

Minutes of the
June 7, 2002 Meeting of the
Securities Industry Conference on Arbitration
NASD Dispute Resolution, New York, NY

Members Present

Amal Aly, SIA
Joan Clark, PCX
Robert S. Clemente, NYSE
Theodore G. Eppenstein, Public Member
Angelo Evangelou, CBOE*
George H. Friedman, NASD Dispute Resolution
Nancy Nielsen, CBOE*
Stephen G. Sneeringer, SIA

Invitees Present

Heather Cook, NFA
Barbara Brady, NASD Dispute Resolution
India Johnson, AAA
Constantine Katsoris, Public Member Emeritus
Robert Love, SEC
Helene McGee, SEC*
Rose Seeman, NASD Dispute Resolution (Recording Secretary pro tem)

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on June 7, 2002 at 8:43 a.m., Professor Katsoris presiding in place of Professor Stipanowich.

Approval of Minutes (Tab 1)

Upon a motion duly made and seconded, the Conference unanimously approved the March 11, 2002 meeting minutes, as amended. (Attachment A)

SICA Non-SRO Pilot Program Final Report (Tab 2)

Professor Katsoris presented the final report on the SRO Pilot Program. After discussion, the report was approved unanimously, with some amendments. (Attachment B).

Result: Mr. Friedman agreed to send to members via e-mail a redline version showing the approved changes. Members will have ten days to provide editorial suggestions to Professor Katsoris. Once the Report is in final form, it will be sent by Chairman Stipanowich to the SEC, participating firms, JAMS and AAA and PIABA. It will not be posted on member websites but will be made available upon request.

Replacement of Tom Grady (Tab 3)

Result: Tabled until the October SICA meeting.

Arbitrator Classification (Tab 4)

Stephen Sneeringer and Ted Eppenstein presented their proposed refinement of arbitrator classification in the Uniform Code of Arbitration, section 16. The Conference approved the changes to c(1), c(2), c(3) and d(2).

* Via Teleconference

There was a discussion about item c(4) that states that an arbitrator should be classified as being with the securities industry if he or she is “an attorney, accountant, or other professional who within the last two years devoted 20 percent or more time to securities industry clients, such as broker/dealers or registered representatives.” Ted Eppenstein raised the issue of how the SROs determine what the criterion is for determining what represents 20 percent of the arbitrator’s time. There was some discussion about whether we should change “20 percent or more *time...*” to “20 percent or more *revenue...*” Barbara Brady suggested that there be a separate category for arbitrators who receive some revenue from the securities industry but don’t have any insider knowledge. Amal Aly expressed concern that these changes not result in our panels could be under qualified to preside over securities cases.

Result: Sections c(1), c(2), c(3) and d(2) were approved. Section c(4) is to be reworked by a small task group consisting of Aly, Brady, Sneeringer and Eppenstein. A draft will be circulated by on or about June 30, and will be voted on at the October meeting.

California Legislation Update (Tab 5)

Mr. Clemente delivered a status report on legislative activities in California pertaining to arbitration. The SROs will be going to Sacramento the week of June 10th to attempt to get an exemption from the statute. There was a discussion about what role the SEC should take in this matter.

Update on CitiBar Direct Communication Proposal (Tab 6)

Ted Eppenstein and Stephen Sneeringer presented their update on the CitiBar Direct Communication proposal, and handed out draft language for review. Mr. Eppenstein stated that many arbitrators liked being able to communicate with parties directly without using staff as the middleman. Mr. Friedman said that NASD Dispute Resolution was currently conducting a direct communication pilot in its Chicago region. The one-year pilot will end June 30th. So far, 40 percent of the eligible parties have agreed to participate. Mr. Friedman also cited the planned new MATRICS computer system as a tool that should enable parties and arbitrators to communicate more directly with one another online. Some concerns were raised about a possible lack of oversight, but the general consensus was support for some sort of voluntary direct communication rule in the Uniform Code.

Result: Mr. Sneeringer will circulate his draft rule language to the SICA membership, for discussion at the October SICA meeting.

Fitzpatrick/Beckley Workshops (Tab 7)

Mr. Clemente gave a status report of the Fitzpatrick/Beckley workshops. The script for the planned training video is now set. The cast is now assembled and the taping is scheduled to take place during the second week of July.

Rule Filings Status (Tab 8)

Mr. Friedman reviewed a written report on various NASD Dispute Resolution rule filings.

Public Citizen Report on the Cost of Arbitration (Tab 9)

Result: Tabled until the October SICA meeting.

New Business (Tab 10)

- ?? Linda Fienberg will discuss securities arbitration with Phil Aidikoff and Ike Sorkin and one other guest on CNBC on July 4th.
- ?? Mr. Friedman stated that NASD is announcing a corporate restructuring today. With the NASDAQ spin-off essentially completed (awaiting SEC approval of exchange status for NASDAQ) NASD is returning to its regulatory roots. The various subsidiaries are being consolidated. There will be three operating divisions, each with a president: Regulatory Policy and Oversight, headed by Mary Schapiro (who was named a Vice Chairman of NASD), Regulatory Services and Operations, headed by Douglas Shulman, and Dispute Resolution, headed by Linda Fienberg. The National Arbitration and Mediation Committee will continue to function as before.
- ?? The group endorsed a proposal to have the current version of the Uniform Code in each SICA meeting kit.

Articles of Interest (Tab 11)

Mr. Friedman recommended that the members review the items in the “Articles of Interest” tab, especially: 1) the NASD’s statistics on arbitrator web use; and 2) the Global Research Institute’s report on whether arbitrators “split the baby in half” in deciding arbitration cases.

Future Meetings (Tab 12)

Professor Katsoris confirmed that the next SICA meeting is scheduled for October 2, 2002 at Colorado Springs, in conjunction with the PIABA Annual Meeting. Mr. Clemente urged those planning to attend to make their reservations quickly. The first meeting in 2003 will take place on January 13th, at NYSE. The alternate site is Fordham Law School (if security considerations preclude NYSE as a meeting location). NASD Dispute Resolution cannot be a backup site, since it will be preparing at that time to relocate from Broad Street to Liberty Plaza. The Spring 2003 meeting will be April 6, 7, 8, or 9 at Orlando, in conjunction with the SIA Legal and Compliance Annual Meeting. The specific date is not yet set.

There being no further business, the Conference adjourned at 11:47 a.m.

/s/ George H. Friedman
Acting Secretary

Attachment: A. Approved Minutes of the March 11, 2002 SICA Meeting
B. Final Report on SICA Non-SRO Pilot Program