Approved June 8, 2004

Minutes of the
October 22, 2003 Meeting of the
Securities Industry Conference on Arbitration
Palm Desert, CA

Members Present
Robert S. Clemente, NYSE
Heather Cook – NFA
Ted Eppenstein, Public Member
Linda Fienberg, NASD
Jim Flynn, CBOE
Constantine Katsoris, Public Member and Chair
Steve Sneeringer, SIA

Members Participating by Phone
Amal Aly, SIA
Patrick DeMoon, Chicago Stock Exchange
George Friedman, NASD
Tom Stipanowich, Public Member

Invitees Participating in Person or By Phone
Catherine McGuire, SEC
Joe Corcoran, SEC
Helene McGee, SEC

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on October 22, 2003 at 8:30 am, Professor Katsoris, chair, presiding.

Review of Minutes of June 13 Meeting [Tab 1]
Corrections were proposed and unanimously approved. George Friedman was to prepare the final minutes.

Application of Roberts Rules to Voting [Tab 2]
Ted Eppenstein withdrew his proposal to apply Roberts Rules in SICA meetings, but moved to follow its procedures for recording votes. A discussion followed. Ted discussed that SICA votes during the time he has been a public member have been recited in the minutes solely by giving the number of votes for and the number of votes against a proposition. Ted expressed that members should not be able to hide behind this anonymity and that the minutes should reflect how each voted. We have to stand up and be counted.

Ted said that Robert's Rules seems to agree with this. Ted directed us to look at the materials under Tab 2 in Section 60 of the Rules. These materials speak of the duty of the Secretary which states: "When the voting is by yeas and nays he [the Secretary] should enter a list of the names of those voting on each side." Ted believes we should follow this procedure. Ted's motion was seconded by Steve Sneeringer; the motion failed to carry (2 for, 4 against; Prof. Katsoris abstained). Everyone agreed that on a particular item, a member could move for the recording of a vote. It was pointed out that some members have previously asked that their own vote be recorded.

Arbitrator Classification [Tab 3]

Amal Aly summarized the prior discussion regarding excluding certain individuals from the public pool. Some individuals stated that individuals who are in the business of representing investors should not be counted as industry arbitrators. George Friedman and Linda Fienberg discussed present proposals before the NAMC; Linda also indicated that certain changes to public definition have already been submitted to SEC, and are out for comment. After a lengthy discussion, Steve Sneeringer proposed to require that to be classified as an industry arbitrator, a professional (lawyer) would need to devote at least 50% of his or her time to representation of industry clients – an increase from the present 20% requirement. After discussion, Ted Eppenstein seconded in order to bring the matter to a vote. The vote was 1 in favor, 3 against, with 3 abstentions; Gus and Tom noted that they voted against the proposal, but would not necessarily oppose a revised proposal in the future.

Ted Eppenstein proposed that all lawyers currently litigating in the securities arena, public and industry, be prohibited from serving. This issue was referred to the classification subcommittee (Eppenstein-chair, Sneeringer, Clemente, and Barbara Brady of NASD). This will be an item for the March meeting.

Expedited Procedures for Elderly, Ill and Infirm Parties [Tab 4]

Ted Eppenstein directed people's attention to the joint proposal from the subcommittee for changes in the language of the Arbitrator's Manual. A question was raised as to whether the second paragraph should be modified to address the issue of pro se parties. Linda suggested that witness issues should be addressed in a different way – perhaps by scheduling a deposition – as opposed to putting the case on an expedited track.

SICA unanimously adopted the following modified version of the subcommittee's proposed language:

Accommodations for Ill, Infirm or Elderly Parties and Witnesses

Arbitrators have the authority to make accommodations for ill, infirm or elderly parties and witnesses. For example, hearings may be expedited; accommodations regarding the manner or scheduling of testimony may be made; and depositions of witnesses may be permitted.

It is the responsibility of the party, witness, or the attorney for the party or witness who is ill, infirm or elderly to bring the situation to the attention of the arbitrators. Once notified, every effort should be made to accommodate that party or witness.

Important to hearing efficiency and fairness, arbitrators must act quickly to prevent abuse or disruption of the process. When arbitrators are determining the reasonableness of requested postponements or adjournments, they should be mindful of the health and age of a party or key witness among the facts or circumstances under consideration.

Discussion on the subject of additional protections continued. Ms. Fienberg indicated that the NAMC had agreed to start with pilot under which arbitrators provide expedition, but might go to program for mandatory expedition in certain categories of cases, including special rules and a special roster.

Ted said that the arbitration forums need a fast track for those Claimants who are sick or elderly. He suggested that accommodations should be made at the time of filing or before filing the Statement of Claim. There should be (a) expedited pleadings; (b) expedited discovery; (c) expedited arbitration processing; and (d) expedited pre-hearing conferences scheduled among other items. Ted reviewed his letter of September 23, 2003 and the enclosures thereto, including the trial preference rule in New York State.

A Subcommittee consisting of Eppenstein, Sneeringer, Clemente and Rose Schindler (NASD) will consider these proposals and report at the January meeting.

Eligibility Rule [Tab 5]

Gus Katsoris moved to get rid of the eligibility rule, reiterating several arguments from past discussions. Steve Sneeringer responded that there are situations where it can be applied by arbitrators very clearly, as opposed to applying various statutes of limitations. Most of the time they postpone the ruling, anyway. He

argued that this is important where arbitrators lack legal expertise.

Caite McGuire indicated that the eligibility rule has strong links to the broad range of disputes that may be brought to arbitration.

Linda Fienberg suggested that new NASD rule filing will make it clear that arbitration is not election of remedies, so customers kicked out of arbitration can still go to court. She reasoned that if there was no eligibility rule, thinks defendants will look closer at S of L, and maybe customers would be hurt.

After further discussion, Gus withdrew his motion while expressing concern.

The matter was tabled until the next meeting, at which time SICA will look at current NASD proposal and discuss it.

Eppenstein Recommendations [Tab 6]

1) Changes in Panel Makeup
Ted Eppenstein summarized several recommendations set forth in his letter of Sept 23. First, there was a discussion on the subject of changes to makeup of panel. Ted Eppenstein advanced the proposal that SICA should remove the requirement that an industry arbitrator sit on every panel for customer claims.

Ted noted the potential for bias in favor of the industry. The investors should not be concerned that an industry representative has ties to the Respondent broker-dealer. Wall Street is a small street. The existence of an industry panelist adds to the concern that that panelist, when awarding large sums to investors, might face reprisals or black balling in the industry. At least there is an appearance of conflict of interest which public investors can't understand and the process appears to be a stacked deck against the investor.

Ted said that, of course, not all or even a majority of the arbitrators from the industry are conflicted, but some definitely are and we shouldn't take the risk of having them sit in customer cases.

Ted proposed that people who represent the industry should be removed from the pool and that Respondent's counsel are too embedded in defending customer claims to have an open mind and should be removed as well. Gus expressed concern about quick move away from current dual system, but would be willing to look at the concept carefully. Discussion moved to issue of single-arbitrator concept. Linda indicated that NASD is prepared to bring the concept of single-

arbitrator case back for cases.

George Friedman moved to raise the 3-arbitrator threshold to $100,000. The motion was seconded by Tom Stipanowich and carried (6 in favor, 1 abstention).

George Friedman and Bob Clemente were charged with drafting appropriate language for the Uniform Code.

2) Voluntariness in Arbitration

Ted said SICA and the SEC work to make arbitration a fair forum. Now it is time to return to the voluntary method of arbitration. The arbitration contract isn't a bargained for agreement. Customers must sign an agreement with the broker-dealer or the broker-dealer will not accept them. This is not fair since it removes the right of trial by jury and all the court's safe guards such as appeal, full discovery and the like.

Ted said The SEC for 30 years had voiced disfavor with mandatory arbitration for securities fraud cases. In 1984 the SEC adopted Rule 15 C-2-2 which prohibited broker-dealers to put in an arbitration clause without advising the customer that he has a right to go to court for statutory fraud claims. Then came the McMahon case. As we all know, the Supreme Court in a 5-4 decision ruled for the industry with the SEC's support. It is time to make amends. We should consider restoring Rule 15 C-2-2 or go to the NFA and CFTC approach requiring a separate signature line for parties to indicate consent to arbitration. Ted pointed out that the SEC had done a good deal to try to make the agreement bolder, etc. He urged SICA to try to address the issue of voluntariness.

Caite McGuire indicated that she believed that Securities Exchange Act controls here. She said that Congressional action would be necessary. She cannot recommend that the SEC go back to the old rule 15(c), pre-McMahon. Discussion concluded on that point.

3) Making Hearings Open to the Public

Ted Eppenstein recommended that the arbitration hearings should be open to the public. Bob Clemente raised concerns about the administrative and logistical problems of allowing people into hearings. Caite McGuire suggested that if the interest is to let the light in, there are better solutions, such as those relating to publication of awards. It was pointed out that "hot" cases are often reported by the media. Also, transcripts are available on demand of a party. Gus Katsoris noted concerns about disruptions of the hearing, grandstanding by counsel when an audience exists. It was stated that reporters have been allowed into hearings on

an individual basis where the parties and arbitrator agree. The discussion concluded.

Confidentiality [Tab 7]
This matter was deferred pending the PIABA discussion.

Script for Arbitrators–Review [Tab 8]
Ted Eppenstein raised his request that arbitrator hearing scripts be reviewed. Linda Fienberg indicated a willingness to have SICA look at recent scripts, suggest changes.

The NASD will provide current scripts to Ted; he will review them and propose changes for the January meeting.

Independent Research on Fairness of SRO Arbitrations [Tab 9]
George Friedman stated that the NASD is looking at proposals to do research on fairness of SRO arbitrations, and was told the California Dispute Resolution Institute had a meeting in Sacramento with various ADR providers to discuss a California survey. Bob Clemente said they are looking to a study in California of all forms of arbitration, hoping to put to rest some of the clichés that have existed about arbitration being valuable for one party only.

George raised the possibility of SICA providing input on questions for a CDRC survey. Tom agreed to advise CDRI of SICA's interest in having input in its study.

There was discussion about the desirability of a nationwide survey on consumer arbitration. Tom Stipanowich indicated that the CPR Institute and CDRI were seeking funding for such a study.

Update on Florida Out of State Attorney Ruling [Tab 10]
Linda reported on activities to date. She pointed out that the Florida Bar will be taking public comments on its proposed approach, and would publish a rule in early December. Linda also advised the group that the U.S. Supreme Court had denied Mr. Rapoport's request for certiorari.

Friedman and Clemente agreed to give a status report at the January meeting.

GAO Report on Employment Arbitration [Tab 11]
No discussion.

Update on California Situation [Tab 12]
Clemente and Friedman gave a brief status update; will provide another at the January meeting.

12th SICA Report [Tab 13]
The Report was unanimously approved.

NASD and NYSE Rule Filings [Tab 14]
No discussion; materials in kit were self-explanatory.

DISCUSSION WITH PIABA REPRESENTATIVES

PIABA attendees included:
Rosemary Shockman
Seth Lipner
Brian Smiley
Mark Maddox
Phil Aidikoff
Pat Sadler
Scott Bernstein
Bob Banks

1) Arbitrator pool. Seth Lipner raised concerns about the number of arbitrators who are defense lawyers, or affiliated with financial services, insurance and other businesses. Gus explained that the bar for single arbitrators was raised to $100,000. Linda said NASD is revisiting its entire public pool – non-respondents to the current survey will be declassified.

2) Third party subpoena rule. Pat Sadler stated that there is a consensus that both sides don't like the present practice because it is generating a lot of litigation. He said that PIABA and NASD had looked at limiting third parties subpoenaed before answer was filed to just other brokerage firms, and there had been agreement on a notice process. He understood that the staff at NASD had concerns that SEC might not be completely comfortable with compromise between PIABA and NASD, and thought SICA might look at it.

Seth Lipner proposed modifying the Uniform Code to include a procedure for arbitrators to quash subpoenas. After a lengthy discussion, Gus Katsoris suggested that a subcommittee work out some language that would address the issues raised (based on the June 2002 NAMC draft), and it would be considered at the next meeting. The subcommittee will consist of Fienberg, Lipner and

Sneeringer.

Also, there was suggestion that SICA look at guidelines for third party discovery in arbitration.

3) Confidentiality orders. Pat Sadler reiterated concerns raised by Ted Eppenstein, suggesting that the forum should be public. He indicated a large problem involving systematic disputes regarding the discovery process in case after case, without legitimate justification.

Linda stated that NASD needs to be informed about specific discovery abuse problems, to see if enforcement measures should be taken.

SICA agreed to review the Arbitrator's Manual for possible changes and make proposals at the March meeting (Fienberg, Lipner, Sneeringer, Brady).

4) Expedited hearings. SICA members explained what efforts SICA would be taking to address the concerns expressed. (See above.)

5) Respondents not filing submission agreements. PIABA notes that a lot of respondents are not filing submission agreements; PIABA is working with NASD and NYSE to resolve the issue.

6) Issues in Arbitrator's Manual. Pat raised concerns about the treatment of mitigation of damages in the Arbitrator's Manual. A committee was set up consisting of George Friedman, Amal Aly, and a PIABA rep to be named later to address the issue.

7) Unpaid arbitration awards. The SEC is currently looking at various ways to solve the problem. The discussion turned to the idea of having firms carry insurance to cover restitution for investors, unless adequately self-insured. In order to avail oneself of the restitution fund, a victorious claimant would have to go through various hoops. Caite McGuire indicated that she would be seeking input from various groups before addressing the issue.

NEW BUSINESS: None.

NEXT MEETINGS:

✍✍January 16, 2004 ***** 10 a.m**. in Washington (NASD Offices)

- ✍✍March 22, 2004 ***** Noon** in Desert Ridge, AZ (SIA Annual Legal & Compliance Meeting)
- ✍✍June 2004. NASD in New York City. Location TBA; NASD to circulate dates.
- ✍✍October 18-24 (w/PIABA at Bonita Springs, FL)

ADJOURNMENT: meeting adjourned at 1:24 p.m. MST.

NEXT MEETING (January 16, 2004) AGENDA ITEMS (IN FORMATION)
Clemente Coordinating Agenda/Materials

✍✍Approval of 10/22/2003 Minutes [Katsoris]
✍✍Expedited Procedures for Old/Infirm/Terminally Ill Parties
✍✍Eligibility Rule [Katsoris]
✍✍SRO Hearing Scripts [Eppenstein]
✍✍Third Party Subpoenas [Fienberg/Sneeringer/Lipner]
✍✍Independent Survey (Recommended by Perino Report) [Clemente/Friedman]
✍✍Update on Florida Bar Unauthorized Practice of Law Ruling [Friedman]
✍✍California Ethics Rules Update [Clemente/Friedman]
✍✍Articles of Interest
✍✍New Business
✍✍Schedule for Upcoming Meetings

March Meeting

- Improvements to the Arbitrators' Manual (Aly/Friedman)
- Classification (Eppenstein/Sneeringer)

Respectfully submitted,

Thomas J. Stipanowich