Financial Industry Regulatory Authority

Hearing Procedure Script
3 Member Panel

The hearing procedures set forth below may, in the discretion of the arbitrators, be varied provided all parties are allowed a **full** and **fair** opportunity to present their respective cases. The FINRA Dispute Resolution staff member, if present, or the Chairperson will initiate the following**.**

Note to Arbitrator - Recording the Proceeding

There must be a record kept of every FINRA arbitration hearing. This is an important function, and is required under FINRA rules. It is essential that care be taken to properly record each hearing, and to timely transmit the digital recorder and memory cards to FINRA Dispute Resolution.

Occasionally, the parties request a stenographic record. In such cases, the panel can determine that the stenographic record will be the official record and dispense with the recording of the hearing. If a stenographic record is used, the parties are required to defray the cost of such record and provide FINRA Dispute Resolution with sufficient copies of the transcript for FINRA and the arbitrators.

The chairperson should ensure that a member of the panel performs the following:

- ☑ **Operate the recorder. There are no "off the record" conversations between the parties and yourself. Record the entire proceeding!**

- ☑ **To test the recorder before the hearing begins: Press the REC button; clearly state the case name, case number and date; press the STOP button; Press the PLAY button to listen.**

- ☑ **How to Record: Push the REC button to begin recording. (The REC indicator will be lit and steady while recording).**

- ☑ **How to Stop Recording: Push the STOP button to stop recording, during breaks or executive sessions.**

- ☑ **Remember to press the REC button to resume recording after breaks or executive sessions.**

- ☑ **Advise all occupants in the room to turn off their blackberry, otherwise, the digital recorder will not record clearly, and we will not have a proper record of the hearing as is required by the Code of Arbitration Procedure.**

- ☑ **At the last day of the hearing:**

  For hearings held outside of FINRA's offices:

  - ☑ **All digital recorders and memory cards should be returned to the FINRA Dispute Resolution staff member assigned to the case or the hearing facility that provided the recorder.**

  For hearings held at FINRA's offices:

  - ☑ **FINRA's offices are equipped with built-in digital recorders. Arbitrators must notify staff that the hearings have concluded so that the memory card can be secured.**

Note: The following should be covered on the record. Make sure that the digital recorder is on before proceeding.

A. Introduction of the Arbitrators. Please note that Arbitrator (state the arbitrator's name) will operate the digital recorder during the hearing and Arbitrator (state the arbitrator's name) will take custody of the exhibits.

B. Restate to the parties any disclosures previously made by the arbitrators. Also, any additional disclosures should be made to the parties at this time. In addition, arbitrators should confirm on the record their current classifications as either public or non-public arbitrators.

   [The following section is intended to be informational for the arbitrators and does not need to be read to the parties: Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect—or even appear to affect—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the arbitrator, the parties and the matter in dispute, no matter how remote they may seem. If you need to think about whether a disclosure is appropriate, then it is: ***make the disclosure****.]*

C. Elicit names of all parties, their attorneys of record and other representatives, if any. **Ask each party's counsel/representative who should be reflected in the award as counsel/representative for each party. Make a note of each**

party's response and include it on the Award Information Sheet when the panel deliberates.

Ask whether any of the parties and counsel to this matter know of any potential conflicts between the arbitrators and any party, counsel or witness in this matter.

D. Obtain oral confirmation from all of the parties or their representatives of their acceptance of the Panel's composition.

E. Oath Of Arbitrators *(If necessary, the following oath is administered by the Chair. Otherwise, the Chair should state on the record: "We have submitted our properly executed Oaths of Arbitrators to the FINRA Dispute Resolution staff."):*

Do each of you, as the arbitrators selected to hear this matter in controversy, solemnly swear or affirm your duty under the AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes to keep confidential all matters relating to this arbitration proceeding and decision, including but not limited to any information, documents, evidence, or testimony presented; and that your duty is continuous and does not cease at the conclusion of the arbitration or upon your withdrawal as an arbitrator?

Do you solemnly swear or affirm that you are not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to you; that you have no direct or indirect interest in this matter; that you know of no existing or past financial, business, professional, family, or social relationship which would impair you from performing your duties; and that you will decide the controversy in a fair manner, and render a just award?

Do you swear or affirm that, based on FINRA Dispute Resolution's Temporary and Permanent Arbitrator Disqualification Criteria, you are not temporarily or permanently disqualified from being a FINRA arbitrator?

Having reviewed the *Arbitrator Disclosure Checklist*, do you certify that you have made all disclosures of items on the *Arbitrator Disclosure Checklist*?

Do you swear or affirm that your *Arbitrator Disclosure Report* is accurate, current, and up to date, and that you have no additional disclosures to make?

(Note: The following paragraphs are to be read on the record by the Chairperson)

F. Formal Opening Of Hearing: This controversy has been submitted to this Panel of Arbitrators for hearing in accordance with the Code of Arbitration Procedure. The Panel is authorized to determine each of the matters set forth in the statements submitted and filed with FINRA Dispute Resolution. Unless the law directs otherwise, all awards rendered pursuant to the Code will be final and not subject to appeal.

   It is suggested that no interruptions be made during an individual's testimony. Parties are entitled to make objections, cross-examine and redirect witnesses, and may, in the discretion of the arbitrators, present rebuttal testimony. The arbitrators may ask questions as they deem appropriate.

G. The submission of this matter to arbitration will not preclude any right of FINRA that it would otherwise be authorized to adopt, administer or enforce. If any matter comes to the attention of this panel during and in connection with this panel's participation in this proceeding, either from the record or from material or communications related to this proceeding, that this panel has reason to believe may constitute a violation of FINRA's rules or the federal securities laws, this panel may initiate a referral of the matter to FINRA for disciplinary investigation. If we make any such referral it will only be initiated after this dispute has been either settled or otherwise disposed of or after a final award has been rendered.

H. Responsibility of Neutral Arbitrators: We have been selected to serve as neutral arbitrators to hear and decide this matter. We are not FINRA Dispute Resolution employees.

   Pursuant to Canon I of the ABA/AAA Code of Ethics for Commercial Arbitrators, we, as neutral arbitrators, have the duty of conducting these proceedings with fairness and integrity. This duty extends to all parties and to this process. Therefore, on behalf of the panel, I respectfully request that all parties and their counsel or representatives refrain from engaging in any conversations or contact with the members of this panel except while in this room and in the presence of all parties, counsel or representatives. Thank you for your anticipated cooperation.

I. Oath Administered To Witnesses

   Do you solemnly swear or affirm that the testimony you are about to give shall be the truth the whole truth and nothing but the truth?

   Will each of you please state your name, address, and if applicable, your business affiliation.

   Parties and a corporate representative are permitted to remain throughout the proceeding. Expert witnesses are permitted to remain unless the panel determines that the witness should be excused. All other witnesses will now be excused and will be called upon at the appropriate time, unless the panel determines that the witness(es) will remain. **(Note to Arbitrators: Barring countervailing reasons, expert witnesses who are assisting parties in the presentation of their cases should be permitted to attend all hearings. Generally, there is a**

presumption that expert witnesses, as opposed to witnesses testifying as to the facts pertinent to the case, will be permitted to attend the entire proceedings.)

J. Arbitrators' Exhibit: The Arbitrators have read the papers that have been submitted by the parties. These papers, along with the executed Submission Agreements, will be marked and received into evidence as Arbitrators' Exhibit #1.

[**The Chairperson should explain the contents of Arbitrators' Exhibit # 1.**]

K. Other important open matters may be addressed here.

L. Party Evaluations: As part of FINRA Dispute Resolution's ongoing effort to improve the arbitration process, each party or representative is asked to voluntarily complete an evaluation concerning this arbitration. For your convenience, FINRA has made it possible for you to complete the evaluation online via the Internet. You can find the evaluation form at http://www.finra.org/arbevaluation. If you do not have Internet access, or have difficulty completing the evaluation online, please ask your case administrator to provide a paper version of the evaluation that you can mail to the address indicated.

M. Opening Statements: Each party may make an opening statement. It should be limited to what the party intends to prove and should not be a presentation of evidence or of the merits of the case.

N. Documentary Evidence: Evidence will be marked for identification and shown to the opposing party for review and possible objection to its admissibility. The Panel will rule on any objections asserted and determine whether the document will be received in evidence.

O. Expected Conduct: All participants are expected to act in a civil manner at all times. Parties and attorneys are requested to be on time for all sessions and to limit breaks to the time allotted. Parties and attorneys are responsible for providing copies of all proposed exhibits to all other parties and to the panel. Parties are encouraged to avoid repetitive arguments. Parties and counsel must direct all objections and motions to the Panel and not to each other. The digital recording (or stenographic record) will be the official record of the hearing, and parties and counsel should refrain from making audio or video recordings or transmissions of the proceedings unless otherwise agreed by all parties and arbitrators.

Note to Arbitrator: The administrative announcements have been completed and you will now begin opening statements and the presentation of the evidence. This is a reminder that all further conversations between the parties and the arbitrator should be on the record (e.g. digitally recorded). Please ensure that the recorder is operating after your return from any breaks or lunch. In addition, do not leave the recorder unattended.

P. Opening Statements: The parties will now proceed with their opening statements, beginning with the Claimant.

Q. Presentation Of Evidence: The parties will now present their evidence, beginning with the Claimant.

R. Inquiry Prior To Closing Argument: Do the parties have any further evidence or testimony to present?

S. Closing Argument:

Each party may make a closing argument. The parties are directed to limit their closing argument to a summation of what he or she believes has been proven. The parties should include a summary of their final request for damages. Parties may present their final damages as a range, as opposed to a specific monetary amount, and may include a description of each theory of damages.

The parties should also address the issue of hearing session fees. In the award, we will allocate the amount of hearing session fees that each party will pay. Therefore, the parties should include a statement of how we should assess the hearing session fees.

The parties may now begin their closing argument, beginning with the Claimant. Rebuttal is allowed and the Claimant may reserve its entire closing for rebuttal.

Note to Arbitrators: It is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedure may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.

T. Final Damage Requests: We realize that at the time the claim was initiated the parties may not have had all of the information needed to accurately or completely calculate their claims. Therefore, at this point, we ask that the parties restate their respective claims. For parties requesting damages, please provide us with a summary of your final request for damages. You may present your final damage request as a range, as opposed to a specific monetary amount.

Note to Arbitrators: If a party's final request for damages is different from the amount stated in its pleading, please record this amount in the Award Information Sheet item number 10.

U. Inquiries Prior To Closing Hearing: Do the parties have any other issues or objections that you would like to raise that you have not previously raised?

V. The decision will be forwarded to the parties, and/or counsel. In order to expedite the delivery of the Panel's decision to the parties, the Panel may either execute a handwritten copy of the Award or each Arbitrator may execute a counterpart copy of the Award.

W. Party Evaluations: As I mentioned at the beginning of the case, I ask that each party or representative complete an evaluation of this arbitration. Your participation – while

strictly voluntary – greatly assists FINRA Dispute Resolution's ongoing effort to improve the arbitration process. You can find the evaluation form at http://www.finra.org/arbevaluation. If you do not have Internet access, or have difficulty completing the evaluation online, please ask your case administrator to provide a paper version of the evaluation that you can mail to the address indicated.

X. FINRA is concerned about information security and identity theft. Parties should take all documents that are not needed for the official record when leaving the arbitration hearing.

Note to Arbitrator: The hearing room should be locked and/or secured when it is not in use, including during lunch breaks, short recesses, and overnight.

Y. Closing the Hearing: The record will remain open until the Panel arrives at a decision, or the Panel determines that it is closed.

No party will contact any member of this arbitration panel directly. All communications are to be directed to the staff person assigned to this case.

I request that the parties leave the room at the same time.

Note to Arbitrator - At the last day of the hearing:

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