

Approved October 11, 2005

**Minutes of the June 23, 2005 Meeting of the
Securities Industry Conference on Arbitration
New York, New York**

Members Present

Theodore Eppenstein, Public Member
Linda Fienberg, NASD
George Friedman, NASD
Constantine Katsoris, Public Member and Chair
Karen Kupersmith, NYSE
Pat Sadler, Public Member

Members Participating by Phone

Jim Flynn, CBOE
George Kramer, SIA

Invitees Participating in Person or by Phone

David Blass, SEC
Lourdes Gonzalez, SEC
Paula Jenson, SEC
Gena Lai, SEC
Helene McGee, SEC

Guests:

Richard Berry, NASD
Barbara Brady, NASD
Kenneth Meister, Prudential Equity Group
Rose Seeman, NASD

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on June 23, 2005 at 8:30 a.m., Professor Constantine Katsoris, Chair, presiding.

ACTION ITEMS

Approval of Minutes of March 15, 2005 Meeting [Tab 1]

The minutes as submitted were unanimously approved by the Conference. Mr. Friedman will finalize and distribute them.

Out-of-State Attorneys [Tab 2]

Mr. Friedman discussed the proposal crafted by the Subcommittee to amend the Uniform Code of Arbitration (Uniform Code) to state explicitly that any attorney-at-law licensed to practice in a United States jurisdiction may represent parties in an SRO arbitration or mediation.

Conference members generally agreed with the spirit of the suggested amendment. Mr. Meister said that the scope of the rule should be increased to include attorneys licensed in foreign countries to represent parties in SRO arbitrations, citing the recent opening of the NASD London Portal and the

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continuing efforts to expand SRO arbitration on an international scale. The Conference members agreed and the language of section (b) was amended as follows:

(b) Representation by an Attorney

At any stage of the arbitration proceeding held in a United States hearing location, [A]all parties shall have the right to [representation by counsel at any stage of the proceedings.] be represented by an attorney admitted to practice law in any state of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States, or foreign country. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

Result: The proposal, as amended, passed unanimously.

Non-Attorney Representation [Tab 3]

Mr. Sadler discussed the proposal to amend the Uniform Code to regulate non-attorney representation in arbitrations. He said that the Subcommittee determined that this issue was worth pursuing for the sake of protecting the investing public from unscrupulous non-attorney representatives who are currently allowed to practice without any oversight.

Anticipating the potential for resistance from consumer groups, the Conference will prepare a survey of neutrals regarding the quality of non-attorney representatives in arbitrations. Additionally, PIABA and the SIA will gather anecdotal data on the quality of non-attorney representation; and PIABA will provide its list of attorneys willing to handle cases involving less than \$10,000.

Result: The proposal passed unanimously

NASD Proposal to Amend the Uniform Submission Agreement [Tab 4]

Mr. Friedman discussed the proposed revision to the Uniform Submission Agreement. He said that the change was aimed at reducing confusion when the signatory is not an individually named party, such as a trustee.

The Conference was supportive of the proposal. It was determined that the line "State capacity if other than individual" should be added under the signature line.

Result: The proposal, as amended, passed unanimously.

Scheduling of Future SICA Meetings at PIABA and SIA Annual Meetings [Tab 5]

Mr. Eppenstein suggested to the Conference that starting in 2006, SICA coordinate two meetings a year to be held in conjunction with PIABA and the SIA's annual meetings, as was done in the past. Mr. Sadler agreed and said that PIABA members were enthusiastic about the opportunity to meet with SICA and offer their contributions on issues pertaining to SRO arbitration.

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Ms. Fienberg and Ms. Jenson pointed out that these meetings were often held at resort hotels in remote areas, making it difficult as representatives of SROs and the SEC to justify the travel expenses associated with these conferences.

Result: The proposal passed, 3 to 2 with 2 abstentions. Mr. Friedman will coordinate with SIA and PIABA as to their 2006 meetings.

SIA Proposal on Responsible Pleadings [Tab 6]

Mr. Kramer reported that the Subcommittee was not able to come to a consensus on the issue of requiring claimants to provide a signed attestation relating to the naming of respondents in arbitrations. He said that the group has been focusing on creating educational materials on the subject of responsible pleadings. Mr. Kramer said that he expected to have those materials completed for the Conference's review by the October meeting.

Result: The issue was tabled until the October SICA Meeting.

Review of Temporary and Permanent Arbitrator Removal Criteria [Tab 7]

Mr. Eppenstein discussed the work of the Subcommittee on arbitrators who fail to disclose pertinent information during a case. The Subcommittee also looked at the issue of whether a failure to disclose should result in an arbitrator's permanent removal from the roster of neutrals.

On the issue of how to handle non-disclosure from an arbitrator while a case is in process, the Conference approved unanimously an amendment to section 19(d) of the Uniform Code that would read as follows:

(d) Arbitrator Removal and Disclosure

- (1) The Director may remove an arbitrator, before the first pre-hearing or hearing session, based on the disclosure of information described above. The Director will remove or will disqualify from appointment any arbitrator who the Director concludes intentionally has failed to disclose material information as to his or her background, experience or potential or existing conflicts of interest or bias.

Concerning the issue of permanent removal from the roster, Messrs Eppenstein and Sadler stated that the current criteria were not strict enough to prevent arbitrators who have conflicts of interests from serving on panels. Chairman Katsoris expressed his concern that the current approach left no recourse for arbitrators to protest their inactive status without an adequate explanation for the reason for their removal.

Ms. Fienberg described the process by which arbitrators are permanently removed from the NASD roster, in which a recommendation to remove an arbitrator must be reviewed by and agreed upon by Ms. Brady, Mr. Friedman, Ms. Fienberg, and two public members of the National Arbitration and Mediation Committee. She said that twice a year letters were sent to the arbitrators to inform them of their inactive status. Ms. Brady said that it was in the interest of the SROs to maintain a roster of neutrals without conflicts of interest in order to uphold the integrity of the system. Mr. Friedman said that SICA's current criteria for permanent and temporary removal from the roster already address many of the issues the Subcommittee raised.

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After some discussion, the Conference concluded that these criteria will be reviewed by a Subcommittee consisting of Ms. Brady, Mr. Flynn, and Ms. Kupersmith.

Result: The Subcommittee will draft any amendments they deem necessary for review and consideration at the October SICA meeting.

DISCUSSION ITEMS

Report from Roster Issues Subgroup [Tab 8]

Mr. Sadler updated the Conference on the work of the Roster Subcommittee on issues pertaining to the review of temporary and permanent removal criteria, motions to vacate involving the arbitrator's conduct, and removing sitting arbitrators. The topic had been discussed in depth earlier in the meeting.

Out-of-State Attorneys and Non-Attorneys Subgroup [Tab 9]

The topic had been addressed earlier in the meeting.

Report from Independent Research Subgroup [Tab 10]

Mr. Sadler distributed a memo updating the Conference on the status of the survey on the perceptions of fairness of SRO arbitration that is being administered by Professors Barbara Black and Jill Gross of Pace University School of Law.

Mr. Sadler said that Professors Black and Gross have sent him a first draft of the survey. He will distribute the draft to the Conference members to return to him with their comments.

Result: The Subcommittee was authorized to resolve any conflicts with Professors Black and Gross in crafting the final survey. Mr. Sadler will give an update at SICA's October meeting

Report from Employment Disputes Subgroup [Tab 11]

Mr. Eppenstein reported that the Subcommittee was not able to meet before the meeting.

Result: This topic was tabled until the October SICA meeting.

Discussion of House Subcommittee Testimony [Tab 12]

The Conference discussed the testimony provided by Ms. Fienberg, Ms. Kupersmith, and Chairman Katsoris at the "Review of Securities Arbitration" held by the House Financial Services Subcommittee on March 17, 2005.

NASD Discovery Initiatives [Tab 13]

Mr. Berry reported on the Discovery Arbitrator Pilot Program to be implemented by NASD. He said that it would involve the inclusion of a "discovery arbitrator" to review and decide discovery motions. He said that he hoped to have approximately 100 cases within two years time go through the pilot. He explained that this was necessary due to the amount of discovery motions that come up before arbitrators are appointed.

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Electronic Discovery Matters and Revisions to the Arbitrators' Manual [Tab 14]

Mr. Eppenstein discussed his proposal to revise the Arbitrators' Manual to clarify the issue of discovery matters that are sent and stored electronically.

Result: A Subcommittee consisting of Ms. Brady, Ms. Kupersmith, Mr. Eppenstein, and Mr. Meister will convene to explore the issue further and propose changes to the Arbitrators' Manual regarding electronic discovery items, for review at the October SICA meeting.

NASD's Restructuring its Administrative Staff [Tab 15]

Mr. Friedman discussed the new business model that has been implemented in NASD's Northeast Regional Office. He said that outside consultants are currently working with NASD's Regional Offices in the Southeast, Mid Atlantic, Midwest, and West with the goal of a nationwide rollout by the end of 2006. Mr. Friedman reported that NASD will conduct a focus group with attorneys and arbitrators who participated in the Pilot, which took place in the Northeast Regional Office from June 2004 through December 2004, for the purpose of vetting their opinions of the new business model and using them to make any necessary changes before the nationwide roll-out.

INFORMATION ITEMS

Status of Arbitrators' Manual Re: Witness Attendance [Tab 16]

Ms. Brady reported that the revised language to the Arbitrators' Manual for the section on Attendance of Witnesses at the Hearing had already been updated on NASD's website and was in the process of being updated for the hard-copy version. Per Mr. Eppenstein's suggestion, NASD will now keep copies of the Arbitrators' Manual at their reception desk for easier access during hearings.

Update/Statistics on NASD Pilot Procedures for Elderly/Infirm Parties [Tab 17]

Mr. Berry reported on the status of the pilot program to expedite arbitration proceedings for elderly, infirm, and terminally ill parties. He said that anecdotal evidence suggested that it is going well, but there was not enough meaningful data available to present to the Conference at this time. He will report again on this topic at the October meeting.

Update/Statistics on Direct Communication Rule [Tab 18]

Mr. Berry reported on the status of the direct communication rule. He said that anecdotal evidence suggested that parties have tended to indicate that direct communication works well, but that arbitrators have mixed views. He cautioned that NASD does not yet have meaningful data on its experience with the new rule. He will report again on this topic at the October meeting.

Update on 13th SICA Report [Tab 19]

Chairman Katsoris advised that he had distributed a draft of the 13th SICA Report. The group voted unanimously to approve the draft.

Result: The 13th SICA report will be published this fall at Fordham's expense; thereafter SROs will post the report on their web pages. Chairman Katsoris will give an update at the October meeting.

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California Ethics Rule Update [Tab 20]

Mr. Friedman reported that the *Jevne* case, which was heard before the California Supreme Court, was decided in favor of the SROs. As a result, the waiver program in place in California has been rescinded. Ms. Kupersmith said that the NYSE has chosen to keep the waiver program in place for the time being.

SRO Case Filing Statistics [Tab 21]

Ms. Kupersmith updated the Conference on the 2004 SRO case filing statistics.

SRO Reports on Activities and Rule Filings [Tab 22]

Mr. Friedman and Ms. Kupersmith updated the Conference on recent rule filings at NASD and the NYSE.

Cases and Articles of Interest [Tab 23]

No discussion.

New Business [Tab 24]

No discussion.

Schedule of Future Meetings [Tab 25]

The next SICA meeting and the first meeting of 2006 will take place as follows:

- October 11, 2005 at CBOE (Chicago) (with PIABA representatives)
- January 12, 2006 at NASD (New York)

There being no other business, the meeting adjourned at 2:10 p.m.

Respectfully submitted by:
Rose E. Seeman

REPORT FROM INDEPENDENT SURVEY SUBGROUP

The subgroup has not met because no documents have as yet been received from Barbara Black and Jill Gross.

Pat Sadler spoke with Ms. Black and Ms. Gross on June 20, 2005 and received the following update:

- 1) the survey will target four sub-groups: claimants, respondents (through corporate representatives for firms), claimants' representatives and respondents' representatives;
- 2) Results will be tabulated for each sub-group
- 3) Surveys will be sent out for all cases concluded within the most currently available 24 month period
- 4) Survey questions should be available for review by SICA in 3-4 weeks in content only format (i.e. not in final form)
- 5) Survey will be ready for mailing within 2-4 weeks after receipt of content approval from SICA

While welcoming feedback from SICA, Ms. Black and Ms. Gross cautioned that there are reasons behind the content and structure of survey questions. They suggest a meeting be held with the two of them, their survey consultant and SICA representatives to discuss any content changes proposed by SICA.

SICA needs to decide how its approval will be conveyed to the survey team. Specifically, will the subgroup be delegated the authority to give final approval of the survey or should dissemination be delayed until the entire Conference can consider, discuss and approve the final version, presumably at our October meeting.

full group to review ~~the survey questions~~ by e-mail -
maybe add q's about non-atty representation?

Project: Securities Arbitration Fairness Survey-2006

Project Description	The Pace Investor Rights Project is conducting this survey for the Securities Industry Conference on Arbitration (SICA). The purpose is to evaluate the fairness of the arbitration of customer claims at both NASD Dispute Resolution, Inc. and the New York Stock Exchange. It is the goal to understand whether participants believe the securities arbitration process is conducted simply, fairly, economically and without bias by the arbitrators.
Principal Investigator	Jill Gross
Funding or Sponsor Organization	Pace Investor Rights Project - Pace University
Sample or Target Population	Individuals involved in a dispute between a customer and a brokerage firm and/or its registered representatives filed for arbitration in its forum in the last 5 years.
Project Start Date	05/23/2005
Project End Date	