

Approved March 22, 2004

**Minutes of the  
January 16, 2004 Meeting of the  
Securities Industry Conference on Arbitration  
Washington, DC**

Members Present

Amal Aly, SIA  
David Carey, NYSE  
Heather Cook – NFA  
Linda Fienberg, NASD [10-11 am; 1145-end]  
Jim Flynn, CBOE  
George Friedman, NASD [10-11 am]  
Constantine Katsoris, Public Member and Chair  
Jean Feeney, NASD

Members Participating by Phone

Daniel Beyda, NYSE [10-11 am]  
Patrick DeMoon, Chicago Stock Exchange  
Ted Eppenstein, Public Member  
Steve Sneeringer, SIA [10:19]  
Tom Stipanowich, Public Member

Invitees Participating in Person or By Phone

India Johnson, AAA  
Robert Love, SEC  
Helene McGee, SEC  
Mary Ann Gadziala,(sp),SEC [10:11]

The Securities Industry Conference on Arbitration (“Conference” or “SICA”) convened on January 16, 2004 at 10 am, Professor Katsoris, chair, presiding.

Recognition of Past and Present NYSE Representatives

Gus paid tribute to Bob Clemente of the NYSE for his 15 years of service to SICA. A formal resolution was moved by Linda Fienberg and unanimously approved. Gus welcomed Daniel Beyda and David Carey, representing the NYSE.

Spring Meeting

Gus asked Amal Aly to serve as our liaison with the SIA conference organizers, etc., to plan for our next meeting. SICA will meet with SIA representatives at the spring meeting.

Review of Minutes of October 22 Meeting [Tab 1]

Several corrections were proposed. Ted Eppenstein and Steve Sneeringer were given leave to propose further changes to the Minutes. No vote was taken to approve the minutes.

Language for Three-Arbitrator Threshold [Tab 2]

George Friedman presented the revised language at Exhibit A. Professor Katsoris said that the New York Stock Exchange will continue to act as “keeper” of the Uniform Code.

Independent Research on Fairness of SRO Arbitrations – Update [Tab 8]

George Friedman stated that it would not be appropriate for SROs to drive the process of collecting information on the fairness of SRO arbitrations. Given the personnel changes at the NYSE, there has been a hiatus in the project, but the NASD is prepared to move forward. Tom Stipanowich explained that he would be touching base with Bob Barrett of CDRI regarding Bob’s plans for California and joint efforts for nationally based surveys, and would be glad to arrange a conference call with Dan Beyda, David Carey, George Friedman, TJS, and Bob Barrett of CDRI.

Florida Bar Unauthorized Practice of Law Ruling – Update [Tab 9]

George reported that the Florida Bar Board of Governors is moving forward with a new rule requiring representatives appearing in arbitration (including those who sign complaints or answers) to agree to submit to the jurisdiction of the Florida Bar and meet other requirements. The Florida Bar Board is expected to publish the proposed rule for comment in February.

Amal Aly reported on a comment letter filed by the SIA expressing concerns with the proposed rule and its breadth. She raised a question regarding the intent of PIABA to file a similar letter.

[Missed items by George]

Expedited Procedures for Elderly, Ill and Infirm Parties [Tab 4]

George Friedman will report to the conference in March on the NASD’s Pilot Program for Expedited Procedures for Elderly, Ill and Infirm Parties.

Eligibility Rules [Tab 4]

Professor Katsoris said the conference should postpone its consideration of whether to eliminate the eligibility rule.

Third Party Subpoenas [Tab 5]

Amal Aly summarized the background of the issues regarding third party subpoenas. Often the recipient receives a FedEx version and slower means are used to communicate with other parties. The concern was that there should be a process that would ensure parties receive notice at about the same time. The PIABA proposal was for a 10-day notice requirement in order to give parties an opportunity to object to the production of subpoenaed information. Amal reported earlier discussions had failed to resolve the matter; she said that SIA’s position is that the matter should not be addressed as a matter of notice, but as a matter of an entitlement to certain categories of information. Amal supported a carve-out for financial records that the claimant would ordinarily be obligated to produce. Linda Fienberg reported that the NASD NAMC has not taken action on the matter, awaiting SICA’s effort.

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After a lengthy discussion, Gus Katsoris suggested that a committee address the issue. Professor Katsoris assigned Rick Barry, Dave Carey, Steve Sneeringer, Ted Eppenstein, Amal Aly and George Friedman (chair) to the committee. He expressed the hope that the committee would have a report for the March meeting.

#### Party Questions to Prospective Arbitrators [Tab 6]

Ted Eppenstein said there is a need for action to address the processing of party questionnaires to arbitrators. Ted said he was not getting timely responses that allow ranking selections to be completed. He said the NASD administrators are not encouraging arbitrators to respond quickly.

The other issue is what we should do if questionnaires are not returned, given the fact that arbitrators have to respond.

Ted also pointed out that the Uniform Code requires in Section 17(b)(5) that the time for ranking be automatically tolled while questionnaires are outstanding; the NASD rule requires consent of the other party to toll, a discrepancy. Ted said he would prepare a letter to the NASD on the issue. Professor Katsoris cautioned that certain questions to arbitrators can be invasive and might discourage qualified arbitrators from serving.

#### Motions to Dismiss [Tab 7]

Ted raised an issue that he characterized as an abuse of motion practice. Recently a party filed a motion to dismiss but did not file a Submission Agreement. The forum directed Claimants to respond within 14 days. He argued that a party should not be allowed to file papers unless they file the Submission Agreement. In this case, he argued, discovery was needed, and the matter should ultimately be for the arbitrators to address.

Linda Fienberg indicated that the situation involved a staff error, and would not normally be a problem. Normally, she said that if something were buried in an answer, the arbitrators would address it when they convene.

Ted suggested that it would be instructive for the conference to look at the scenario and the discussion proceeded. Linda indicated that the NASD is taking steps to ensure that respondents file the U.S.A. said she would address it at the March meeting if the NASDR acted. Issues regarding timing are addressed in the NASD Code rewrite, available on the NASD web site. The matter was tabled until the March meeting.

#### California Ethics Standards

Linda Fienberg reported that the NASD and NYSE were unsuccessful in trying to work out a legislative solution to the issues, and are addressing the issue through litigation. There is a pertinent case going to the 9<sup>th</sup> Circuit, but the court denied the motion to intervene but gave NASD and NYSE amicus status. They are hoping for a definitive ruling within the next few months.

On the state court front the SRO disclosure standards were upheld in the *Jevne* case, but there is

a request by the investor and the state AG's office to the California Supreme Court to review the decision. Approximately 350 cases are in abeyance where investor has not waived disclosure standards or agreed to arbitration outside California.

NASD and NYSE Rule Filings [Tab 11]

Jean Feeney indicated that the California labor program would expire March 31. There are a number of pending rule filings, including: increased fee for panels training; online modules on special subjects such as discovery and other topics; reduced time for NASD selection of chairpersons in order to speed up the process; compensation of arbitrators for last-minute cancellations within 3 business days; voluntary direct communication program, where agreed by all parties, for specific situations; online filings. They are considering an amendment to the eligibility rule to make certain that it is understood that the rule does not apply to matters transferred from court to arbitration by broker/dealers. The regulatory staff has also filed an amendment to the predispute arbitration agreement rule filing, given the withdrawal of the punitive damages rule and the changes to the eligibility rule. The revised rule will take out reference to choice of law. The NASD has also filed a rule amendment adopting the Perino Report's recommended definition of a public arbitrator.

**NEW BUSINESS:** None.

**NEXT MEETINGS:**

- March 22, 2004 \*\*\* Noon in Desert Ridge, AZ (SIA Annual Legal & Compliance Meeting)
- June 8, 2004. NASD, New York City.
- October 18-24 (w/PIABA at Bonita Springs, FL)

**ADJOURNMENT:** The meeting adjourned at 12:50 pm.

Respectfully submitted,

Thomas J. Stipanowich