



## Hearing Procedure Script Special Proceeding

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With the exception of the requirements for Special Proceedings, the hearing procedures set forth below may, in the discretion of the arbitrator, be varied, provided all parties are allowed a **full** and **fair** opportunity to present their respective cases. The arbitrator will initiate the hearing.

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### Reminders for Requests to Expunge Customer Dispute Information

Pursuant to Rule 12800(e), effective as of October 16, 2023, if a Claimant elects to have a Special Proceeding, and a party to the Special Proceeding files a request to expunge customer dispute information during the Special Proceeding, the arbitrator must hold a separate expungement hearing after the customer's dispute is decided. When a separate expungement hearing is held, it is recommended that the arbitrator use the Hearing Script for a Single Arbitrator Case for the expungement hearing. The Special Proceeding time limits will not apply.

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### Reminder for Virtual and Hybrid Hearings

The arbitrator is expected to have their camera turned on for the duration of the evidentiary hearing held by videoconference, absent technical difficulties or extenuating circumstances. The arbitrator should have their camera on while on the record. It is permissible for the arbitrator to turn off their camera for breaks.

Before the hearing begins the arbitrator and parties should create a back-up plan in case someone loses power or their internet becomes disconnected. For example, participants may call or email the FINRA Case Administrator so that the arbitrator can be advised and a plan to resume the hearing can be made.

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**NOTE: The following should be covered on the record. Italicized information in brackets is intended to clarify a point for you and does not need to be read to the parties.**

A. Introduce the arbitrator.

- B. Restate to the parties any disclosures the arbitrator previously made. Make any additional disclosures to the parties at this time. In addition, the arbitrator should confirm on the record their current classification as either a public or non-public arbitrator.

*[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. Solicit the names of all participants.

***[If any participant is not attending in person, the following paragraph is to be read on the record by the arbitrator.]***

The parties are ordered to disclose all persons that are in the room, whether they are on camera or not. Failure to do so may result in sanctions.

Ask each party's representative who should be reflected in the award as the representative for each party.

*[Make a note of each response and include it on the Award Information Sheet.]*

Ask whether any of the parties and representatives to this matter know of any potential conflicts between the arbitrator and any participant in this matter.

Obtain oral confirmation from all parties or their representatives of their acceptance of the arbitrator.

*[If a party does not accept the arbitrator, the hearing should generally proceed as scheduled. Also, if a party says they intend to file a request for the Director to remove the arbitrator, the hearing should generally proceed as scheduled. Of course, adjourn the hearing if you choose to recuse yourself from the case.]*

- D. *[If necessary, the chairperson should administer the following oath. Otherwise, the chairperson should state on the record: "I have submitted my properly executed Oath of Arbitrators to FINRA Dispute Resolution Services staff."]*

I, as an arbitrator selected to hear this matter in controversy, solemnly swear or affirm my duty under the 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 my duty is continuous and does not cease at the conclusion of the arbitration or upon my withdrawal as an arbitrator.

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

I swear or affirm that, based on FINRA DRS' Temporary and Permanent Arbitrator Disqualification Criteria, I am not temporarily or permanently disqualified from being a DRS arbitrator.

Having reviewed the *Arbitrator Disclosure Checklist*, I certify that I have made all disclosures of items on the Arbitrator Disclosure Checklist.

I swear or affirm that my *Arbitrator Disclosure Report* is accurate, current, and up to date and that I have no additional disclosures to make.

*[Make sure that your oath is executed in writing and submitted on the DR Portal for completion of the case file.]*

E. Formally open the hearing. ***[The following paragraphs are to be read on the record by the arbitrator.]***

This controversy has been submitted to me for hearing in accordance with the Code of Arbitration Procedure. I am authorized to determine each of the matters set forth in the claims submitted and filed with FINRA Dispute Resolution Services. Unless the law directs otherwise, all awards rendered pursuant to the Code of Arbitration Procedure will be final and not subject to appeal.

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 my attention during and in connection with my participation in this proceeding, either from the record or from material or communications related to this proceeding, that I have reason to believe may constitute a violation of FINRA's rules or the federal securities laws, I may initiate a referral of the matter to FINRA for disciplinary investigation. If I 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.

F. State the responsibility of neutral arbitrators. ***[The following paragraphs are to be read on the record by the arbitrator.]***

I have been selected to serve as a neutral arbitrator to hear and decide this matter. I am not a FINRA Dispute Resolution Services employee. I am an independent arbitrator. FINRA makes available this arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

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

- G. Permit parties and corporate representatives to remain throughout the proceeding. Permit expert witnesses to remain, unless the arbitrator determines that the witness should be excused. Excuse all other witnesses until they are called to testify unless you determine otherwise.

*[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.]*

- H. Enter Arbitrator's Exhibit #1 into evidence. ***[The following paragraph is to be read on the record by the arbitrator.]***

I 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 Arbitrator's Exhibit #1.

*[You should explain the contents of Arbitrator's Exhibit #1.]*

- I. Other important open matters may be addressed here.
- J. Solicit party evaluations. ***[The following paragraph is to be read on the record by the arbitrator.]***

As part of FINRA Dispute Resolution Services' 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 Party Experience Survey via the DR Portal.

- K. Explain how the hearing will proceed. ***[The following paragraphs are to be read on the record by the arbitrator.]***

The hearing in this matter will be conducted as a Special Proceeding. 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 an opposing parties' witnesses; and
- The parties may not call an opposing party as a witness.

As arbitrator, I will remain mindful of the above time limits. I will remain neutral, but given the absence of cross-examination, I will need to ask the parties questions during the hearing.

Opening statements 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.

Evidence will be marked for identification and shown to the opposing party for review and possible objection to its admissibility. Parties are responsible for providing copies of all proposed exhibits to all other parties and to me. I will rule on any objections asserted and determine whether the document will be admitted as evidence.

All participants are expected to act in a civil manner at all times. Participants are requested to be on time for all sessions and to limit breaks to the time allotted. Parties are encouraged to avoid repetitive arguments. Direct all objections and motions to me and not to each other.

I ask that everyone silence their cell phones or other electronic devices. This will help us to minimize distractions and focus on testimony and does not apply to the use of electronic devices used to present evidence with audio. There will be periodic breaks that will allow us to view incoming messages that arrive during the hearing.

This hearing is being recorded by Zoom and the recording will be the official record of the hearing. Participants cannot use electronic devices to record or broadcast the hearing.

*[If you use an electronic device to access arbitration documents or information during the hearing (e.g., pleadings, rules or scripts), please let the parties know that*

*you are doing so. This will ensure the parties know that you are devoting your full attention to the hearing.]*

- L. If applicable, explain that there will be a separate expungement hearing for requests to expunge customer dispute information in cases filed on or after October 16, 2023.

We will schedule a separate expungement hearing after an award is issued on the merits of the claims. Regardless of the decision on the merits of the claims, I encourage Claimant(s) to attend and participate in the expungement hearing and submit their position on expungement in writing.

*[The administrative announcements have been completed. Proceed with opening statements and the presentation of evidence. This is a reminder that all further conversations between you and the parties should be on the record (i.e., recorded by Zoom).]*

- M. Proceed with opening statements. ***[The following paragraph is to be read on the record by the arbitrator.]***

We will now proceed with opening statements, beginning with the claimant. Does anyone need a reminder about the time limits for Special Proceedings?

- N. Proceed with the presentation of evidence. ***[The following paragraph is to be read on the record by the arbitrator.]***

Participants will now present their evidence, beginning with the claimant.

- O. Administer the oath to each witness. ***[The following paragraph is to be read on the record by the arbitrator.]***

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?

***[For each witness not testifying in person, the following paragraphs are to be read on the record by the arbitrator.]***

During their testimony, witnesses may have counsel present in the room but are not permitted to communicate with their counsel unless I allow such communication. During their testimony, witnesses must not communicate by text, email, or other electronic means with any persons. Do you solemnly swear or affirm that you will refrain from any impermissible communications while testifying?

Do you solemnly swear or affirm that you have disclosed all persons that are in the room with you now, physically, or electronically, whether or not they are on camera?

Do you solemnly swear or affirm that you will inform me if these circumstances change at any point for the duration of your testimony?

*[The arbitrator may require virtual participants to scan their videoconference locations with the camera to show that there are no undisclosed individuals in the room.]*

Ask each witness to state their name, address, and if applicable, their business affiliation.

Inform each witness that electronic devices cannot be used to record or broadcast the hearing.

After testimony, remind each witness that – in order to avoid influencing other witnesses or creating an appearance of impropriety – the witness should refrain from communicating about the case with others who may be testifying prior to the conclusion of the hearing.

- P. Prior to closing arguments, ensure that all evidence and testimony has been presented. ***[The following paragraph is to be read on the record by the arbitrator.]***

Does anyone have any further evidence or testimony to present?

- Q. Proceed with closing arguments. ***[The following paragraph is to be read on the record by the arbitrator.]***

The participants may make closing arguments and are directed to limit their closing argument to a summation of what they believe has been proven. Claimants, collectively, and Respondents, collectively, each have one-half hour for rebuttal and closing statements.

We will now proceed with closing arguments, beginning with the claimant. Rebuttal is allowed and the claimant may reserve its entire closing for rebuttal.

*[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. With the exception of the requirements for Special Proceedings, the procedure may, however, be varied in your discretion.]*

- R. Solicit the parties' final damage requests. ***[The following paragraphs are to be read on the record by the arbitrator.]***

I realize that at the time the claim was initiated the parties may not have had all of the information needed to accurately or completely state their claims.

Therefore, at this point, I ask that the parties restate their respective requests for relief.

For parties requesting damages, please provide me 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, and may include a description of each theory of damages.

The parties should also address the issue of hearing session fees. In the award, I will assess the amount of hearing session fees that each party will pay.

Therefore, the parties should include a statement of how I should assess the hearing session fees.

*[If a party's final request for damages is different from the amount stated in its pleading, please record the request in the Award Information Sheet.]*

- S. Prior to adjourning the hearing, ensure there are no remaining issues to be resolved. ***[The following paragraph is to be read on the record by the arbitrator.]***

Do the parties have any other issues or objections you would like to raise that you have not previously raised?

- T. Provide final reminders. ***[The following paragraphs are to be read on the record by the arbitrator.]***

My final decision will be forwarded in writing to the participants.

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 Services' ongoing effort to improve the arbitration process. You can find the Party Experience Survey on the DR Portal.

As a reminder, the parties are responsible for filing all the exhibits admitted into evidence at the hearing with DRS via the DR Portal for recordkeeping purposes within the number of days set in the Initial Pre-hearing Conference Scheduling Order. Unless the parties agree among themselves for one party to be responsible for uploading all admitted exhibits, each party is responsible for uploading their own admitted exhibits.

- U. Close the hearing. ***[The following paragraphs are to be read on the record by the arbitrator.]***

The record will remain open until I arrive at a decision or I determine that it is closed.

No party will contact me directly. All communications are to be directed to the FINRA Dispute Resolution Services staff assigned to this case.

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## **Reminders for Secure Disposal of Case-Related Materials**

Arbitrators have an ethical duty to keep confidential all case-related materials. Included in this duty is ensuring that all case-related materials - electronic and paper - are securely disposed of at the conclusion of a case. FINRA provides reimbursement to arbitrators for expenses associated with shredding materials, pre-paid mailing labels for mailing materials back to FINRA for secure disposal, and, for hearings held at FINRA locations, secure shredding bins. If case-related materials were downloaded to laptops, computers, tablets, or any other electronic device, arbitrators must ensure that they are permanently deleted. If you have any questions regarding secure disposal of case-related materials, please contact your Case Administrator.