Approved March 21, 2001

Minutes of the
January 19, 2001 Meeting of the
Securities Industry Conference on Arbitration
Hosted by New York Stock Exchange, Inc.
New York, NY

Members Present

Amal Aly, SIA
James E. Buck, NYSE
David Carey, NYSE
Robert S. Clemente, NYSE
Paul Dubow, SIA
Theodore G. Eppenstein, Public Member
Linda D. Fienberg, NASD Dispute Resolution
George H. Friedman, NASD Dispute Resolution
Nancy Nielsen, CBOE
Thomas J. Stipanowich, Public Member

Invitees Present

Peter Cella, Public Member Emeritus
Mary Ann Gadziala, SEC
Paula Jenson, SEC
Constantine Katsoris, Public Member Emeritus
Robert A. Love, SEC
Stephen G. Sneeringer, SIA

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on January 19, 2001 at 9:15 a.m., Professor Stipanowich presiding.

Re-nomination of Public Member and Chair – Prof. Thomas J. Stipanowich (Tab 2)

The Conference approved by acclamation the public members' nomination of Thomas Stipanowich to serve a second term as a public member of SICA and a second term as chair of the Conference.

Approval of Minutes (Tab 1)

Upon a motion duly made and seconded, the Conference unanimously approved the October 11, 2000 meeting minutes, as submitted. (Attachment A)

Non-SRO Arbitration Pilot Program (Tab 4)

Professor Katsoris summarized the early results of the confidential Pilot Program Survey (29 responses to date) designed to obtain information regarding the reasons why parties with eligible claims decline to participate in the Non-SRO Arbitration Pilot Program. The Conference noted that although the cost of the Non-SRO fora continues to be a factor, some responses also indicated satisfaction with the NASD and NYSE programs. Case filings under the pilot are negligible. Three eligible cases were reported to have been filed at the alternate fora (one from the NYSE and two from the NASD, one of which may have

gone to mediation). Ms. Aly indicated that she is collecting information from the firms regarding the number of cases reported eligible for the pilot by the firms.

The Conference thanked Professor Katsoris for handling the data and discussed what information to make public. It was the sense of the Conference that it could release statistics without violating the promise of confidentiality, but not to do so until the conclusion of the pilot. The Conference considered whether to revise the confidentiality disclaimer on the survey. Mr. Clemente and Ms. Aly will amend the disclaimer language and send new forms to the SROs.

Professor Stipanowich referred the Conference to his December 15, 2000 letter to Robert Love reporting on the status of the pilot program. He noted that the essence of the letter is contained in the paragraph on page three that references what appear to be the primary reasons for non-participation in the pilot – the greater cost of the non-SRO fora and the familiarity and comfort level of the plaintiff's bar with SRO-sponsored programs. Professor Stipanowich suggested that the Conference devote more time to developing meaningful, alternative procedures, such as the single arbitrator option.

SICA will report on the Non-SRO Arbitration Pilot Program at the upcoming SIA and PIABA Conference and solicit feedback from the participants.

Fitzpatrick/Beckley Workshop Update (Tab 3)

Professor Stipanowich reported on the November 17, 2000 Fitzpatrick/Beckley Workshop and referred the Conference to the materials in Tab 3, which summarize the discussion. He reported that the focus of future efforts will be the creation of training modules for arbitrators (effective management of the arbitration process) and for advocates (effective advocacy, including the perspective of arbitrators) and the development of "Best Practice" guidelines. The workshop is not focusing on revising the arbitration rules.

SICA Publications (Tab 5)

Mr. Friedman submitted for a vote the revised *Arbitrator's Manual* and the *Arbitration Procedures* booklet, which incorporate, where possible, the changes proposed by Conference members since the last SICA meeting. Upon a motion duly made and seconded, the Conference unanimously approved the revised publications.

The NASD will print the hardcopy booklets and publish them on the web (HTML and PDF), with hyperlinks. The Conference will also provide the booklets in electronic format to Susan Wyderko at the SEC.

Plain English Translation of UCA (Tab 6)

Mr. Clemente presented the Plain English Translation of the UCA and proposed that the Conference approve the translation, subject to technical corrections (e.g., typographical errors). Mr. Clemente also proposed that both the translation and the regular UCA be published side by side in SICA's Eleventh Report to invite comments on the translation.

Upon motion duly made and seconded, the Conference unanimously approved the adoption of the Plain English Translation of the UCA. The Conference determined to base future amendments to the UCA on the Plain English Translation.

The Conference thanked Mr. Carey and the Fordham students for their tremendous efforts producing the first draft of the translation. Mr. Clemente will email the translation to the SROs.

The NASD and NYSE reported that they are independently working to adapt their rules to Plain English. The NYSE expects to file with the SEC in approximately 6 months, and the NASD during 2002. On behalf of the SEC staff, Mr. Love thanked the Conference for undertaking the project and requested that SRO staff work very closely with the Commission staff well before filing in order to address the procedural and substantive issues connected to such a large proposed rulemaking project.

SICA – Eleventh Report – 2001 (Tab 7)

Mr. Clemente reminded the Conference that SICA traditionally publishes a report to the SEC every other year, but determined to skip publishing a report in 2000. He presented a draft outline for the 11th Report and suggested publication in July 2001. After discussion regarding the proposed contents, the Conference agreed to proceed as outlined. Mr. Clemente will distribute a draft of the Eleventh Report at the next SICA meeting for comments.

Report – Subcommittee on Subpoena Service and Objections (Tab 8)

Mr. Dubow presented the Subcommittee on Subpoena Service and Objections' (Messrs. Grady, Dubow, and Clemente and Rose Schindler (NASD Dispute Resolution)) proposed change to Section 20 (f), Subpoenas. The draft language is intended to address issues raised by Mr. Grady at the August 2000 SICA meeting with respect to untimely notice of attorney issued subpoenas and the appropriateness of forcing a party to court to quash a subpoena. Mr. Cella distributed and discussed his letter, dated January 9, 2001, regarding the Misuse of Subpoenas Duces Tecum for discovery purposes in Securities Arbitration. (Attachment B)

Among other things, the Conference discussed:

- whether to provide additional training for arbitrators and to include information in the *Arbitrator's Manual* with respect to the proper use or misuse of the subpoena power.
- if requiring notice and service of a subpoena by the same means and at the same time would sufficiently address the issues raised.
- if the proposal inappropriately attempts to preempt state law with respect to enforcing subpoenas.
- that the proposed language appears to grant to attorneys subpoena power that may not otherwise be provided under state law.
- the need to address different types of subpoenas, e.g., prehearing discovery vs. appearance and production at hearing.

The Conference returned the proposed rule change to the Subcommittee for further consideration and redrafting. Messrs. Cella, Love and Stipanowich asked to participate in future Subcommittee meetings.

Arbitrator Disqualification Criteria (Tab 9)

The Conference discussed Marcia Ford's request to re-classify harassment and discrimination offenses as criteria for permanent rather than temporary disqualification from service as an arbitrator. After reviewing the ramifications of the proposal, the Conference requested that Messrs. Clemente and Friedman review the request and make a recommendation at the next SICA meeting.

Proposal to Modify Arbitrator Category Definitions (Handout)

The Conference determined to table until the next meeting discussion of PIABA's proposal to modify the rule language regarding the classification of arbitrators contained in PIABA's letter of January 9, 2001. (Attachment C) The proposal was received after the cut-off for submission of agenda items and SICA members require sufficient time to review.

Report on Digitizing SICA Minutes

Mr. Friedman reported that the Subcommittee (consisting of Mr. Clemente, Ms. Nielsen, and himself) had met to develop a plan for digitizing SICA meeting minutes. Those minutes not available in Word/Wordperfect format (historic minutes) will be converted to PDF format.. Minutes that are in electronic format (recent minutes) will be organized by year. All minutes will be loaded on a CD that will be provided to SICA members. The Subcommittee will proceed with the project and give a status report at the next meeting.

Interpretation of NASD Rule 10330(h) (UCA Section 28) (Tab 11)

Mr. Friedman reported on the NASD's response to Henry F. Minnerop's inquiry about whether attorneys' fees and costs are considered part of an award for the purpose of accruing interest. The NASD responded that staff believes that an entire monetary award, including attorneys' fees and interest, is subject to any applicable interest unless the arbitrators specify otherwise.

Online Trading Issues

Professor Stipanowich suggested that SICA take a broad look at online issues, including online dispute resolution, online dispute administration, and online trading. Mr. Friedman referred the Conference to an article he had published in the Hastings Communication and Entertainment Law Journal regarding online dispute resolution and online case administration. Mr. Friedman will provide copies of this article at the next meeting, and will also present on the NASD's planned use of electronic media in dispute resolution (the Mediation and Arbitration Tracking Retrieval Interactive Case System known as MATRICS).

SICA Web Site

The Conference tabled consideration of creating a web page for SICA.

Info Items (Tab 13)

Mr. Clemente referred the Conference to the informational items in Tab 13.

New Business

Mr. Friedman reported that the NASD's rule change regarding the director's authority to remove arbitrators for cause after the beginning of the hearing was noticed to members and will become effective March 8, 2001.

Mr. Friedman also reported that, as a follow-up to the GAO Report, the NASD intends to file a rule change that would prevent a firm that is defunct, bankrupt or has been suspended or expelled from enforcing a pre-dispute arbitration agreement with customers. The filing would allow claimants to go to court in limited circumstances. It was noted that the other SROs should consider a similar rule change to prevent forum shopping.

Mr. Clemente reported that the SEC recently approved amendments to two NYSE pilot programs – the mediation pilot and the administrative pilot. A notice regarding the changes is posted on the NYSE's web site.

Mr. Eppenstein asked that a report on single arbitrator arbitrations be put on the agenda for the next meeting. Ms. Fienberg agreed to provide data at the next meeting on the NASD's single arbitrator pilot program.

Mr. Stipanowich informed the Conference that the CPR Commission on Future of Arbitration's report is available through the ABA Section on Dispute Resolution.

Future Meetings Schedule

- ?? March 21, 2001 (hosted by the NYSE) in conjunction with the SIA Conference in Orlando, Florida. The SIA Arbitration Committee will join SICA at 10:30 a.m.
- ?? June 18, 2001 (hosted by the NASD) in San Francisco, California.
- ?? October 16, 2001 in conjunction with the PIABA Annual Meeting in Amelia Island, Florida.

There being no further business, the Conference adjourned at 1 p.m.

/s/ Nancy Nielsen _____
Secretary

Attachments: A. Approved Minutes of the October 11, 2000 SICA Meeting
B. Peter R. Cella's Letter, dated January 9, 2001
C. PIABA's Letter, dated January 9, 2001

From: "Thomas Stipanowich" <SMTP:StipanowichT@adr.org>
Sent: Friday, December 08, 2000 11:22 AM
To: LoveR
Subject: SICA Pilot Program

Attachments: PILOTLET.DOC

PILOTLET.DOC (27 KB)

Robert,
In the interest of getting you the essential information about the SICA Pilot Program before the end of the week, I am attaching a Word version of my draft letter. As I mentioned in a phone message I attempted to leave on your machine yesterday, Robert Clemente had some indication from JAMS that as many as 2 or 3 cases may be somewhere in their pipeline. However, despite leaving an e-mail message with Catherine Zinn and a phone message with Beth Wiener, who I believe is supposed to be our primary contact at JAMS, I have not yet received a confirmation of this. In a conversation this morning with Steve Price, JAMS President, I mentioned our query; Steve was unable to help.

My point is that it is possible that at least some cases are working their way through the system, and that I may alter the letter at least slightly in the next day or so. Meanwhile, I wanted you to have the draft. Let me know if it is generally suitable for the purpose.

Best regards.

Tom <<pilot letter 12 04 00 --Robert Love.doc>>

Robert Love, Esq.
Special Counsel
Division of Market Regulation
U.S. Securities & Exchange Commission
450 5th Street NW
Washington, D.C. 20549

Re: Status of Securities Industry Conference on Arbitration (SICA)
Non-SRO Arbitration Pilot Program

Dear Robert:

On behalf of the Securities Industry Conference on Arbitration (SICA), I am responding to your request for a progress report on the SICA Non-SRO Arbitration Pilot Program. My understanding is that this information will be transmitted to Congressmen Dingell and Markey in response to their request for information regarding several matters noted in the June 27, 2000 letter concerning GAO's report, *Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards*.

Background

As you know, the Non-SRO Arbitration Pilot Program was initiated early in 2000 after two years of effort by SICA. The intent of the program was to provide investors with the choice of arbitrating disputes with participating brokerage firms in forums other than the NASD, New York Stock Exchange and other SRO- (self regulatory organization)-sponsored programs. Our collective belief was that the availability of such choices would be beneficial to investors. Moreover, we hoped that a body of experience with alternative programs might provide comparative data to further assess the relative effectiveness of SRO as well as non-SRO programs.

Because SICA does not have the authority to initiate such a program, it was necessary to work with members of the investors' bar (through the Public Investors Arbitration Bar Association) and the Arbitration Committee of the Securities Industry Association to create a level of consensus regarding the scope and nature of a non-SRO pilot program. It was also necessary to convince brokerage houses to agree to participate in such a program and to individually select non-SRO institutional providers to administer cases.

In the event, seven major brokerage houses agreed to participate in the pilot program. Five of these organizations selected Judicial Arbitration and Mediation Services (JAMS) as their independent provider for the program, one chose the American Arbitration Association, and one selected both JAMS and AAA. During the two-year pilot period, each of the firms agreed to permit investors to have a choice between arbitrating in the usual SRO program(s) or going to the independent provider's program. Six of these firms agreed to permit at least 15 cases to proceed all the way to an award in a non-SRO forum, the seventh agreed to permit 10 to proceed to award.

SICA, the NASD and the New York Stock Exchange made efforts to publicize the program and the rules for participation by investors. Procedures were established for routinely notifying claimants of the availability of the program in qualified cases. On January 24, 2000, the program was officially implemented.

At the time of implementation of the program, we were aware of the possibility that the program might not see a lot of cases. First of all, practical considerations led to a number of limitations on the kinds of cases that would be eligible for the program. For example, we elected not to permit participation by investors without counsel. Also, where individual brokers were named respondents along with a brokerage firm, the individual respondents' consent would be required before the case could be submitted to the non-SRO pilot program. Finally, and most significantly, we recognized that while the costs of SRO arbitrations are heavily subsidized by the industry, the costs of non-SRO arbitration would not be. Therefore, investors would be required to pay charges at or close to those normally charged by independent providers for arbitrators and administrative services.

The Program in Operation

In the months since the program was instituted not one case has thus far proceeded to arbitration at a non-SRO forum under the pilot program. As of October 31, 2000, Robert Clemente of the NYSE reported that of 92 cases filed against participating firms during the pilot period, the Exchange was informed of only six cases that qualified for the pilot. In none of these cases did the claimant elect to proceed to the non-SRO forum. During the same period, the NASD was notified of 52 eligible cases. In 20 of these cases, the NASD was informed that the customer was not interested in the pilot program; in 23 cases, the customer did not respond when notified of the pilot program. Eight cases are still pending. In only one case was there an agreement to use the non-SRO (JAMS) program, but the matter was apparently settled before being administered by JAMS.

Katsoris Survey

In an effort to determine why eligible parties elected not to participate in the pilot program, Fordham University law professor Constantine Katsoris, Public Member Emeritus of SICA, was charged with obtaining confidential information from those parties or their counsel. He furnished counsel with a survey form, along with a self-addressed, postage-paid envelope. Thus far, only four responses have been received, all from attorneys. Three of the four indicated that they had received sufficient information about the program, while one would have liked to have more information on the non-SRO program and the pool of arbitrators.

Asked why they elected not to use the pilot program, two of the responding counsel indicated that they were satisfied with the SRO forum (in both cases, the arbitration program of the New York Stock Exchange). Yet another indicated the case was a relatively simple one, and using the pilot procedure "would have meant delay and unnecessary complication." The fourth attorney expressed general dissatisfaction with

arbitration and wanted to go to court (although it is unclear whether this actually happened.)

One responding attorney indicated that he "wanted to wait for a large and complex case" before using the pilot program. Another was waiting for the alternate forums to develop "more of a track record."

Although the survey data are sparse anecdotal evidence and comments from members of the plaintiff's bar reinforce the impression that the primary reasons for non-participation in the pilot program are:

(1) the relatively greater cost of arbitrating in unsubsidized non-SRO programs, including higher arbitrator fees and administrative fees;
(2) the relative lack of familiarity of members of the investor's bar with non-SRO programs, and the absence of a "track record";
(3) a level of comfort among some members of the investors' bar with SRO-sponsored arbitration programs.

There have been suggestions that some might deem it appropriate to use the program in cases involving large sums and complex issues, but thus far this has not happened.

As chair of SICA, let me reiterate our commitment to improve the arbitration process and safeguard the interests of the investing public. We welcome your continuing input regarding the pilot program and other initiatives, and will be happy to discuss these issues with you or Congressmen Dingell and Markey.

Sincerely,

Thomas J. Stipanowich
William L. Matthews Professor of Law
University of Kentucky
Chair, SICA

From: LoveR
Sent: Thursday, January 25, 2001 10:01 AM
To: WyderkoS
Cc: WalshG; JensonP; McGuireC
Subject: Re[2]: SICA results -- important to read (after UK ok)

Thank you for the offer. I expect it would make sense for you two to meet with Caite, Paula and me to figure out how we could work together on this. I will be out of the country on travel the next two weeks, and Caite is on travel this week, and other than Monday in also on business in Europe next week (different locale). Why don't we pick up the week of February 12th. If you are interested in the interim, either stop by by tomorrow to copy my code (sorry, I've no support staff that would actually help accomplish this) or ask Robert Clemente to send it to you (he wants congratulations, not reality about how much remains to do). Thanks again. Robert

Reply Separator

Subject: RE: SICA results -- important to read (after UK ok)
Author: WyderkoS at EST
Date: 01/25/2001 8:19 AM

Robert --

Thanks for the updates. We'll distribute the new pamphlets. Re: the plain English staffing issue, can OIEA help by providing staff?

Susan

-----Original Message-----
From: LoveR
Sent: Wednesday, January 24, 2001 7:12 PM
To: WyderkoS; McGuireC; JensonP; BusseyB
Cc: CorcoranJ
Subject: SICA results -- important to read (after UK ok)

Here's a summary of the significant SICA items in chronological, not importance order.

SICA Pilot: SICA's questionnaire to counsel/parties asking why they determined not to use the pilot asserts that it is confidential. The information is compiled by Professor Katsoris. I asked what the confidentiality meant, and what information gleaned from the questionnaires I could use in response to any further inquiries from the Hill. Similarly, SICA is weighing what reference to this data (as opposed to the identity of the responders in those cases where that person is identified) it should make in the next SICA report (there are some responses indicating satisfaction with the SROs). After tedious debate on how to characterize the replies (with the SROs wanting them to be a proxy for widespread joy with the process, and public member Ted Eppenstein asserting that he was privy to secret information indicating great woe with the process), I suggested that someone draft a short, flat report that doesn't say too much, and give others an opportunity to edit. They are even now circulating by e-mail revised versions of the confidentiality sentence. As for the pilot itself, there are rumoured citings of a couple of cases, with unclear status or case stage. There also may be a glitch in statistics -- the SROs think they've had x number of cases that qualified for the pilot, while the SIA's Amal Aly said that the data

provided to her by the SIA suggests that 2x cases qualify. They intend to sort that out.

New Procedures Pamphlet and Arbitrators' Manual: The revised documents were approved, and will be printed by the NASD. I've asked that the NYSE or NASD contact Susan Wyderko in order to provide her with an appropriate electronic format or paper supply of the updated procedures pamphlet which OIEA distributes to investors.

Plain English Code: SICA adopted the Plain English version of its Uniform Code of Arbitration as its own, replacing the former code. In its next public report, SICA will publish both versions side by side, allowing readers to compare, and if they want, to comment. But any comments would only provoke possible revisions to the new code. The new one is not out for comment before adoption.

The Division must decide how to staff this. The NYSE intends to adopt the Plain English version. It has sent the code to its legal advisory committee; then it will go to its public policy committee. Jim Buck thinks that after a four to six months cycle, they should be close to preparing a rule filing. I clearly advised them that I have not read more than a few small portions of the code, and have no view on the success of the composite. I told them our little office has lost 6 attorneys in 4 months in addition to others over a longer time frame, and that there has been no one to assign this to who realistically could do it. I asked Jim to have patience with us, and more important, to work with as he gets closer so that we are well coordiated.

Subpoena: There was a very productive discussion of issued raised by the draft subpoena rule that was before the conference. In very short hand, it concerns who can issue subpoenas, to whom, when, with approval by whom, and when is it returnable (very significant difference in returnable to counsel or to panel at hearing). There is an issue of the interplay with state law; I think the agreements can supplant state law. Steve Sneeringer reminded the group that he thought concerns about state law were holding up another filing (unsaid, punitive damages). There also is an issue of whether revisions could inadvertantly expand attorney issued subpoenas where not now permitted. There are timing issues. Cella asked for training. Stipano called for real state law examples to help shape this. I've asked to be included in the notices for working group meetings (with the proviso that the likelihood of my being able to participate is very low).

Arbitrator classification and disqualification: PIABA came in with a proposal to alter disqualification standards to permanently ban from the pool (for all cases, not just discrimination cases) arbitrators with adverse findings in discrimination cases. It's at about 7 years now at the NASD. Buck noted that corporate officers are often routinely named in matters with no personal involvement; Feinberg noted that agency heads are similarly named (and litigation named after them) also without direct involvement; we noted that those same persons make decisions to litigate the allegations and accordingly may not be attractive to the parties. This hasn't been resolved, and will be considered more fully within SICA's discussion of arbitrator classification that it will take up in the March meeting. PIABA failed to make a timely submission of materials for this past meeting concerning arbitrator classification as it had undertaken to do at teh November meeting in San Antonio. It provided some materials at the last minute, but did not provide the examples of real arbitrators that raised the concerns as they promised to do. They've simply opened the abstract conceptual discussion of who should serve, and with what hat. As you will recall, this ties in to the issue of single arbitrator usage, industry concerns over expertise, and proposals to eliminate classifications and go to "neutrals" (which I suspect PIABA would resist). CM I've sent you separately a proposal raised by the NYSE's

Jim Buck for another way on classification that we should discuss. I've alerted Jim to our respective travel schedules and availablility to discuss the matter.

Digitizing: The NYSE and NASD are moving forward to collect and digitize the minutes.

Interest on Award payments: Henry Minnerop of Brown Wood asked of the interest on award provision applied to awards of attorneys fees. The NASD made it clear that it unambiguously did. Dubow advised the group that Minnerop had the question in his role as an arbitrator, not counsel, and that he, Dubow, had been asked the question and that he had advised Minnerop to write.

Online: There was a general discussion of future use of online media for the dispute resolution process, as opposed to addressing online trading issues that may arise in arbitration. NASD's George Friedman will make a presentation on its new computer system in March.

Katsoris and Stipanowich raised again the idea of having a web page for SICA. Many of us reminded them that maintaining such a site is important, difficult, and expensive. Who would do it? The chief desire seemed to be for advertisement. After an annoying exchange, this was put on hold.

ABA meetings of the Task Force on Electronic Commerce are taking place on January 27 and February 17. They are open meetings, and will include discussion of electronic litigation. If you want to go call Paul Dubow for more information.

Dubow noted that there was yet another non attorney representative battle flaring up in California. We are not following.

Note: Dubow has retired from Morgan Stanley Dean Witter and is a consultant to the SIA.

NASD noted the approval of its rule proposal allowing it remove sitting arbitrators; there was an internal NASD disconnect on its effective date that it is resolving. This was subject of a separate earlier e-mail to CM. No concerns.

NASD gave only the briefest of presentations of its rule that would allow investors access to court in cases against a defunct broker-dealer. I expanded in order to advised the exchanges of the need to protect themselves. After the meeting, I asked Nancy Nielson, the secretary, to please make certain she looked at and understood the rule and possible implications for the exchanges so that the minutes reflect this, and help them protect themselves with similar filings if they feel exposed.

Stipanowich noted the publication of a new great book (he edited it) that is available through the ABA.

Next meetings are: Weds. March 21 (last day of Orlando SIA meeting); Monday June 18th (San Francisco); Tuesday October 16 (Amelia Island, to correspond with PIABA). RAL

From: Friedman, George [George.Friedman@NASD.com]
Sent: Friday, June 14, 2002 2:47 PM
To: Aly Amal (E-mail); Angelo Evangelou (E-mail); Brown Jeffrey (E-mail); Buck James (E-mail); Cain Cindy (E-mail); Catherine McGuire Esq. (E-mail); David P. Van Wagner (E-mail); Eppenstein Ted (E-mail); Fienberg, Linda; Grady Tom (E-mail); Helene McGee (E-mail); Jenson Paula (E-mail); Johnson India (E-mail); Laura Pruitt Esq. (E-mail); Liberti Daniel (E-mail); Mary Ann Gadziala Esq. (E-mail); Nancy Nielsen (E-mail); Paul Dubow (E-mail); Peter R. Cella Esq. (E-mail); Philip J. Hoblin Jr. Esq. (E-mail); Phillippay, Wendy; Robert A. Love Esq. (E-mail); Robert S. Clemente Esq. (E-mail); 'S. Sneeringer' (E-mail); Tom Stipanowich (E-mail)
Subject: FW: DRAFT FINAL REPORT ON SICA PILOT

Attachments: SICA Pilot Report Redline (FINAL 6-7-2002).doc

SICA Pilot Report Redline (FIN...

Let's try it again, this time with the attachment!
<<SICA Pilot Report Redline (FINAL 6-7-2002).doc>>

> -----Original Message-----
> From: Friedman, George
> Sent: Friday, June 14, 2002 2:44 PM
> To: Aly Amal (E-mail); Angelo Evangelou (E-mail); Brown Jeffrey
> (E-mail); Buck James (E-mail); Cain Cindy (E-mail); Catherine McGuire Esq.
> (E-mail); David P. Van Wagner (E-mail); Eppenstein Ted (E-mail);
> Fienberg, Linda; Grady Tom (E-mail); Helene McGee (E-mail); Jenson
> Paula (E-mail); Johnson India (E-mail); Laura Pruitt Esq. (E-mail);
> Liberti Daniel (E-mail); Mary Ann Gadziala Esq. (E-mail); Nancy
> Nielsen (E-mail); Paul Dubow (E-mail); Peter R. Cella Esq. (E-mail); Philip J Hoblin Jr. Esq.
> (E-mail); Phillippay, Wendy; Robert A. Love Esq. (E-mail); Robert S.
> Clemente Esq. (E-mail); 'S. Sneeringer' (E-mail); Tom Stipanowich (E-mail)
> Subject: DRAFT FINAL REPORT ON SICA PILOT
>
> At the last SICA meeting, I agreed to provide a redline version of the
> Final SICA Pilot Project report. The changes are those developed at
> the SICA meeting.
>
> Please provide any additional comments or edits to GUS KATSORIS no
> later than June 30th, after which the report will be finalized and published.

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.

Deleted: , in cooperation with A.G. Edwards, Merrill Lynch, Morgan Stanley Dean Witter, Paine Webber, Prudential Securities, Salomon Smith Barney and Raymond James,

Deleted: where permitted

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.