

FINAL REPORT
SECURITIES INDUSTRY CONFERENCE ON ARBITRATION
Pilot Program for
Non-SRO-Sponsored Arbitration Alternatives

I HISTORY OF PROGRAM

Since 1977, the Securities Industry Conference on Arbitration (SICA) has played an important role in the development of procedures for arbitration offered by the self-regulatory organizations (“SROs”) including NASD, the New York Stock Exchange (NYSE), the Chicago Board Options Exchange (CBOE), the American Stock Exchange AMEX), the Pacific Exchange and other SROs. One of SICA’s enduring goals has been to ensure that the reasonable expectations of the investing public in the fairness and integrity of SRO arbitration are met.

Over the same period, court decisions embracing arbitration presented challenges to SICA and the SROs. As arbitration evolved to address the large number of disputes filed in arbitration after the Supreme Court’s decisions in McMahon and Gilmer, the process became more like litigation. In response to these concerns, the New York Stock Exchange conducted a Symposium on the future of securities arbitration in the fall of 1994; and an NASD Task Force on Arbitration, chaired by Professor David Ruder, former chairman of the SEC, published its findings in January 1996. At the same time, some courts were more closely scrutinizing the use of binding arbitration provisions in standardized contracts. Accordingly, renewed attention was focused upon expanding the choices available to consumers in private “ADR” programs.

In the fall of 1998, SICA appointed a subcommittee to explore ways in which investors might be provided with options to the present system of SRO-sponsored arbitration. SICA’s action coincided with a proposal by the Public Investors Arbitration Bar Association (PIABA) to provide investors, among other things, the option of arbitration before the American Arbitration

Association (AAA).

The SICA subcommittee considered several alternatives, including the possibility of some form of opt-out to the court system. It became clear that the most promising alternative was the choice of non-SRO-sponsored arbitration. With this in mind, the Subcommittee developed “Guidelines” for a two-year Pilot Program. Several of the major brokerage firms collectively agreed to arbitrate, (at the request of a customer) 100 cases to award at non-SRO sponsored forums. Because many cases are settled before arbitrators issue an award, SICA expected that more than 100 cases would be eligible for the Pilot Program. The **Guidelines** (attached hereto as **Exhibit A**): (i) set up **criteria** for firms that want to offer investors the option of non-SRO sponsored arbitration, including applicable “due process standards,” and (ii) provided a **mechanism to collect data** to assist SICA to evaluate the Pilot Program.

Accordingly, on January 24, 2000, SICA initiated a two-year Pilot Program to permit public customers to elect to have their claims arbitrated at either JAMS or, in the case of two firms, also at the American Arbitration Association. The participating firms were A.G. Edwards, Merrill Lynch, Morgan Stanley Dean Witter, Paine Webber, Prudential Securities, Salomon Smith Barney and Raymond James. The Pilot Program ended on January 24, 2002. Eligible claims transmitted to one of the participating firms on or before January 24, 2002 will continue to conclusion at the designated non-SRO forum.

II SRO EXPERIENCE

As of the conclusion of the program, the SROs reported that approximately 277 cases

were eligible for the pilot program but only eight cases were submitted.

III EVALUATION OF PROGRAM BY PARTICIPANTS

Eligible participants in the program were given a printed evaluation form ("Survey" - - a copy is attached hereto as Exhibit B), together with a prepaid return envelope addressed to Professor Constantine N. Katsoris, at Fordham University School of Law in New York.

Professor Katsoris collected the responses and prepared a Memorandum (Copy attached hereto as Exhibit C) to SICA summarizing the details and comments reflected in the Survey Responses.

The Eleventh Report of SICA (2001) also briefly described the interim results of the Survey, noting that the principal reasons given by claimants for not taking advantage of the program were: the higher cost of the alternative forums over SRO costs; they generally preferred the SRO procedures with which they were more familiar, rather than the less familiar non-SRO procedures; and, possible delays resulting from moving to the non-SRO forum.

48 Survey Responses were received. The most significant questions of the Survey were numbers 5 and 6, which dealt directly with the questions of why the claimants did not elect the option, or under what circumstances they would use the alternative program. The responses to those two questions reaffirmed the basic themes that higher costs, more familiarity with the SRO forums, and possible additional delays were the main reasons claimants did not choose the non-SRO forums. The Survey Response forms have been available to SICA for inspection, *in camera*, at all times.

IV CONCLUSION

Because of the relatively few cases submitted to the pilot program and small number of responses to the Survey, SICA did not renew or extend the pilot program beyond its expiration date.