

Updated as of August 5, 2020



Initial Pre-Hearing Conference Arbitrator's Script

[The script is in a regular typeface size. Information in brackets, in italics, is intended to clarify a point for the arbitrator and does not need to be read to the parties. The arbitration panel must be prepared for the conference call and have its schedule/calendar available. Please dial-in a few minutes before the call is scheduled to begin. A Verizon operator will NOT contact you. You will need the case number to give to the operator.]

The panel Chairperson has the responsibility to record the agreements reached during the conference on the Initial Pre-hearing Conference Scheduling Order (Scheduling Order). The Chairperson should submit the enclosed Scheduling Order to FINRA Dispute Resolution Services within 48 hours. The Chairperson may do so by electronic mail.

The Initial Pre-hearing Conference (IPHC) procedures set forth below should be followed, but may, in the panel's discretion, be varied to allow all parties a full and fair opportunity to present their respective positions. If a member of the FINRA Dispute Resolution Services staff participates in the conference, he or she should speak with the Chairperson before the IPHC to discuss their respective parts of the script. If a staff member is present, he/she will begin by introducing the arbitrators. If a staff member is not present, the Chairperson will perform this function.]

A. Introduction of the Arbitrators: We will begin by briefly introducing ourselves.

As a reminder, I/we have been selected to serve as neutral arbitrators to hear and decide this matter. I/we are not FINRA Dispute Resolution Services employee(s). I/we are independent arbitrators. FINRA makes available this arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Will the parties or their representatives introduce themselves and any others who are listening on their end of the line? Since we cannot see each other, please continue to identify yourself by name whenever you speak.

For Special Proceedings Only:

This confirms that the hearing in this matter will be conducted as a Special Proceeding via telephone conference call. The following hearing procedures will be followed:

- **Claimants, collectively, and respondents, collectively, each have two hours to present their cases and one-half hour for rebuttal and closing statements;**
- **The hearing will be completed in one day with no more than two hearing sessions;**
- **The parties may not question or cross-examine the opposing parties' witnesses; and**
- **The parties may not call an opposing party as a witness.**

(Cases Proceeding Under the Expedited Procedures for Senior or Seriously Ill Parties Program):

We have been informed that this is an expedited case involving senior or seriously ill parties. FINRA's procedures call for the scheduling of hearing dates that will expedite the process, but still provide a reasonable amount of time for case preparation. We remind the parties that it is better to set aside extra dates to avoid delay in the arbitration process.

The arbitrators promise to avoid causing postponements, absent a genuine emergency. We also pledge to be prepared and on time for all conferences and hearings. In exchange, we expect the parties and counsel to avoid unnecessary postponements, to be prepared, and to be on time, for all conferences and hearings.

- B. Disclosures:** The panel will now make any disclosure that was not previously contained in the *Arbitrator Disclosure Report*. *Arbitrators should confirm on the record their current classifications as either public or non-public arbitrators.*

[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. This shall include all disclosures previously made, including any disclosures resulting from the Arbitrator Disclosure Checklist, in addition to new disclosures. Arbitrators are reminded that any change in their classification as a public or non-public arbitrator must also be disclosed.]

As Chairperson, I have the following disclosures *[convey disclosure, if appropriate]*.

Do 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?

C. Confirmation of the Panel: Do the parties confirm acceptance of the panel's composition?

D. Oath of Arbitrators: As Chairperson, I confirm that I have executed my oath and submitted it to FINRA Dispute Resolution Services. Have the other panelists submitted their oaths?

[If not, inquire as to whether each arbitrator has read and reviewed FINRA's Temporary and Permanent Arbitrator Disqualification Criteria, the Arbitrator Disclosure Checklist, and the Arbitrator Disclosure Report. If an arbitrator has not received and reviewed the above items, he/she is not permitted to rule on any item on today's agenda.]

If he/she has reviewed the items, then administer the oath as follows:

“Do you, as an arbitrator(s) 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 Services' 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?”

The Chairperson should make sure that the oaths are executed in writing and given to the FINRA Dispute Resolution Services staff for completion of the case file.]

E. Pleadings: We acknowledge and identify that the following pleadings have been filed by the parties and read by the panel: *[list documents]*. *Acknowledge any outstanding deficiencies (e.g. undated submission agreement, unpaid fees or failure to file proof of service) and set a deadline for parties to cure such deficiencies. Remind parties that if the filing party does not correct the deficiency by the deadline, the Panel will proceed as though the deficient document had not been filed.*

[If one of the parties has failed to submit a signed Submission Agreement, please advise the parties of the following:]

Any party that has not yet filed a Submission Agreement or otherwise objected to jurisdiction must do so within 30 days or may be subject to sanctions as provided in the *Codes of Arbitration Procedure (Codes)*.

[If one of the parties has failed to submit an answer (an unresponsive party), FINRA staff will review the service history with the panel and ask the panel to decide whether service is complete and sufficient upon the unresponsive party in order for the case to proceed to hearing].

F. Mediation: We want to remind the parties that FINRA Dispute Resolution Services has a successful, voluntary mediation program. Mediation is an informal process in which a mediator facilitates negotiations between disputing parties. The mediator's role is to help the parties find a mutually acceptable solution to the dispute. Parties who mediate at this forum resolve four out of every five cases.

FINRA Dispute Resolution Services mediators are trained and experienced in helping parties resolve their disputes. In addition, many are experienced arbitrators, attorneys, and securities industry professionals knowledgeable in employment and securities issues.

The mediation process is designed to proceed on a parallel track with this arbitration, so it does not interfere with the scheduled hearing dates or other matters agreed to during the course of this pre-hearing conference. If you are interested in mediation, contact the staff member assigned to this case for more information.

COVID-19 Reduced Fee Program

FINRA is currently offering to parties in arbitration cases the remote use of the mediation process (via Zoom and/or by telephone) at a reduced rate. The COVID-19 Reduced Fee Program features the following benefits:

- Parties will receive a random list of 10 national mediators along with their Mediator Disclosures for consideration and ranking;
- The mediator payment for his/her service is \$100 an hour split by the parties; and
- FINRA waives mediation filing fees and administrative fees (FINRA receives no revenues)

If interested in participating in this program, please advise your Case Administrator who will have the appropriate Mediation Administrator contact the parties to discuss further and help assist with scheduling the virtual mediation.

[As a reminder, the IPHC procedures set forth below should be followed, but may, in the panel's discretion, be varied to allow all parties a full and fair opportunity to present their respective positions.]

Further, it is within the panel's discretion to determine the order in which the parties and arbitrators discuss scheduling hearings or setting discovery, motion, or briefing deadlines. Regardless of the order, the panel should endeavor to meet FINRA's goal of scheduling hearings within nine months or less after this conference.]

G. Additional Guidance for Cases Involving Pro Se Parties:

Since we have parties that are appearing without counsel in this matter, I want to add some further background on the arbitration process. As arbitrators, our ultimate responsibility is to resolve all claims in a fair and just manner. To the extent ethically permissible, we will provide parties with procedural guidance and direction to ensure that all parties receive a fair hearing. However, arbitrators will not and cannot be an advocate for any party, nor can we offer legal advice or recommend a specific course of action. If you need legal advice at any time during this case, we recommend that you consult with an attorney. Please note that FINRA rules provide parties with the right to be represented by a lawyer at any time in the proceeding.

Are there any questions?

H. Late Cancellations - Party and Arbitrator Communication: The parties and arbitrators may arrange for direct communication solely to alert the panel that the parties have settled the case, the claimant has withdrawn the claim, or the parties jointly agreed to postpone the hearings. This arrangement prevents arbitrators from unnecessarily traveling to a cancelled hearing. Do the parties agree to direct communication solely to alert the panel that the parties have settled the case, the claimant has withdrawn the claim, or the parties jointly agreed to postpone the hearings?

[If the parties agree to direct party and arbitrator communication or direct communication solely to alert the panel that the parties have settled the case, the claimant has withdrawn the claim, or the parties jointly agreed to postpone the hearings, the Chairperson should record the parties' agreement in the Order.]

I. Party and Arbitrator Communication: We remind the parties that they may not communicate with any member of the panel except in the presence of all parties or representatives. All correspondence and pleadings must be filed with the FINRA Office of Dispute Resolution Services via the DR Portal for distribution to the panel.

[Please select either K or L below, as appropriate, to schedule hearing dates.]

J. Postponement Fee

FINRA charges a postponement fee for all postponed hearings equal to the applicable hearing session fee. The arbitrators may allocate the fee to the party or among the parties that agreed to or requested the postponement. FINRA will not charge this fee if the parties advise FINRA that they have reached a final settlement and the case can be closed.

Payments to Arbitrators - Postponements or Cancellations within 10 Days of a Hearing

Separate from the above postponement fee, if a party requests and the arbitrators grant, a postponement within ten days before a scheduled hearing session, the party making the request shall pay an additional fee of \$600 per arbitrator (a total of \$1,800 for cases with three arbitrators). This fee also applies if a hearing is cancelled because the parties have settled the case.

The parties should understand that they have 10 days before the first scheduled hearing date to advise FINRA of the postponement or settlement of the case to avoid the \$600 per arbitrator late cancellation fee.

Question to Parties: On what date was this case filed?

The above paragraph applies to cases filed on or after **July 6, 2015**.

K. Selection of Arbitration Hearing Dates (Special Proceeding):

[Now schedule the arbitration dates. During the IPHC, dates are to be set regardless of a party's failure to prepare for the selection of any of the dates.]

Have the parties agreed to hearing dates for consideration by the panel? Since this is a Special Proceeding, FINRA recommends setting the hearing date within four months from today's conference.

1. *[If yes, discuss the dates with the panel.]*
2. *[If no, request the parties' availability for the hearing, on a month-by-month basis, until a date has been selected.]*
3. Once the Hearing Date Has Been Selected – Panel to Inform the Parties:

The parties should understand that they have 10 days before the first scheduled hearing date or by (insert date that is 10 days before the first scheduled hearing) _____ to advise FINRA of the postponement or settlement of the case to avoid the \$600 per arbitrator late cancellation fee.

Notice of a settlement "in principle" will not halt the administration of the arbitration. Any scheduled hearing dates will remain on the calendar until FINRA is provided with notice of final settlement or a request to postpone the hearing

dates.

Please note that if the hearing is postponed, postponement fees will be assessed in accordance with Rules 12601(b)(1)/13601(b)(1) of the Code of Arbitration Procedure.

Important Note about Sending Hearing Exhibits to the Other Side and FINRA before the Hearing:

At least 20 days before the hearing, all parties must provide the other side with copies of all documents that they intend to use at the hearing that have not already been produced. The parties should also file the documents with FINRA at the same time so that FINRA can send the documents to the arbitrator before the hearing. Parties will need to have all exhibits available while they testify telephonically.

Parties should make an effort to organize their exhibits in a single PDF file with a table of contents and label each exhibit. Parties should upload their exhibits on the DR Portal.

Selection of Arbitration Hearing Dates (Non-Expedited Cases): For cases proceeding under the expedited procedures for senior or seriously ill parties, see Section M below. *[Now schedule the arbitration dates. During the IPHC, dates are to be set regardless of a party's failure to prepare for the selection of any of the dates.]*

We begin with the scheduling of hearing dates and we remind the parties that it is better to set aside extra dates to avoid delay in the arbitration process. Expeditious resolution of disputes is one of the goals of arbitration. Therefore, the commencement of evidentiary hearings within nine months or less after this conference is the goal of FINRA and the arbitrators. It is understood that there may be times when this is not feasible. However, the commencement of hearings more than nine months after this conference should be the exception.

The arbitrators promise to avoid causing postponements, absent a genuine emergency. We also pledge to be prepared and on time for all conferences and hearings. In exchange, we expect the parties and counsel to avoid unnecessary postponements, to be prepared, and to be on time, for all conferences and hearings.

With exceptions agreed to by all parties, counsel, and the panel, FINRA expects full eight-hour hearing sessions and suggests the hearings to start at 9:00 AM and end no earlier than 5:00 PM.

Have the parties agreed to hearing dates for consideration by the panel?

1. *[If yes, discuss the dates with the panel.]*

2. *[If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]*

3. Once Hearing Dates Have Been Selected – Panel to Inform the Parties:

The parties should understand that they have 10 days before the first scheduled hearing date or by (insert date that is 10 days before the first scheduled hearing) to advise FINRA of the postponement or settlement of the case to avoid the \$600 per arbitrator late cancellation fee.

Notice of a settlement “in principle” will not halt the administration of the arbitration. Any scheduled hearing dates will remain on the calendar until FINRA is provided with notice of final settlement or a request to postpone the hearing dates.

Please note that if the hearing is postponed, postponement fees will be assessed in accordance with Rules 12601(b)(1)/13601(b)(1) of the Code of Arbitration Procedure.

The above paragraph applies to cases filed on or after **July 6, 2015**.

L. Selection of Arbitration Hearing Dates (Cases Proceeding under the Expedited Procedures for Senior or Seriously Ill Parties Program):

[Now schedule the arbitration dates. During the IPHC, dates are to be set regardless of a party's failure to prepare for the selection of any of the dates.]

Have the parties agreed to hearing dates for consideration by the panel? Since this is an expedited case, FINRA recommends setting the hearing date within a 6 month period.

4. *[If yes, discuss the dates with the panel.]*

5. *[If no, find out how many days will be required. Continue by requesting the parties' availability for the hearings, on a month-by-month basis, until sufficient dates have been selected.]*

6. Once Hearing Dates Have Been Selected – Panel to Inform the Parties:

The parties should understand that they have 10 days before the first scheduled hearing date or by (insert date that is 10 days before the first scheduled hearing) _____ to advise FINRA of the postponement or settlement of the case to avoid the \$600 per arbitrator late cancellation fee.

Notice of a settlement “in principle” will not halt the administration of the arbitration. Any scheduled hearing dates will remain on the calendar until FINRA is provided with notice of final settlement or a request to postpone the hearing dates.

Please note that if the hearing is postponed, postponement fees will be assessed in accordance with Rules 12601(b)(1)/13601(b)(1) of the Code of

Arbitration Procedure.

The above paragraph applies to cases filed on or after **July 6, 2015**.

M. Discovery: The arbitrators wish to remind the parties that FINRA rules require you to fully cooperate with one another with respect to the exchange of documents and information.

[The following three paragraphs are for public customer cases only.]

For Regular Hearings Only: The parties should carefully review the *FINRA Discovery Guide* and *Document Production Lists*, available for use in customer arbitrations. The *Discovery Guide* and *Document Production Lists* can be downloaded from FINRA's Web site at www.finra.org.

The *Discovery Guide* provides guidance regarding documents that are presumed discoverable. With few exceptions, these documents should be exchanged automatically without the intervention of the panel.

We would like to hear from the parties regarding the exchange of the presumptively discoverable documents outlined in the *Discovery Guide*.

[The preceding three paragraphs are for public customer cases only.]

The arbitrators wish to remind the parties that the panel will not tolerate any abuse of the discovery process. Discovery abuse undermines the integrity and fairness of the FINRA forum. If necessary, the panel will consider a full range of sanctions in order to address discovery abuse by any party.

We would like to hear from the parties regarding the status and progress of their discovery proceedings to date.

Do the parties wish to stipulate to any deadlines or cutoff dates with respect to the filing of discovery requests and motions? *[If so, please memorialize the parties' agreement in the IPHC Scheduling Order.]*

Do the parties wish to schedule a tentative telephonic hearing with the Chairperson to address unresolved discovery disputes? *[If so, please memorialize the date and time in the IPHC Scheduling Order.]*

[If the parties are going to submit any additional documents regarding discovery for consideration by the panel, they should do so at least 10 days in advance of the scheduled discovery conference.]

Are there any issues that need to be resolved concerning the format for production of electronic discovery?

Please be advised that arbitrators will be compensated for decisions rendered on discovery-related motions on the papers. Each arbitrator that participates in deciding the discovery-related motion will receive \$200. A single motion includes the

motion and any opposition/replies sent in response to that motion.

The panel will allocate the cost of the honoraria to the parties at the conclusion of the case. FINRA rules also provide a \$200 honorarium for arbitrators that decide contested subpoena requests. The honorarium shall be paid on a per case basis.

N. Arbitrator Orders and Subpoenas to Non-Parties

Will the parties agree to a cutoff date (absent extraordinary circumstances) that is _____ days before the first scheduled hearing, for serving subpoenas and arbitrator orders on non-parties? *[If parties agree to specify a cut-off date, please memorialize the parties' agreement in the IPHC Scheduling Order.]*

- O. Motions:** *[Under Rule 12503/13503, written motions, other than Motions to Dismiss, must be served via the DR Portal at least 20 days before a scheduled evidentiary hearing, unless the panel decides otherwise. Parties have 10 days to respond to a motion, unless the moving party agrees to an extension or the Director or panel decides otherwise. Motions and responses must be served via the DR Portal. Customers representing themselves and not using the DR Portal must serve motions via first class mail, overnight mail or delivery service, hand delivery, facsimile, or electronic mail.*

Motions to Dismiss, governed by Rules 12504/13504 and 12206/13206, have different submission and response deadlines.]

FINRA rules allow parties to make pre-hearing motions in writing or orally during any hearing session. Note that there are specific rules for motions to dismiss that differ from the general motion practice rules.

Do the parties intend to file any pre-hearing motions? If so, please identify which motions you intend to file. Please note that FINRA staff will wait for the reply due date before sending motion papers to the panel for decision. At that point, FINRA staff will send the motion and any reply papers to the panel.

[If the parties indicate that they intend to file pre-hearing motions, the panel should set up a briefing schedule for the motions. The briefing schedule for all motions, including Motions to Dismiss, should be memorialized in the Initial Pre-hearing Conference Scheduling Order. If applicable, the panel should specify in the Order the different time frames for a Motion to Dismiss.]

- P. Canceled Conferences:** Parties are instructed to notify FINRA Dispute Resolution Services when scheduled pre-hearing conferences are no longer needed.

For cases filed on or after October 29, 2018: Parties who request cancellation of a prehearing conference within three business days of the scheduled conference will be charged a \$100 per-arbitrator cancellation fee.

- Q. Legal Issues and Pre-Hearing Briefs:** Are there any unique legal issues that would warrant the filing of briefs in this case?

[If so, set deadlines for the submission of the briefs and request that the parties attach all cases cited. The briefs should be simultaneously exchanged by the parties and submitted to FINRA Dispute Resolution Services.]

- R. Witness Lists:** The Codes of Arbitration Procedure provide for, among other things, the parties' obligation to exchange witness lists at least twenty (20) calendar days prior to the first scheduled hearing date. The panel requests that, concurrently with the parties' timely exchange of the witness lists, the parties file the witness lists with FINRA via the DR Portal for forwarding to the panel. The panel's timely receipt of the witness list will enable the arbitrators to review the witness list in advance of the hearing to determine if the appearance of a witness identified in the witness list may create a potential conflict with an arbitrator or otherwise trigger additional disclosures by an arbitrator. To assist the arbitrators in making these conflict checks, the parties should list the business affiliation of each witness, or other descriptive information. To conserve hearing time, parties should consult in an effort to agree on the admission of hearing exhibits and resolve possible issues about authentication of exhibits and the scheduling of witnesses' testimony.

A party should only identify the name of an expert witness that the party has actually retained.

- S. Other Matters:** Are there any other matters that need to be addressed before the hearing in this proceeding?

[If a party requests to hold the hearing in an alternative hearing location, i.e. not in one of the 71 designated hearing locations, you should advise the parties that they will be responsible for paying the arbitrators' travel and expenses. Also, if the hearing was originally scheduled to take place in one of Dispute Resolution Services' four regional offices (Boca Raton, Chicago, Los Angeles, or New York), and the panelists grant a party's request to proceed in an alternative hearing location, please advise the parties that they are responsible for securing and paying for the conference room rental and tape recording costs.]

- T. Explained Decisions:** The Codes of Arbitration Procedure require arbitrators to provide an explained decision if the parties file a joint request for one at least 20 calendar days prior to the first scheduled hearing date. The explained decision is a fact-based award stating the general reasons for the arbitrators' decision and does not need to include legal authorities or damage calculations. There is no fee to the parties for an explained decision.

- U. Protecting Personal Confidential Information:** FINRA is concerned about information security and identity theft. We suggest that parties and their counsel take steps to protect their confidential information. Actions parties can take include the following:

- Safeguarding personal confidential information by redacting such information from pleadings, exhibits, and other documents upon agreement of the parties;
- Asking the arbitrators to resolve any disagreement among the parties concerning the use or redacting of personal confidential information; and
- Taking all documents that are not needed for the official record when leaving the arbitration hearing.

V. Use of Technology: The parties are encouraged to use technology to facilitate hearings. The parties may agree to modify hearing procedures by using technology that promotes efficiency and cost-effectiveness (e.g. videoconferencing and electronic exhibits), subject to the arbitrators' approval.

W. Security: FINRA takes security very seriously. Security personnel may be present at hearings held at FINRA offices or at a non-FINRA hearing location.

X. Conclusion: As Chairperson, I am submitting a Scheduling Order that confirms what we've agreed to here today. FINRA Dispute Resolution Services will send the order to all parties or their representatives via the DR Portal. As I read the order, tell me if any statement is incorrect.

[Read the dates and information you recorded in the Order.]

Please do not expect the staff to send letters reminding you of your deadlines. The deadlines are your responsibility.

Parties shall serve one another via the DR Portal. Parties are reminded again to use the same form of service with one another as used when filing with FINRA Dispute Resolution Services, and to do so simultaneously.

Thank you for your participation.

Executive Session:

Reconnect with a Verizon operator pursuant to the instructions you received at the outset of the call. Confirm with the operator that only the arbitrators are on the line.

Assessment of IPHC: Discuss and decide whether and how the fee for the IPHC shall be apportioned (who bears the cost) if the matter settles without a hearing.

Note: Outstanding forum fees that have not yet been resolved or assessed by the panel, the parties or another Rule will be divided equally among the parties when settling parties fail to allocate fees in their settlement agreements.