Amended and approved January 13, 2003

Minutes of the
October 2, 2002 Meeting of the
Securities Industry Conference on Arbitration
Colorado Springs, Colorado

Members Present
Joan Clark – Pacific Exchange
Robert S. Clemente, NYSE
Ted Eppenstein, Public Member
Linda Fienberg, NASD
Jim Flynn, CBOE
George Friedman, NASD
Tom Grady, Public Member
Joanne Moffic-Silver, CBOE
Nancy Nielson, CBOE
Steve Sneeringer, SIA
Tom Stipanowich, Public Member and Chair

Invitees Present
Heather Cook, NFA
Joel Corcoran – SEC
India Johnson, AAA
Robert Love – SEC
Helene McGee – SEC
Catherine McGuire – SEC

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on October 2, 2002 at 8:30 am, Tom Stipanowich, Chair, presiding.

Approval of Minutes

Upon a motion duly made and seconded, the Conference unanimously approved the June 7, 2002 meeting minutes, as submitted. (Attachment A)

Upon a motion duly made and seconded, the Conference unanimously approved further amendments to the March 11, 2002 meeting minutes. (Attachment B)

2. SICA Non-SRO Pilot Program Status

After a brief discussion it was requested that the final report be sent to the SEC and program participants. Mr. Stipanowich promised to send the report out.

3. Nomination of New Public Member; Statements of Mr. Grady and Ms. Nielson

Mr. Stipanowich reported on the process by which the public members selected a replacement for Tom Grady as one of the three sitting public members of SICA. He indicated that the members invited PIABA, SAC, and NASAA to encourage anyone interested in the position of public member to contact us. This solicitation generated a number of nominations and expressions of interest.

After due consideration, the Public Members selected Professor Constantine Katsoris, a founding Public Member, to replace Mr. Grady. Mssrs. Grady, Eppenstein and Stipanowich enumerated several reasons for the selection, including Professor Katsoris' long and unrelenting devotion to SICA and its ideals, the importance of strong academic participation, his even-handedness in policy deliberations, and his ability and willingness to undertake the role of Chair in 2003. The Public Members' choice received a strong showing of support from the entire membership.

During a brief discussion of future Public Member selections, Mr. Grady urged the Public Members to remember the important role of investor advocates in SICA. Mr. Sneeringer asked the Members to keep in mind the importance of geographic diversity.

A resolution by Ms. Fienberg expressing appreciation for Tom Grady's efforts as a Public Member was seconded by Mr. Clemente and adopted by acclamation. Mr. Grady offered brief comments, expressing the view that it is critical time for arbitration, although the urgency is far less apparent in post-Ruder days when we had a better-described agenda. He urged SICA to continue to address issues such as motion practice and discovery abuse in arbitration, keeping in mind that arbitration should be kept as speedy, inexpensive, and fair as possible. He concluded by saying that "Arbitration is a good thing, and search for fair arbitration presents us with challenges."

Mr. Stipanowich expressed SICA's appreciation for the participation of Nancy Nielson as CBOE representative and SICA secretary. Ms. Nielson reiterated Mr. Grady's remark regarding the importance of making the arbitration process fair for all parties. She also urged SICA members to act in the recognition that an arbitration tribunal is not a court of law, but a less formal body. She also encouraged emphasis on motion practice, discovery.

4. Proposal to Amend UCA Section 16(c) Arbitrator Classification

It was agreed to table discussion of UCA Section 16(c) pending the arrival of PIABA representatives.

5. Proposal to Amend UCA Section 15

Mr. Clemente initiated discussion of this non-substantive rule change limiting the requirement that parties file copies of all discovery requests and objections with the Director of Arbitration to those situations where the Director is requested to "refer the matter to either a pre-hearing conference or to a selected arbitrator." (Attachment C) Ms. McGee expressed the concern that the SEC preferred from the inspection standpoint to have a complete record in one place, but understood the problem of multiple copies. Mr. Grady pointed out that the rule would bring the UCA into line with the approach of the Federal Rules.

Mr. Friedman's motion in favor of the change was seconded by Mr. Grady, and was unanimously approved. Mr. Clemente will provide an updated Uniform Code at the January meeting.

6. Fitzpatrick/Beckley Workshop

Mr. Clemente reported that the arbitrator training video had been completed and would be viewed at lunch.

7. CitiBar Proposal on Joint Administration

Mr. Sneeringer reported on a proposal to change UCA Section 23 to codify the ability of the parties to agree to joint administration of claims and permitting direct communications between the parties and the arbitrator. Mr. Sneeringer moved to adopt the proposal, seconded by Mr. Eppenstein.

Mr. Grady expressed support of the concept of allowing parties to fashion proceedings as they agree. However, he objects strongly to adoption and use of the concept of motion practice in uniform code. Mr. Grady also expressed an objection to the part of the proposal giving the arbitrator discretion on whether there is a recording of conference.

Mr. Sneeringer agreed to amend the proposal by withdrawing arbitrator discretion on recording conference. He expressed his view that deleting reference to "motions" is form over substance, but that leaving it in opens up issue of motion practice which could lead to more, not less, motions including dispositive motions. The proposal was further amended by deleting "including information requests" from section (d)(1). Tie vote. Tabled until Mr. Stipanowich returned.

Ms. Fienberg indicated that the Commission indicated that it favored the development of rules to address procedural issues. Ms. McGuire noted that the definition of rule 19b,to extent that an SRO wants to change procedures it needs to file the proposal in accordance with Rule 19b.

Mr. Clemente objected to the proposal noting that putting the onus on the arbitrators to administer process that the SROs are getting paid for is inappropriate.

Mr. Sneeringer observed that parties do not have to agree to this process, but codifying it gives notice to parties that they could do this. Mr. Clemente noted that this take administrators out of the loop, and prevents us from performing our oversight responsibilities. Mr. Eppenstein noted that this is intended to help parties by cutting an unnecessary third party (SRO administrator) out of the loop.

Vote is 4-3 in favor of modified proposal. Mr. Clemente will provide an updated Uniform Code at the January meeting.

8. Proposal to Ban Secret Settlements

Ted Eppenstein briefly discussed recent efforts to address concerns regarding secret settlements, and recent news items. He described a Michigan rule under which settlements are to be unsealed after two years**, and a report that all ten South Carolina federal judges unanimously voted to ban secret settlements, as noted in the document**. Mr. Eppenstein expressed the concern that money buys confidentiality of fraudulent practices, bad offices **and bad brokers**, cover-ups, secretion of financial schemes. He suggested that SICA consider a provision prohibiting confidential treatment of expungements, etc. through settlement.

Ms. Fienberg and Mr. Friedman explained that expungements will be addressed by a separate rule filing by the NASD. The proposal was approved by the NASD board with the hope of getting the matter before the SEC this year. There will be extensive comment to the SEC.
The notice to members captures what will be proposed. It is on the NASD website.

This issue was tabled for consideration at the January meeting.

9. Public Citizen's Report

This issue was tabled for consideration at the January meeting.

10. California Developments

Mr. Clemente and Mr. Friedman delivered a brief oral report on the situation in California. Because of the pending litigation, they could not discuss the matter in detail.

11. NASD Rule Filings

Ms. Fienberg reported that in November, NASD will be going back to the Commission subject to Board approval and seek to unbundle the current filings, i.e., the proposal on eligibility will be severed from punitive damages rule. The proposed eligibility rule filing now pending at the SEC will probably be withdrawn, and replaced with one allowing a party to move for dismissal on statute of limitations grounds. There would be also be a provision for the parties to be heard on arbitrability issues by the arbitrators. Ms. Fienberg cautioned that the situation is fluid, and subject to change based on the Supreme Court's eventual decision in *Howsam v. DeanWitter.*. She also reported that NASD staff will recommend to NASD Board that the punitive damages rule be withdrawn. The next NASD Board meeting is in November.

Joint Discussion with PIABA Members

At 10:30 am, a number of PIABA representatives joined the SICA meeting to discuss matters of common interest. Participating PIABA Members included: Phil Aidikoff, Pat Sadler, Scott Bernstein, Joel Goodman, Rosemary Shockman, Alan Fedor, Seth Lipner, Chuck Austin, Bob Banks, and Tom Mason.

4. Arbitrator Classification (continued)

Mr. Sneeringer started the discussion by summarizing SICA's efforts to reform arbitrator classifications to expand the range of individuals under the rubric of industry arbitrator, and noted further changes under consideration at Tab 4 of the meeting materials.

Ms. Shockman congratulated SICA on developments to date. She also noted that one problem she has experienced is lists of arbitrators where as many as three on the list have industry backgrounds but are officially classified as "public" under the current definition contained in the SRO Codes of Arbitration. Mr. Fedor expressed the same concern. Mr. Sneeringer suggested that industry people are not necessarily sympathetic to industry parties, but Ms. Shockman responded that the issue is one of perception (a point reinforced by Mr. Sadler).

Mr. Lipner and Mr. Sadler also expressed support for the efforts SICA was making.

There was further discussion about particular elements of the NASD rule.

Expediting Procedures for Elderly Clients

Mr. Aidikoff expressed concern about the need to expedite arbitration proceedings for very elderly or terminally ill clients. He pointed to certain state procedural rules that might offer simple models to adopt, such as a California provision that sets specific limits on a trial date and sets other specific guidelines for administrative action.

Mr. Friedman explained that an NASD subcommittee had considered the issue and recommended not a rule change, but a change in training for staff, recognizing that staff has some discretion. The NAMC is still considering whether to recommend a specific rule.
Ms. Fienberg suggested that one approach might be to assign such determinations to a single public arbitrator. Mr. Grady added that it might be interesting to have a fast track single arbitrator pilot program. Ms. Fienberg responded that NASD tried that in a two-year pilot program recently, but got only a few takers in almost 300 cases. She suggested that if a further pilot project was to be done, it should focus on ill and old clients.

Mr. Lipner noted that there is also a training issue here. He suggested that the problem with expedition is that arbitrators are not tough enough with both sides.

Mr. Clemente reported that the NYSE has handled issues of this kind on an informal basis for many years.

Ms. Fienberg added that if we have standards, we would want standards **approved by the SEC**.

Mr. Stipanowich indicated that SICA will put this on agenda at next meeting.

Mr. Aidikoff promised to provide SICA with examples of statutory models.

SICA asked PIABA representatives to draft a proposal for consideration at the next meeting

Subpoenas

Tom Grady began the discussion by expressing concern regarding ex parte securing of subpoenas. He summarized his prior unsuccessful efforts to get feedback from interested parties, and was pleased to see that PIABA was raising this issue. He requested the attendees to provide specific examples of problems with subpoena abuse.

Ms. Fienberg indicated that Seth Lipner had put a specific proposal before the NAMC. Mr. Lipner explained that there are two separate issues involved. First, because there is no advance notice requirement, the subpoena goes to party by Fed Ex, and then comes to us by snail mail – too late to participate or respond. The difficulty is, the so-called street subpoena from broker to firm does seek relevant information. Mr. Lipner promised to put his proposal before NAMC, suggesting it might be good model language for consideration by SICA at the January meeting

Mandatory discovery of insurance coverage

The discussion centered on situations where a claimant may seek recovery against an insurer in cases where there is no chance of collecting on award. It was stated that arbitrators almost always deny requests to order disclosure of insurance coverage. SICA asked PIABA

representatives to draft a proposal for consideration at the January meeting.

Payment of Awards

Bob Banks expressed serious concerns about firms with no financial responsibility. He wondered why there not a need for requirement on bonding before they can do business. It was explained that GAO is doing second study on the problem, and hopefully there will be new information coming out.

George Friedman clarified that the GAO is doing an update on the 2000 study on unpaid arbitration awards. The study will probably note the changes NASD has made, going after firms that don't pay. Almost 99% of firms that do not pay are defunct. The third part of the report will note limits of arbitration process on ultimately resolving the final problem.

Mr. Eppenstein suggested that there is a potential arbitration issue here that relates to procedures during the appeal process. Mr. Austin said that defendants against whom an award has been rendered should be required to post bond when they will go to court in the first instance. Mr. Goodman added that payment should be made in some manner within limited number of days of award. Then if they want to appeal, fine. Mr. Bernstein agreed, concluding that permitting firms to sit on the money represented by an award where 99 out of 100 awards are upheld seems unfair.

Mr. Grady queried whether we were talking about a rule of conduct rather than an arbitration code issue. It was discussed that SICA might address the prohibition against seeking provisional remedies. Perhaps we should permit a party to seek provisional remedies.

It was agreed that Bob Banks and Tom Mason of PIABA will work on proposals that might be approaches to the problem, and it will be placed on the January meeting agenda.

At this point, the group adjourned for lunch and watched the videotape developed as a product of the Beckley/Fitzpatrick workshops.

At 12:40, SICA resumed discussion of the agenda.

4. Arbitrator Classification (continued)

Mr. Eppenstein identified two issues that needed to be addressed: (1) the percentage of one's practice, and whether or not it should be based on the amount of time devoted **and/or** the percentage of revenue. Also, he wondered should we not take into account other individuals at firm where a would-be arbitrator works.

Mr. Sneeringer recalled that we talked about the revenue issue, and that Robert Love had comments on this matter.

Mr. Eppenstein accepted responsibility to convene subcommittee to resolve issues and submit a revised 4(c) for discussion at the January meeting.

10. California Ethics Issues

Linda Fienberg briefly summarized current judicial developments. She also indicated that in response to Harvey Pitt's letter to Bob Glauber, the NASD filed and the SEC approved a waiver rule that provides if a customer wants to go forward with her case and waives California disclosure standards in favor of NASD rules, and customer counsel signs off too, the member must go forward in arbitration.

New Business

Chairmanship

Mr. Stipanowich nominated Mr. Katsoris to serve as chair in the coming year. Mr. Katsoris was unanimously approved the new chair.

The meeting adjourned at 1:30.

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Copies → C McGuire, H McGee, P Jensen, JM, → P Love

Public Investors Arbitration Bar Association

SECURITIES AND EXCHANGE COMMISSION
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October 21, 2002

Professor Thomas Stipanowich
President and CEO
CPR Institute for Dispute Resolution
366 Madison Avenue
New York, NY 10017

Dear Tom:

On behalf of the PIABA board, we express our thanks for the opportunity to attend a portion of the SICA meeting and to share PIABA's views on various issues.

You informed us at the meeting that Professor Gus Katsoris had been appointed to fill the public seat on SICA which is being vacated by Tom Grady. While PIABA applauds Professor Katsoris' long time efforts to champion fairness in the SRO arbitration process, we view his re-appointment with mixed emotions. The replacement of an investor advocate with an academic/neutral weakens SICA in our view. Unlike academics, attorneys who represent investors work with the code of arbitration procedure daily. Their unique perspective is vital to SICA.

Professor Katsoris himself has written extensively about the importance of public input into SICA and the relationship between the shrinking of that influence and diminishing public confidence in the SRO dispute resolution process. Certainly recent events in the marketplace and within the brokerage industry illustrate the need for the inclusion of investor advocates in the dispute resolution process.

PIABA calls upon SICA to expand its membership to increase public representation by one, and to appoint an investor advocate to that seat. It is our understanding that when Professor Katsoris first retired from SICA in 1996, his position was eliminated. Perhaps that position could be reinstituted and both Professor Katsoris and an additional investor advocate could be added.

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We thank you for your hospitality at the meeting, and we look forward to working with you in the future.

Sincerely,

J. Pat Sadler

J. Pat Sadler
President, Public Investors
Arbitration Bar Association

JPS/j

cc: Robert Love, Esq.