

Minutes of the
June 18, 2001 Meeting of the
Securities Industry Conference on Arbitration
San Francisco, CA

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
Thomas J. Stipanowich

Invitees Present

Nancy Appel, SEC*
Florence Harmon, SEC*
Paula Jenson, SEC
Constantine Katsoris, Public Member Emeritus*
Seth Lipner, PIABA**
Helene McGee, SEC*
Catherine McGuire, SEC*
Ken Meister, SIA*
Stephen G. Sneeringer, SIA
Catherine Zinn, JAMS

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on June 18, 2001 at 12:15 p.m., Professor Stipanowich presiding.

Approval of Minutes (Tab 1)

Upon a motion duly made and seconded, the Conference unanimously approved the March 21, 2001 meeting minutes, as amended. (Attachment A)

SICA Non-SRO Pilot (Tab 2)

The SROs updated the Conference on the statistics regarding Non-SRO Pilot cases. (Tab 2) Based upon the statistics as of April 30, 2001, there have been 111 cases filed at either the NASD-DR or NYSE that were reported by the firms as eligible for the pilot program, 3 of which are proceeding under the pilot. (If NASD-DR data for May is included in the statistics, 127 eligible cases have been filed, with 4 cases proceeding under the pilot.)

Ms. Zinn reported that 7 pilot cases have been filed with JAMS, 5 of which were filed within the last 6 weeks. JAMS receives 10-15 telephone inquiries per month (primarily from California, New York and Washington, DC) and 30 hits per month on its Internet site. Ms. Zinn indicated that the cases generally involve claims over \$250,000 and attorneys who are known to JAMS.

* Via Teleconference

** Mr. Lipner joined the Conference for the discussion on Arbitrator Classification.

The Conference discussed:

- ?? that there is no way to track whether firms follow-up with named registered representatives to determine their willingness to proceed under the pilot program.
- ?? that there appears to be a backlog of cases on which the firms have not responded to the SROs regarding eligibility.

Ms. Aly will bring these issues to the July SIA Arbitration Committee meeting, including the suggestion that firms develop some uniformity for reporting data with respect to pilot eligibility.

Mr. Lipner, who joined the Conference for discussion of the PIABA proposal with respect to arbitrator classification, indicated that the arbitrator panel composition for the pilot is not sufficiently different from SRO panels to encourage participation in the pilot and that the differences between the alternative and SRO programs do not justify the increased costs under the pilot. He also noted that people tend to choose the program with which they are familiar.

At the October meeting, SICA will consider how to measure the pilot's effectiveness when the program sunsets on January 23, 2002. JAMS and AAA will be asked to present an overview of their experiences with the program at the spring 2002 SICA meeting.

Arbitrator Classification (Tab 3)

Mr. Clemente referred SICA to his May 23, 2001 memorandum regarding the subcommittee's (Messrs. Clemente, Dubow, Friedman and Eppenstein) discussion of PIABA's proposal to amend UCA Section 16, Determining the Number and Type of Arbitrators. (Tab 3) He reported that the subcommittee did not arrive at a consensus on the majority of the proposals.

Mr. Lipner presented PIABA's proposal to amend the UCA's arbitrator classification criteria, indicating that the proposal addresses three areas in which the classification criteria allow arbitrators to serve in the public pool who ought to be designated as industry arbitrators:

- (1) Registered investment advisors are too close to the industry to qualify as public arbitrators.

NASD-DR has not adopted the UCA's optional classification of investment advisors as industry arbitrators. PIABA has presented this issue to the NASD-DR. SICA agreed this issue is a NASD-DR issue, rather than a SICA issue.
- (2) The look-back period for individuals who have been associated with the securities industry ought to be 5, rather than 3 years, together with any consecutive 5-year period in the past 15 years.

It was the sense of the Conference to amend the affiliation look-back period and the method of determining those who have "spent a substantial part of their career in the securities industry." To facilitate the administration of arbitrator pool maintenance, SICA discussed alternate objective measures to determine industry affiliations that would limit

an individual's classification as a public arbitrator, including 7 years out of the industry with no look back, and an "x" number of years (e.g., 15-20) in the industry.

SICA also considered a proposal that an "x" number of years out of the industry would disqualify an individual from serving as an industry arbitrator, because of that individual's lack of current industry expertise. An individual would become "non-appointable" if s/he meets the industry affiliation criteria and the "years away from the industry" criteria.

The Conference referred the above proposals to the subcommittee to draft language to define a "substantial part of a career", extend the time period for recent industry affiliation, and to exclude from the industry pool those who have been out of the industry for a certain period of time.

- (3) Individuals who derive a regular income from industry clients, such as partners in a law firm that defends securities industry clients or family members supported by income derived from professional work on behalf of the securities industry, should not be classified as public arbitrators.

The Conference tabled this proposal.

Arbitrator Disqualification (Tab 4)

Mr. Friedman summarized the report of the subcommittee (Messrs. Clemente and Friedman) appointed to recommend changes to the SICA approved arbitrator disqualification criteria upon a finding of sexual harassment or discrimination. (Tab 4) Consistent with SICA's discussion at the March meeting, the subcommittee proposed retaining temporary disqualification based on a finding of indirect involvement in sexual harassment or discrimination, with elimination of the current \$25,000 qualifier, and adopting permanent disqualification criteria based on a finding of direct engagement in sexual harassment or discrimination within the last seven years.

Upon further discussion, SICA determined to eliminate the temporary disqualification criteria for indirect involvement and to adopt permanent disqualification criteria based on a finding of direct involvement in sexual harassment or discrimination at any time. As amended, the permanent disqualification criteria read:

Arbitrator is the subject of, or is a party to, a final, adverse regulatory decision or court decision or arbitration award involving any discrimination claims, including sexual harassment, in which the arbitrator was directly found to have engaged in sexual harassment or discrimination.

SICA 11th Report – Final Draft (Tab 5)

Mr. Clemente presented the final draft of the SICA 11th Report and summarized certain proposed editorial amendments. (Tab 5) SICA approved the report, as amended, and thanked Mr. Clemente for his efforts preparing the report. Mr. Clemente will provide final electronic versions of the report to SICA members for posting on Internet sites and will arrange for a limited printing and distribution of hardcopies to SICA members, emeritus public members, and the SEC.

Fitzpatrick/Beckley Workshop – Status Report

Mr. Clemente reported on the status of the arbitrator training and advocacy subgroups, indicating that both groups are working on vignettes. PIABA is expected to make a proposal with respect to arbitrator training. Messrs. Clemente, Friedman and Stipanowich will confer regarding presentations for the PIABA meeting (October 17, 2001) and the 2002 SIA meeting (March 10-13, 2002).

SICA Publications – Status Report

Electronic versions of the *Arbitrator's Manual* and *Arbitration Procedures* have been posted to the NASD-DR and NYSE Internet sites. Hardcopies are available from the NASD-DR.

Digitizing Past SICA Minutes – Status Report

Mr. Friedman reported that CDs were provided to SICA members in May, 2001. NASD-DR will prepare annual updates following the approval of the minutes for the last meeting each year. Mr. Clemente stated that the NYSE would continue to maintain a complete set of agendas.

New Business

Ms. Nielsen presented CBOE's proposed rule filing to retain disciplinary jurisdiction over former members who fail to pay arbitration awards.

Mr. Clemente distributed information about an on-line automated complaint management system, Online Disputes Inc.

Future Meeting Schedule

- ?? October 17, 2001 (8:30 a.m.) in conjunction with the PIABA Annual Meeting in Amelia Island, Florida.
- ?? January 2002 hosted by the NASD-DR on a date to be determined.
- ?? March 10-13, 2002 in conjunction with the SIA Conference.

There being no further business, the Conference adjourned at 3:10 p.m.

/s/ Nancy Nielsen
Secretary

Attachment: A. Approved Minutes of the March 21, 2001 SICA Meeting