practice Law and Rules.

Rule 12. Non-Appearance at Conference. The failure of counsel to appear for a conference may result in a sanction authorized by section 130.2.1 of the Rules of the Chief Administrator or section 202.27, including dismissal, the

striking of an answer, an inquest or direction for judgment, or other appropriate sanction.

Rule 13. Adherence to Discovery Schedule, Expert Disclosure.

(a) Parties shall strictly comply with discovery obligations by the dates set forth in all case scheduling orders. Such deadlines, however, may be modified upon the consent of all parties, provided that all discovery shall be completed by the discovery cutoff date set forth in the preliminary conference order. Applications for extension of a discovery deadline shall be made as soon as practicable and prior to the expiration of such deadline. Non-compliance with such an order may result in the imposition of an appropriate sanction against that party pursuant to CPLR 3126.

(b) If a party seeks documents as a condition precedent to a deposition and the documents are not produced by the date fixed, the party seeking disclosure may ask the court to preclude the non-producing party from introducing such demanded documents at trial.

(c) If any party intends to introduce expert testimony at trial, no later than thirty days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure -- including the identification of experts, exchange of reports, and depositions of testifying experts -- all of which shall be completed no later than four months after the completion of fact discovery. In the event that a party objects to this procedure or timetable, the parties shall request a conference to discuss the objection with the court.

Unless otherwise stipulated or ordered by the court, expert disclosure must be accompanied by a written report, prepared and signed by the witness, if either (1) the witness is retained or specially employed to provide expert testimony in the case, or (2) the witness is a party's employee whose duties regularly involve giving expert testimony. The report must contain:

(A) a complete statement of all opinions the witness will express and the basis and the reasons for them;

(B) the data or other information considered by the witness in forming the opinion(s);

(C) any exhibits that will be used to summarize or support the opinion(s);

(D) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(E) a list of all other cases at which the witness testified as an expert at trial or by deposition during the previous four years; and

(F) a statement of the compensation to be paid to the witness for the study and testimony in the case.

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure. Expert disclosure provided after these dates without good cause will be precluded from use at trial.

Rule 14. Disclosure Disputes. If the court's Part Rules address discovery disputes, those Part Rules will govern discovery disputes in a pending case. If the court's Part Rules are silent with respect to discovery disputes, the following Rule will apply. Discovery disputes are preferred to be resolved through court conference as opposed to motion practice. Counsel must consult with one another in a good faith effort to resolve all disputes about disclosure. See Section 202.7. If counsel are unable to resolve any disclosure dispute in this fashion, counsel for the moving party shall submit a letter to the court not exceeding three single-spaced pages outlining the nature of the dispute and requesting a telephone conference. Such a letter must include a representation that the party has conferred with opposing counsel in a good faith effort to resolve the issues raised in the letter or shall indicate good cause why no such consultation occurred. Not later than four business days after receiving such a letter, any affected opposing party or non-party shall submit a responsive letter not exceeding three single-spaced pages. After the submission of letters, the court will schedule a telephone or in-court conference with counsel. The court or the court's law clerks will attempt to address the matter through a telephone conference where possible. The failure of counsel to comply with this rule may result in a motion being held in abeyance until the court has an opportunity to conference the matter. If the parties need to make a record, they will still have the opportunity to submit a formal motion.

Rule 14-a. Rulings at Disclosure Conferences. The following procedures shall govern all disclosure conferences conducted by non-judicial personnel.

(a) At the request of any party

(1) prior to the conclusion of the conference, the parties shall prepare a writing setting forth the resolutions reached and submit the writing to the court for approval and signature by the presiding justice; or

(2) prior to the conclusion of the conference, all resolutions shall be dictated into the record, and either the transcript shall be submitted to the court to be "so ordered," or the court shall otherwise enter an order incorporating the resolutions reached.

(b) With respect to telephone conferences, upon request of a party and if the court so directs, the parties shall agree upon and jointly submit to the court within one (1) business day of the telephone conference a stipulated proposed order, memorializing the resolution of their discovery dispute. If the parties are unable to agree upon an appropriate form of proposed order, they shall so advise the court so that the court can direct an alternative course of action.

Rule 15. Adjournments of Conferences.

By leave of court as provided by Rule 1(d), attorneys are encouraged to use remote appearance technology in order to avoid adjournments of conferences. Adjournments on consent are permitted with the approval of the court for good cause where notice of the request is given to all parties. Adjournment of a conference will not change any subsequent date in the preliminary conference order, unless otherwise directed by the court.

Rule 16. Motions in General.

(a) Form of Motion Papers. The movant shall specify in the notice of motion, order to show cause, and in a concluding section of a memorandum of law, the exact relief sought. Counsel must attach copies of all pleadings and other documents as required by the CPLR and as necessary for an informed decision on the motion (especially on motions pursuant to CPLR 3211 and 3212). Counsel should clearly separate exhibits from each other by using divider pages with the exhibit number. Counsel shall follow Rule 6 with respect to hyperlinking. Copies must be legible. If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach excerpts and submit the full exhibit separately. Documents in a foreign language shall be properly translated. CPLR 2101(b). Whenever reliance is placed upon a decision or other authority not readily available to the court, a the court may direct counsel to submit a copy and counsel shall otherwise follow Rule 6 with respect to hyperlinking.

(b) Proposed Orders. When appropriate, proposed orders should be submitted with motions, e.g., motions to be relieved, pro hac vice admissions, open commissions, etc. No proposed order should be submitted with motion papers on a dispositive motion.

(c) Adjournment of Motions. Dispositive motions (made pursuant to CPLR 3211, 3212 or 3213) may be adjourned only with the court's consent. Non-dispositive motions may be adjourned on consent no more than three times for a total of no more than 60 days unless otherwise directed by the court.

Rule 17. Length of Papers. Unless otherwise permitted by the court: (i) briefs or memoranda of law shall be limited to 7,000 words each; (ii) reply memoranda shall be no more than 4,200 words and shall not contain any arguments that do not respond or relate to those made in the memoranda in chief; (iii) affidavits and affirmations shall be limited to 7,000 words each. The word count shall exclude the caption, table of contents, table of authorities, and signature block. Every brief, memorandum, affirmation, and affidavit shall include, on a page attached to the end of the applicable document, a certification by the counsel who has filed the document describing the number of words in the document. That certification by counsel certifies that the document complies with the word count limit. The counsel certifying compliance may rely on the word count of the word-processing system used to prepare the document.

Rule 18. Sur-Reply and Post-Submission Papers. Absent express permission in advance, sur-reply papers, including correspondence, addressing the merits of a motion are not permitted, except that counsel may inform the court by letter of the citation of any post-submission court decision that is relevant to the pending issues, but there shall be no additional argument. Materials submitted in violation hereof will not be read or considered. Opposing counsel who receives a copy of materials submitted in violation of this Rule shall not respond in kind.

Rule 19. Orders to Show Cause. Motions shall be brought on by order to show cause only when there is genuine urgency (e.g., applications for provisional relief), a stay is required or a statute mandates so proceeding. Absent advance permission, reply papers shall not be submitted on orders to show cause.

Rule 19-a. Motions for Summary Judgment; Statements of Material Facts.

(a) Upon any motion for summary judgment, other than a motion made pursuant to CPLR 3213, the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In such a case, the papers opposing a motion for summary judgment shall include a correspondingly numbered statement responding to each numbered paragraph in the statement of the moving party. In the response to the material statement of facts, the respondent shall recite the movant's paragraphs and then provide a response to that paragraph so the Court has all the materials in one document. The movant shall, upon request, promptly provide the respondent with a copy of the material statement of facts in the same word processing software application in which the statement was prepared. The respondent may also include additional paragraphs containing a separate short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Each numbered paragraph in the statement of material facts required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

(d) Each statement of material fact by the movant or opponent pursuant to subdivision (a) or (b), including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

Rule 20. Temporary Restraining Orders. Unless the moving party can demonstrate that there will be significant prejudice by reason of giving notice, a temporary restraining order will not be issued *ex parte*. The applicant must give notice, including copies of all supporting papers, to the opposing parties sufficient to permit them an opportunity to appear and contest the application.

Rule 21. Courtesy Copies. Courtesy copies should not be submitted unless requested or as herein provided. However, courtesy copies of all motion papers and proposed orders shall be submitted in cases in the court's Filing by Electronic Means System.

Rule 22. Oral Argument. Any party may request oral argument on the face of its papers or in an accompanying letter. Except in cases before justices who require oral argument on all motions, the court will determine, on a case-by-case basis, whether oral argument will be heard and, if so, when counsel shall appear. Notice of the date selected by the court shall be given, if practicable, at least 14 days before the scheduled oral argument. At that time, counsel shall be prepared to argue the motion, discuss resolution of the issue(s) presented and/or schedule a trial or hearing.

Rule 23. [Reserved] [Previous rule repealed in June 2020]

Rule 24. Advance Notice of Motions

(a) Nothing in this rule shall be construed to prevent or limit counsel from making any motion deemed appropriate to best represent a party's interests. However, in order to permit the court the opportunity to resolve issues before motion practice ensues, and to control its calendar in the context of the discovery and trial schedule, pre-motion conferences in accordance herewith must be held. The failure of counsel to comply with this rule may result in the motion being held in abeyance until the court has an opportunity to conference the matter.

(b) This rule shall not apply to disclosure disputes covered by Rule 14 nor to dispositive motions pursuant to CPLR 3211, 3212 or 3213 made at the time of the filing of the Request for Judicial Intervention or after discovery is complete. Nor shall the rule apply to motions to be relieved as counsel, for pro hac vice admission, for reargument or in limine.

(c) Prior to the making or filing of a motion, counsel for the moving party shall advise the Court in writing (no more than two pages) on notice to opposing counsel outlining the issue(s) in dispute and requesting a telephone conference. If a cross-motion is contemplated, a similar motion notice letter shall be forwarded to the court and counsel. Such correspondence shall not be considered by the court in reaching its decision on the merits of the motion.

(d) Upon review of the motion notice letter, the court will schedule a telephone or in-court conference with counsel. Counsel fully familiar with the matter and with authority to bind their client must be available to participate in the conference. The unavailability of counsel for the scheduled conference, except for good cause shown, may result in granting of the application without opposition and/or the imposition of sanctions.

(e) If the matter can be resolved during the conference, an order consistent with such resolution may be issued or counsel will be directed to forward a letter confirming the resolution to be "so ordered." At the discretion of the court, the conference may be held on the record.

(f) If the matter cannot be resolved, the parties shall set a briefing schedule for the motion which shall be approved by the court. Except for good cause shown, the failure to comply with the briefing schedule may result in the submission of the motion unopposed or the dismissal of the motion, as may be appropriate.

(g) On the face of all notices of motion and orders to show cause, there shall be a statement that there has been compliance with this rule.

(h) Where a motion must be made within a certain time pursuant to the CPLR, the submission of a motion notice letter, as provided in subdivision (a), within the prescribed time shall be deemed the timely making of the motion. This subdivision shall not be construed to extend any jurisdictional limitations period.

Rule 25. Trial Schedule. Counsel are expected to be ready to proceed either to select a jury or to begin presentation of proof on the scheduled trial date. Once a trial date is set, counsel shall immediately determine the availability of witnesses. If, for any reason, counsel are not prepared to proceed on the scheduled date, the court is to be notified within ten days of the date on which counsel are given the trial date or, in extraordinary circumstances, as soon as reasonably practicable. Failure of counsel to provide such notification will be deemed a waiver of any application to adjourn the trial because of the unavailability of a witness. Witnesses are to be scheduled so that trials proceed without interruption. Trials shall commence each court day promptly at such times as the court directs. Failure of counsel to attend the trial at the time scheduled without good cause shall constitute a waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel's absence. There shall be no adjournment of a trial except for good cause shown. With respect to trials scheduled more than 60 days in advance, section 125.1(g) of the Rules of the Chief Administrator shall apply and the actual engagement of trial counsel in another matter will not be recognized as an acceptable basis for an adjournment of the trial.

Rule 26. Length of Trial. At least ten days prior to trial or such other time as the court may set, the parties, after considering the expected testimony of and, if necessary, consulting with their witnesses, shall furnish the court with a realistic estimate of the length of the trial. If requested by the Court, the estimate shall also contain a request by each party for the total number of hours which each party believes will be necessary for its direct examination, cross examination, redirect examination, and argument during the trial. The court may rule on the total number of trial hours which the court will permit for each party. The court in its discretion may extend the total number of trial hours as justice may require.

Rule 27. Motions in Limine. The parties shall make all motions in limine no later than ten days prior to the scheduled pre-trial conference date, and the motions shall be returnable on the date of the pre-trial conference, unless otherwise directed by the court.

Rule 28. Pre-Marking of Exhibits. Counsel for the parties shall consult prior to the pre-trial conference and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the pre-trial conference date, each side shall then mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded which are to be used solely for credibility or rebuttal need not be pre-marked.

Rule 29. Identification of Deposition Testimony. Counsel for the parties shall consult prior to trial and shall in good faith attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered by it as to which objection has not been made and, identified separately, a list of deposition testimony as to which objection has been made. At least ten days prior to trial or such other time as the court may set, each party shall submit its list to the court and other counsel, together with a copy of the portions of the deposition testimony as to which objection has been made. The court will rule upon the objections at the earliest possible time after consultation with counsel.

Rule 30. Settlement and Pretrial Conferences.

(a) Settlement Conference. At the time of certification of the matter as ready for trial or at any time after the discovery cut-off date, the court may schedule a settlement conference which shall be attended by counsel and the parties, who are expected to be fully prepared to discuss the settlement of the matter.

(b) Mandatory Settlement Conference. Unless exempted as set forth herein, the parties in every case pending in the Commercial Division must participate in a court-ordered mandatory settlement conference (MSC) following the filing of a Note of Issue.

(1) Referral to MSC. Following the filing of a Note of Issue, the parties must confer and file a request to proceed to a MSC pursuant to one of the following four tracks. If all parties have agreed upon the settlement conference track that they prefer, they may file a joint request with a statement of preferred procedure for MSC. If the parties do not agree, they must file separate requests with statements as to their preference for a MSC track. The parties' preferences would ordinarily be given presumptive weight. The four possible settlement conference tracks are as follows:

(A) The parties may agree to have a settlement conference before the assigned justice or another judge pursuant to Commercial Division Rule 3(b).

(B) The court may refer the case to the Judicial Hearing Officer/Special Referee office for assignment of a Judicial Hearing Officer or Special Referee to conduct the MSC.

(C) The court may refer the case to the ADR coordinator or other designated court official in the judicial district where the case is pending for assignment, at no charge to the parties, of a neutral selected from the roster of neutrals or mediators under Part 146 of the Rules of the Chief Administrative Judge. If the parties wish to continue talks with the neutral beyond the initial conference, an arrangement will have to be made to retain such neutral at terms agreed to by the neutral and the parties.

(D) The parties may agree to engage a private neutral.

(2) Attendance at MSC. The MSC shall be attended by a person with knowledge of the case and authority to settle the case.

(3) Submissions to the neutral conducting the MSC. The neutral shall determine whether a submission should be provided to the neutral and the service thereof.

(4) Exemptions from MSC. MSC is mandatory for all cases in the Commercial Division unless the assigned justice to the case, for good cause shown, exempts the case from MSC under this Rule.

(5) Confidentiality. All attendees of the MSC, including the assigned neutral, shall treat as confidential information any settlement submission created expressly for use in the MSC, anything that happened or was said during the course of or pursuant to the MSC, and any positions taken or offers made during the MSC. Such material cannot be disclosed to anyone not involved in the litigation or to the court, and may not be used in any fashion in the litigation of the case.

(6) Report. Following the MSC, the parties will advise the assigned justice whether a settlement was reached, and if a settlement was reached, a date by which the parties expect to complete documentation of the settlement. The parties shall not discuss any reasons why a settlement was not reached.

(7) Scheduling and Procedures. Any scheduling and procedural issues shall be determined by the justice assigned to the case. If it is determined that the MSC is to be held before a neutral other than the assigned justice, scheduling and procedural issues with respect to the MSC shall be determined by the neutral.

(8) Non-exclusive. Nothing in the Rule shall preclude or replace any settlement practices used by the court, by any individual justice, or as agreed to by the parties and the assigned justice shall retain ultimate authority with respect to each aspect of the MSC.

(c) Pre-trial Conference. Prior to the pretrial conference, counsel shall confer in a good faith effort to identify matters not in contention, resolve disputed questions without need for court intervention and further discuss settlement of the case. At the pre-trial conference, counsel shall be prepared to discuss all matters as to which there is disagreement between the parties, including those identified in Rules 27-29, and settlement of the matter. At or before the pre-trial conference, the court may require the parties to prepare a written stipulation of undisputed facts.

(d) Consultation Regarding Expert Testimony. The court may direct that prior to the pre-trial conference, counsel for the parties consult in good faith to identify those aspects of their respective experts' anticipated testimony that are not in dispute. The court may further direct that any agreements reached in this regard shall be reduced to a written stipulation.

Rule 31. Pre-Trial Memoranda, Trial Exhibits and Requests for Jury Instructions

(a) If requested by the Court, counsel shall submit pre-trial memoranda at such time as the court may set. Counsel shall comply with CPLR 2103(e). A single memorandum of no more than 7,000 words shall be submitted by each side. No memoranda in response shall be submitted.

(b) At the pre-trial conference or at such other time as the court may set, counsel shall submit a copy of trial exhibits for each attorney’s and the court's use. Unless otherwise directed in the Court’s individual part rules, plaintiff’s exhibits shall be tabbed numerically, and defendant’s exhibits shall be tabbed alphabetically.

(c) Where the trial is by jury, counsel shall, on the pre-trial conference date or such other time as the court may set, provide the court with case-specific requests to charge and proposed jury interrogatories. Where the requested charge is from the New York Pattern Jury Instructions--Civil, a reference to the PJI number will suffice.

(d) In cases brought before paperless commercial parts, counsel shall submit the pre-trial memoranda, copy of trial exhibits and requests to charge on a USB flash drive. In all other commercial parts, counsel shall submit the pre-trial memoranda and requests to charge in a Word document, 12-point type, and submit the copy of trial exhibits in an indexed binder or notebook.

Rule 32. Scheduling of witnesses. At the pre-trial conference or at such time as the court may direct, each party shall identify in writing for the court the witnesses it intends to call, the order in which they shall testify and the estimated length of their testimony, and shall provide a copy of such witness list to opposing counsel. Counsel shall separately identify for the court only a list of the witnesses who may be called solely for rebuttal or with regard to credibility.

Rule 32-a. Direct Testimony by Affidavit. The court may require that direct testimony of a party’s own witness in a non-jury trial or evidentiary hearing shall be submitted in affidavit form, provided, however, that the court may not require the submission of a direct testimony affidavit from a witness who is not under the control of the party offering

the testimony. The submission of direct testimony in affidavit form shall not affect any right to conduct cross-examination or re-direct examination of the witness.

Rule 33. Preclusion. Failure to comply with Rules 28, 29, 31 and 32 may result in preclusion pursuant to CPLR 3126.

Rule 34. Staggered Court Appearances

Staggered court appearances are a mechanism to increase efficiency in the courts and to decrease lawyers' time waiting for a matter to be called by the courts. While this rule is intended to streamline the litigation process in the Commercial Division, it will be ineffectual without the cooperation and participation of litigants. Improving the process of litigating in the Commercial Division by instituting staggered court appearances of matters before the court, for example, requires not only the promulgation of rules such as this one, but also, and more importantly, the proactive and earnest adherence to such rules by parties and their counsel.

(a) Each court appearance before a Commercial Division Justice for oral argument on a motion shall be assigned a time slot. The length of the time slot allotted to each matter is solely in the discretion of the court.

(b) In order for the court to be able to address any and all matters of concern to the court and in order for the court to avoid the appearance of holding ex parte communications with one or more parties in the case, even those parties who believe that they are not directly involved in the matter before the court must appear at the appointed date and time assigned by the court unless specifically excused by the court. However, if an individual is appearing as a self-represented person, that individual must appear at each and every scheduled court appearance regardless of whether he or she anticipates being heard.

(c) Since the court is setting aside a specific time slot for the case to be heard and since there are occasions when the court's electronic or other notification system fails or occasions when a party fails to receive the court-generated notification, each attorney who receives notification of an appearance on a specific date and time is responsible for notifying all other parties by e-mail that the matter is scheduled to be heard on that assigned date and time. All parties are directed to exchange e-mail addresses with each other at the commencement of the case and to keep these e-mail addresses current, in order to facilitate notification by the person(s) receiving the court notification.

(d) Requests for adjournments or to appear telephonically must be e-filed and received in writing by the court by no later than 48 hours before the hearing.

Rule 35. Disclosure Statement.

(A) Who Must File: Contents. A non-governmental corporate party and a non-governmental corporation that seeks to intervene must file a disclosure statement that:

(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or

(2) states that there is no such corporation.

(B) Time to File: Supplemental Filing. A party or a proposed intervenor must:

(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.

Rule 36. Virtual Evidentiary Hearing or Non-jury Trial.

(a) If the requirements of paragraph (c) of this Rule are met, the court may, with the consent of the parties, conduct an evidentiary hearing or a non-jury trial utilizing video technology.

(b) If the requirements of paragraph (c) of this Rule are met, the court may, with the consent of the parties, permit a witness or party to participate in an evidentiary hearing or a non-jury trial utilizing video technology.

(c) The video technology used must enable:

i. a party and the party's counsel to communicate confidentially;
ii. documents, photos, and other things that are delivered to the court to be delivered to the remote participants;
iii. interpretation for a person of limited English proficiency;
iv. a verbatim record of the trial; and
v. public access to remote proceedings.

(d) This Rule does not address the issue of when all parties do not consent.

Rule 37. Remote Depositions.

(a) The court may, upon the consent of the parties or upon a motion showing good cause, order oral depositions by remote electronic means, subject to the limitations of this Rule.

(b) Considerations upon such a motion, and in support of a showing of good cause, shall include but not be limited to:

(1) The distance between the parties and the witness, including time and costs of travel by counsel and litigants and the witness to the proposed location for the deposition; and

(2) The safety of the parties and the witness, including whether counsel and litigants and the witness may safely convene in one location for the deposition; and

(3) Whether the witness is a party to the litigation; and

(4) The likely importance or significance of the testimony of the witness to the claims and defenses at issue in the litigation.

For the avoidance of doubt, the safety of the parties and the witness shall take priority over all other criteria.

(c) Remote depositions shall replicate, insofar as practical, in-person depositions and parties should endeavor to eliminate any potential for prejudice that may arise as a result of the remote format of the deposition. To that end, parties are encouraged to utilize the form protocol for remote deposition, which is reproduced as Appendix G to these rules, as a basis for reaching the parties' agreed protocol.

(d) No party shall challenge the validity of any oath or affirmation administered during a remote deposition on the grounds that

(1) the court reporter or officer is or might not be a notary public in the state where the witness is located; or,

(2) the court reporter or officer might not be physically present with the witness during the examination.

(e) Witnesses and defending attorneys shall have the right to review exhibits at the deposition independently to the same degree as if they were given paper copies.

(f) No waiver shall be inferred as to any testimony if the defending attorney was prohibited by technical problems from interposing a timely objection or instruction not to answer.

(g) Nothing in this rule is intended to: (i) address whether a remote witness is deemed "unavailable," within the meaning of CPLR 3117 and its interpretive case law, for the purposes of utilizing that witness' deposition at trial; or (ii) alter the Court's authority to compel testimony of non-party witnesses in accordance with New York law.

Appendix A

Appendix B

APPENDIX C. COMMERCIAL DIVISION SAMPLE CHOICE OF FORUM CLAUSES

Purpose

The purpose of these sample forum-selection provisions is to offer contracting parties streamlined, convenient tools in expressing their consent to confer jurisdiction on the Commercial Division or to proceed in the federal courts in New York State.

These sample provisions are not intended to modify governing case law or to replace any parts of the Rules of the Commercial Division of the Supreme Court (the "Commercial Division Rules"), the Uniform Civil Rules for the Supreme Court (the "Uniform Civil Rules"), the New York Civil Practice Law and Rules (the "CPLR"), the Federal Rules of Civil Procedure, or any other applicable rules or regulations pertaining to the New York State Unified Court System or the federal courts in New York. These sample provisions should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, the Federal Rules of Civil Procedure, and any other applicable rules and regulations. Parties which use these sample provisions must satisfy all jurisdictional, procedural, and other requirements of the courts specified in the provisions.

The Sample Forum Selection Provision

To express their consent to the exclusive jurisdiction of the Commercial Division, parties may include specific language in their contract, such as: "THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION, NEW YORK STATE SUPREME COURT, WHICH SHALL HEAR ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE VALIDITY, BREACH, ENFORCEMENT OR TERMINATION THEREOF."

Alternatively, in the event that parties wish to express their consent to the exclusive jurisdiction of either the Commercial Division or the federal courts in New York State, the parties may include specific language in their contract, such as: "THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL DIVISION, NEW YORK STATE SUPREME COURT, OR THE FEDERAL COURTS IN NEW YORK STATE, WHICH SHALL HEAR ANY DISPUTE, CLAIM OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO THE VALIDITY, BREACH, ENFORCEMENT OR TERMINATION THEREOF."

APPENDIX D. COMMERCIAL DIVISION SAMPLE CHOICE OF LAW PROVISION

Purpose

The purpose of this sample choice of law provision is to offer contracting parties a streamlined, convenient tool in expressing their consent to having New York law apply to their contract, or any dispute under the contract.

This sample provision is not intended to modify governing case law or to replace any parts of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, or any other applicable rules or regulations. This sample provision should be construed in a manner that is consistent with governing case law and applicable sections and rules of the Commercial Division Rules, the Uniform Civil Rules, the CPLR, and any other applicable rules and regulations. Parties which use this sample provision must meet any requirements of applicable law.

The Sample Choice of Law Provision

To express their consent to have New York law apply to the contract between them, or any disputes under such contract, the parties may include specific language in their contract, such as: "THIS AGREEMENT AND ITS ENFORCEMENT, AND ANY CONTROVERSY ARISING OUT OF OR RELATING TO THE MAKING OR PERFORMANCE OF THIS AGREEMENT, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH

THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO NEW YORK'S PRINCIPLES OF CONFLICTS OF LAW."

APPENDIX E
(reserved)

APPENDIX F

APPENDIX G

Exhibit A

Historical Note

Added 202.70 on Jan. 17, 2006

Amended (a) on Mar. 26, 2007

Amended (a) on Aug. 9, 2007

Amended (a) on Nov. 28, 2007

Amended (a) on Jan. 5, 2009

Amended (a) on Jun. 17, 2009

Amended (a) on Jul. 1, 2010

Amended (g) on Jul. 27, 2010

Amended (d) on May 25, 2011

Amended Rule 13 of section 202.70(g) on Sept 23, 2013

Amended Rule 8 of section 202.70(g) on Sept 23, 2013

Amended (a) on Jan 28, 2014

Added Rule 9 of section 202.70(g) on Apr 17, 2014

Added Rule 11-a of section 202.70(g) on Jun. 2, 2014

Amended (d)-(e) on Jul 1 2014 , effective September 2, 2014

Added Rule 11-b of section 202.70(g) on Jul 8, 2014 , effective September 2, 2014

Amended (a) on Jul 14, 2014 , effective September 2, 2014

Amended Rule 8 on Jul 16, 2014 , effective September 2, 2014

Added Rule 34 on Aug 6, 2014 , effective September 2, 2014

Added Rule 11-c & Appendix A on Aug 8, 2014 , effective September 2, 2014

Amended Rules 8(b) & 11(c) and Added Rule 11-d on December 23, 2014, applicable to all cases filed in the Commercial Division on and after April 1, 2015

Added Preamble on Jan 6, 2015 , effective April 1, 2015

Amended Rule 14 on Jan 9, 2015 , effective April 1, 2015

Added Rule 11-e on Jan 22, 2015 , effective April 1, 2015

Amended section 202.70(g) on October 5, 2015

Amended Rule 11-d of and added Rule 11-f on October 8, 2015

Amended Rule 3 on October 26, 2015

Amended Rule 6 on October 29, 2015

Amended (b)(12) and (c) on October 14, 2015 , effective December 1, 2015

Amended Rule 3 May 26, 2016 , effective July 1, 2016

Amended Rule 14-a on Jun 2 , effective July 1, 2016

Added Rule 11-g & Appendix B Jun 16 , effective July 1, 2016

Added Rule 32-a on Oct 17, 2016

Added Rule 30-c on May 01, 2017

Amended Rule 20 on July 01, 2017

Amended Rule 26 on July 01, 2017

Amended 202.70(d) and added Appendix C on July 01, 2017

Amended Rules 10, 11, and added Exhibit A on Oct. 11, 2017 effective Jan 1, 2018

Amended (d)(2) and added Appendix D on Oct. 26, 2017 effective Jan 1, 2018

Amended Rule 11-g & added Appendix E on Mar. 19, 2018 , effective Jul 1, 2018

Added Rule 11-e (f) July 19, 2018 , effective October 1, 2018

Added Rule 9-a July 25, 2018 , effective October 1, 2018

Amended Rule 17 July 30, 2018 , effective October 1, 2018

Amended Preamble November 19, 2018 , effective January 1, 2019

Amended Rule 3(a) December 5, 2018 , effective January 1, 2019

Amended Rule 10 March 22, 2019 , effective July 1, 2019

Amended (a) on June 14, 2019

Repealed Rule 23 June 23, 2020

Amended Rule 1 June 16, 2020 , effective June 15, 2020

Amended Rule 11-g September 23, 2020 , effective October 13, 2020

Amended Rule 6 on September 29, 2020 , effective November 16, 2020

Amended Rule 31 on January 21, 2021 , effective March 1, 2021

Added Rule 35 on October 4, 2021 , effective December 1, 2021

Added Rule 36 on October 19, 2021 , effective December 13, 2021

Added Rule 37 & Appendix G on Dec. 7, 2021 , effective December 15, 2021

Amended Rule 3(a) on Oct. 19, 2021 , effective December 20, 2021

Amended Rule 30 on Jan. 7, 2022 , effective February 1, 2022

Amended Rule 1, 8, 9, 11-c, 11-e, 11-g, and Appendices on Mar. 7, 2022 , effective April 11, 2022

Amended Rule 4 on April 1 2022 , effective April 18, 2022

Amended Rule 19-a (b) on Apr. 27, 2022 , effective May 2, 2022

Amended Rule 11 on May 16, 2022 , effective May 31, 2022

Amended Rule 19 on June 24, 2022

Amended Rule 15 on July 12, 2022

Amended Rule 6 on August 17, 2022 , effective September 12, 2022

Amended Rule 16 on December 16, 2022 , effective January 3, 2023

Amended Rule 5 on December 19, 2022 , effective January 3, 2023

Amended Rule 2 on December 23, 2022 , effective January 3, 2023