

Minutes of the
March 21, 2001 Meeting of the
Securities Industry Conference on Arbitration
Orlando, Florida

Members Present

Amal Aly, SIA
Robert S. Clemente, NYSE
Paul Dubow, SIA
Theodore G. Eppenstein, Public Member
Linda D. Fienberg, NASD Dispute Resolution
George H. Friedman, NASD Dispute Resolution
Thomas R. Grady, Public Member
Nancy Nielsen, CBOE

Invitees Present

Nancy Appel, SEC
Florence Harmon, SEC*
Phillip Hoblin, Industry Member Emeritus
Paula Jenson, SEC
Constantine Katsoris, Public Member Emeritus
Helene McGee, SEC*
Robert A. Love, SEC
Stephen G. Sneeringer, SIA

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on March 21, 2001 at 8:30 a.m., Professor Katsoris presiding in lieu of Chairman Thomas Stipanowich.

Approval of Minutes (Tab 1)

Upon a motion duly made and seconded, the Conference unanimously approved the January 19, 2001 meeting minutes, as submitted. (Attachment A)

Mr. Dubow informed the Conference that after 10 years on SICA, he will resign from the Conference after the January meeting. On behalf of SICA, Professor Katsoris thanked Mr. Dubow for all his years of service and constructive contributions.

SICA Non-SRO Pilot (Tabs 2 and 12)

Professor Katsoris reported that since the last meeting he has received two pilot surveys. Both of the new surveys are consistent with previous survey results that indicate that the **cost of the alternate non-SRO fora is too high** and that parties prefer working with known SRO fora.

Mr. Friedman directed the Conference to Tab 12, which contains a status report on case filings at the NASD under the SICA Non-SRO Pilot Program through January 31, 2001. **The report indicates that in 2**

* Via Teleconference

of the 74 pilot eligible cases filed at the NASD the customer has agreed to use a non-SRO forum. Mr. Friedman also reported that the NASD is working with the SIA to resolve discrepancies between NASD and SIA pilot program data. Mr. Clemente directed the Conference to the NYSE's Summary report with respect to cases filed at the NYSE through January 31, 2001 and their eligibility for the pilot. He reported that of the 8 cases reported qualified, no customers have opted to proceed at a non-SRO forum.

Mr. Clemente also reported that the reference to confidentiality has been deleted from the Pilot Program Survey, since the form does not request information that would identify a particular case, party or representative. He called attention to the revised Pilot Program Survey form contained in Tab 2 of the agenda.

The Conference agreed that since the pilot program has been in effect for more than a year, SICA will make no further adjustments to the pilot materials.

Report on SICA Workshop

Mr. Clemente reported on the progress of SICA's Fitzpatrick/Beckley Workshop. He indicated that Professor Katsoris and Ken Andrichik (NASD) chair the arbitrator training and the advocacy subgroups, respectively. The arbitrator training subgroup has identified subject areas for training scenarios intended to encourage arbitrators to become more proactive in managing the case, including case administration, discovery, delaying tactics, conduct of hearing, encouraging and maintaining civility, and discouraging frivolous arguments. The group is considering developing an interactive live presentation in conjunction with another organization, such as PLI, and videotaping the presentation. The advocacy subgroup is developing a program for presentation and the PIABA and SIA meetings. The program under consideration is a panel presentation by two arbitrators and two attorneys (one from each side) that is moderated by forum administrators. The focus would be building and maintaining trust between the arbitrators and counsel, encouraging and maintaining civility and finding ways to quickly resolve claims.

Professor Katsoris commented on the congeniality and good faith effort of the workshop participants, who have diverse interests.

Single Arbitrator Proposal (Tab 4)

Ms. Fienberg described the NASD's Single Arbitrator Pilot, which is a 2-year pilot for customer cases with claims of \$200,000 or less and no punitive damages claim. The parties elect the single arbitrator pilot after arbitrator list selection process. The selected chair would be the single arbitrator, if agreed to by all parties. The pilot provides for lower fees and allows the parties to communicate directly with the arbitrator in certain circumstances. Ms. Fienberg reported that of the 279 cases eligible for the Single Arbitrator Pilot at the NASD, only 1 case has gone to a single arbitrator. The Conference discussed ways to increase support for single arbitrator panels and attract more cases. The NASD indicated that it is receptive to suggestions on increasing interest in the single arbitrator proposal and that it will raise the issue with both the SIA and PIABA.

The Conference noted the materials about the NY City Bar Association's recommendations about the draft "Single Arbitrator" procedure and the "Self-Administered" rule that are contained in Tab 4 of the agenda. SICA agreed that the documents do not require a response from SICA or the SROs at this time.

Arbitrator Disqualification Criteria (Tab 5)

Mr. Friedman presented the report of the subcommittee (Messrs. Clemente and Friedman) with respect to Marcia Ford's request that SICA re-classify harassment and discrimination offenses as criteria for permanent rather than temporary disqualification from service as an arbitrator. The subcommittee agreed with Ms. Ford's proposal in principle and proposed a distinction between the disqualification criteria for individuals who are found to have directly engaged in harassment or discrimination versus those who are found to have been indirectly involved in such behavior. The subcommittee requested SICA input with respect to whether to classify direct involvement in harassment or discrimination as grounds for permanent disqualification and whether to classify indirect involvement as grounds for temporary disqualification. Mr. Clemente proposed that another alternative to making all discrimination findings grounds for permanent disqualification would be to make such findings an automatic challenge for cause.

After a lengthy discussion of the issues, the Conference determined to table the matter until the next meeting. The subcommittee will prepare a proposal. Professor Katsoris requested that the SROs provide copies of their arbitrator application forms at the June meeting.

Arbitrator Classification (Tab 6)

Mr. Clemente distributed PIABA's proposed changes to the Uniform Code ("UCA") arbitrator classification definitions, which are intended to draw a greater distinction between industry and public arbitrators. (See letter from Seth Lipner, dated March 16, 2001, Attachment B). Among other things, the proposed changes would increase the length of time required after an arbitrator's association with the industry before s/he would qualify as a public arbitrator. In addition, the proposal would require industry classification for an attorney, accountant or other professional who has a colleague(s) in his/her firm that devotes 20% or more of his/her work effort to industry clients. The Conference questioned what effect the proposed changes would have on current arbitrator rosters. After a brief discussion, the Conference determined to table the issue until the next meeting. A subcommittee consisting of Messrs. Clemente, Dubow, Eppenstein, and Friedman will prepare a recommendation for discussion at the next SICA meeting.

Future Meeting Schedule

?? June 18, 2001 (hosted by the NASD) in San Francisco, California.

?? October 17, 2001 in conjunction with the PIABA Annual Meeting in Amelia Island, Florida.

SICA 11th Report (Tab 7)

Mr. Clemente presented the draft of SICA's 11th Report and requested that comments be sent to him as soon as possible. He will circulate any changes and present the final report at the June SICA meeting. Mr. Clemente indicated that the NYSE will print the report and post it on its website. The report is also sent to law schools and others upon request. The report is free to SICA members. The SROs may purchase additional copies of the report for \$6-\$8 per copy.

Report on Digitizing SICA Minutes (Tab 8)

Mr. Friedman requested that SICA members with electronic minutes for past year email the minutes to Ms. Nielsen. He reported that digitized historic minutes, compiled by year, will be available on CD by the next meeting.

Status Report on SICA Publications (Tab 9)

Messrs. Clemente and Friedman reported that the two publications (*The Arbitrator's Manual* and *Arbitration Procedures*) are available in PDF format on both the NASD Dispute Resolution and NYSE web sites. The documents are also available in HTML format (i.e., with embedded hypertext links) on both forum's websites. Friedman reported that the printed versions of these publications are in production and will be available in mid-April.

Meeting with SIA Arbitration Committee

Present: Judith G. Belash, Goldman, Sachs & Co.
Donald S. Davidson, Salomon Smith Barney
Linda P. Drucker, Charles Schwab & Co., Inc.
Paul J. Dubow, Law Office of Paul Dubow (Also SICA participant)
Thomas E. Hommel, Lehman Brothers Inc.
Kenneth E. Meister, Prudential Securities Inc.*
Paul Matecki, Raymond James Financial
Stephen Sneeringer, A.G. Edwards & Sons, Inc. (Also SICA participant)
Edward Turan, Salomon Smith Barney
Pamela P. Warnament, Wachovia Securities Inc.

Also Present:

Ken Andrichik*
Barbara Brady*

*Via Teleconference

SICA Non-SRO Pilot Statistics

Mr. Friedman informed the SIA representatives that the NASD is working with SIA and the firms to correct any inaccuracies in the eligible case statistics and with respect to the exchange of information. It was noted that there is some confusion regarding reporting. SICA requested that the firms report to SICA the progress on any cases filed at a non-SRO forum.

Specificity of Claims and Defenses

Mr. Meister raised an issue with respect to the inequity in the UCA between the specificity requirements for a Statement of Claim and for filing an Answer. SIA Committee members expressed concerns about the firms bearing the risk of being precluded from presenting facts and defenses not set forth in the answer, when claims may be open-ended and vague. SIA Committee members suggested that the UCA language requiring that the respondent include all available facts and defenses in the answer should be

limited to defenses to claims articulated in the Statement of Claim. The SIA Arbitration Committee will develop a proposal to amend the UCA. Mr. Dubow will bring the proposal to the next SICA meeting.

Procedure for Screening Arbitrators

Noting that a CRD check is regularly run for industry arbitrators, the SIA Arbitration Committee members requested information about the screening and background check process for public arbitrators. Noting that that is no process akin to the CRD system for screening public arbitrators, the SROs indicated that for verifying the qualification of public arbitrators they primarily rely on self-reporting, character and fitness references, and the arbitrator's signing an affirmation and oath. The NASD indicated that its new arbitrator oath includes a series of questions designed to obtain disqualifying information. It was suggested that the Internet and local court systems and bar associations are possible avenues to obtain information with respect to public arbitrators. Mr. Sneeringer will provide information with respect to the outside vendor that A.G. Edwards uses to screen employees. The SROs agreed to review the physical and financial possibility of reviewing applicants through the Internet.

Arbitrator Classification

SIA Arbitration Committee members commented that the current arbitrator classification standards eliminate a lot of people from serving as public arbitrators who are not truly industry arbitrators. A particular problem is the current requirements with respect to the recency of experience in the securities industry. For example, members cited an "industry" arbitrator who has been out of the industry since 1973, but under the current classification system, s/he can never be classified as a public arbitrator.

The Conference discussed concerns with removing arbitrators from the process based on arms-length relationships and noted that a review of the current arbitrator classification standards will look at the system from both the industry and public perspective.

There being no further business, the Conference adjourned at 12:15 p.m.

/s/ Nancy Nielsen _____
Secretary

- Attachments: A. Approved Minutes of the January 19, 2001 SICA Meeting
B. Letter from Seth Lipner, dated March 16, 2001, re: arbitrator classification