

Updated as of January 4, 2012



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. The conference operator may call you up to five minutes before or after the appointed time.]

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

The Initial Prehearing 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 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.

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.

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. 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'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?"

The Chairperson should make sure that the oaths are executed in writing and given to the FINRA Dispute Resolution 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]*.

[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)*.

- F. **Mediation:** We want to remind the parties that FINRA Dispute Resolution 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 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 prehearing conference. If you are interested in mediation, contact the staff member assigned to this case for more information.

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. **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 two paragraphs are for public customer cases 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. Upon request, FINRA will provide the parties with a copy of the *Discovery Guide* and *Document Production Lists*. *[If anyone requests a copy, advise the FINRA Dispute Resolution staff to send that party a copy of the Guide.]*

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.

- H. **Motions:** *[Under Rule 12503/13503, written motions, other than Motions to Dismiss, must be served 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 directly on each other party at the same time and in the same manner, and must be filed with the Director, with additional copies for each arbitrator.]*

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

FINRA rules allow parties to make prehearing 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 prehearing motions? If so, please identify which motions you intend to file.

[If the parties indicate that they intend to file prehearing 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.]

- I. **Canceled Conferences:** Parties are instructed to notify FINRA Dispute Resolution when scheduled prehearing conferences are no longer needed. FINRA Dispute Resolution should be notified at least 48 hours prior to the scheduled conference.

Please select either J or K below, as appropriate, to schedule hearing dates.

- J. **Selection of Arbitration Hearing Dates (Non-Expedited Cases):** For cases proceeding under the expedited procedures for senior or seriously ill parties, see Section I 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.

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.]*

- K. **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.]*

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.

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.]*

- L. **Legal Issues:** 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.]

- M. **Direct Party and Arbitrator Communication:** Parties and arbitrators may engage in voluntary direct communication as provided under the Codes. All named parties must be represented by counsel in order to participate under the Rule. All named parties must agree to forward correspondence directly to the arbitration panel. If all parties agree to proceed under the Rule, they may send only those documents specifically outlined in the Initial Pre-hearing Conference Scheduling Order (Order), which the arbitration panel will issue following this conference call. Any and all other correspondence, motions, briefs, etc., not identified in the Order, must be forwarded to the FINRA Dispute Resolution case administrator with the appropriate number of copies for FINRA Dispute Resolution to distribute to the arbitration panel. If the parties agree to this method of communication, the parties must also send copies of any motion, response, or brief noted in the Order to their opposing counsel and the FINRA Dispute Resolution case administrator on the same day and by the same method of transmission (e.g., facsimile, overnight courier, electronic mail, or U.S. mail). Communication by electronic mail or facsimile is permissible only if all parties and arbitrators have such capability and agree to this method of communication during the Initial Pre-hearing Conference. Parties and arbitrators may limit the number of pages that can be transmitted by fax. Parties must not transmit documents that exceed 15 pages to FINRA Dispute Resolution by fax. Parties must transmit such documents to FINRA Dispute Resolution only by overnight courier or U.S. mail. If all parties and arbitrators agree to use electronic mail or facsimile transmissions, all electronic mails or facsimile transmissions should include the appropriate confidentiality message. The parties are prohibited from direct verbal communication with any member of the panel except in the

presence of all parties or representatives. Do the parties agree to this method of communication with the arbitrators?

- N. **Late Cancellations - Party and Arbitrator Communication:** The parties and arbitrators may also 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. The Chairperson should ensure that all correspondence that should be transmitted directly to the panel is listed in the Order. If all parties and arbitrators agree to use electronic mail or facsimile, the Order should reflect all parties' and all arbitrators' electronic mail addresses or fax numbers. The Order should also indicate the appropriate confidentiality message that all parties and arbitrators are encouraged to use in their electronic mail messages and facsimile transmissions.]

- O. **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 sent to FINRA Dispute Resolution staff for distribution to the panel, **unless all parties and arbitrators agree to the direct voluntary communication as provided in the Codes.**
- P. **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 send copies of the witness lists to FINRA 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.
- Q. **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. The panel will determine how to allocate the \$400 assessment for the explained decision to the parties at the conclusion of the case.

R. **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.

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 72 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's 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. **Conclusion:** As Chairperson, I am submitting a Scheduling Order that confirms what we've agreed to here today. FINRA Dispute Resolution will send a copy of this order to all parties or their representatives. 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 submit the appropriate number of copies to staff and shall simultaneously serve one another. Parties are reminded again to use the same form of service with one another as used when filing with FINRA Dispute Resolution, 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.