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Catherine McGuire, Esq.
Chief Counsel
Division of Market Regulation
United States Securities and Exchange Commission
450 Fifth Street, NW,
Mail Stop 10-01, Rm. 10305
Washington, DC 20549-1001

Re: Greenberg and Goodman Petitions for SEC Rulemaking

Dear Ms. McGuire:

During the summer of 2005 the SEC received two petitions for rulemaking, one from Les Greenberg and the other from Avery Goodman. In August, you wrote to me in my capacity as Chairman of the Securities Industry Conference on Arbitration (SICA), suggesting that SICA consider the proposals. At the October 2005 SICA meeting, I appointed a subcommittee to review and consider the petitions. The subcommittee - - consisting of public member Theodore Eppenstein and George Friedman of NASD (co-chairs), Jim Flynn (CBOE) (since replaced by Greg Hoogasian of CBOE), George Kramer of SIA, and Karen Kupersmith of NYSE - - met several times over the past year, reporting periodically on progress. I thought it would be appropriate to inform you that SICA had completed its review of the petitions for rulemaking and has decided to take certain actions, described below.

Goodman proposal that claimants be permitted to appeal to an SEC Administrative Law Judge SRO decisions on removing arbitrators from a case, or arbitrator reclassification.

SICA does not favor creating for claimants (or respondents, for that matter) a broad right to appeal to an SEC Administrative Law Judge SRO decisions on arbitrator removal or classification, primarily because this would run counter to the goal of expedient administration of claims. SICA, however, determined to amend certain materials to explain more carefully parties' rights for review of SRO administrative decisions in arbitration. Specifically, the subgroup recommended that:

- The SICA *Guide to Arbitration*[1] *(Guide)* to be updated to state that, while most arbitrator challenges to SROs are resolved by review of correspondence, a party can request that a conference call be convened with all counsel and the Director of Arbitration; and

- Directors of Arbitration should be encouraged to explain briefly the rationale for arbitrator removal/reaffirmation decisions, upon request, providing such explanations should be discretionary with the Director, based on the unique facts and circumstances involved.

Greenberg proposal that arbitrators should be allowed to conduct independent legal research and that SROs should not restrict same.

SICA determined to take the following actions:

- *The Arbitrator's Manual* drafted by SICA will be updated to include in the appendix the revised 2004 *Code of Ethics for Arbitrators* (replacing the older version that was in the *Manual*); this was completed last April;

- The *Manual* and perhaps the *Guide* will be changed to clarify when research would be permitted (for example, looking up cases cited in briefs); and

- The *Manual* and *Guide* be changed to refer to/include the inference in Canon VI (B) of the new *Code of Ethics* that some limited research is appropriate.

Also, since there is no analogous section in the *Guide*, SICA approved placing the same language in the "What if I Don't Get Paid?" section of the *Guide* (where the arbitrators' decision-making authority is discussed).

Lastly, SICA noted that it had been six years since *The Arbitrator's Manual* and the *Guide* have had a comprehensive review and update. In light of developments over the past six years, SICA decided to commence such a review. I have appointed a subgroup to undertake this effort.

Greenberg proposal that SROs with arbitration programs conduct party evaluations and peer evaluation (on a mandatory basis).

The SROs all reported that they have existing, voluntary party and peer evaluation programs. SICA believes that, while parties and arbitrators should be encouraged to complete survey forms, a mandatory program was not necessary or appropriate. SICA adopted the following measures to promote a better response rate for peer and party evaluations:

- **Putting surveys online:** allowing responders the option of completing surveys online should increase response rates. The Web has become an accepted tool for completing surveys, and offering this additional means of responding is a good idea. NASD already offers this option for both the party and peer evaluations;

- **Including return postage:** providing return postage will encourage some responders to complete and return the survey form. Some SROs, such as NYSE and NASD, already do this.

- **Reminding arbitrators about peer reviews when they receive their compensation:** this would appear to be a good time to remind arbitrators to complete peer reviews.

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[1] SICA's *Guide to Arbitration* is known formally as *Arbitration Procedures.*

- **Encouraging settling parties to return surveys:** some SROs limit user surveys to cases in which arbitrators issue awards. However, there is value in also asking parties who settle their case to complete and return surveys, since in many of those cases, arbitrators will have been appointed and may have held initial or evidentiary hearings. If arbitrators have not been appointed, or have not acted, the responding parties will simply check off the "not applicable" option.

Greenberg proposal to eliminate the industry arbitrator or that, in the alternative, the industry arbitrator be required to disclose to the parties any information he or she presents to the other arbitrators in deliberations.

SICA deferred consideration of these issues to SICA's broader efforts at reviewing arbitrator classification. SICA discussed the second part of the recommendation, i.e., to what extent should arbitrator deliberations be disclosed. SICA's view is this was not a good idea, and if implemented would compromise arbitrator independence. However, the group undertaking the comprehensive review of SICA's *Guide* and *Manual* will review this general topic.

Greenberg proposal that SROs be required to train arbitrators in applicable substantive law.

SICA believes that this proposal should not be adopted, because: 1) it would not be feasible or appropriate to train arbitrators on the law of 50 states; 2) keeping abreast of changes in substantive law would be very difficult; 3) it would likely be very difficult to obtain a consensus on the content of such training; 4) it is generally up to the parties to bring their case to the arbitrator (including addressing substantive law); and 5) strict application of the law could in many instances be harmful to investors.

Greenberg proposal that SROs include in their predispute arbitration agreements whether their arbitrators are trained in the law and required to follow it. Also, they should be required to disclose their arbitrator evaluation process.

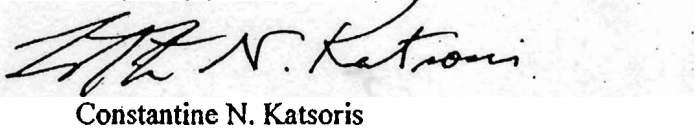
For the reasons articulated above, SICA believes that the first part of this proposal should not be adopted. The second part is moot, since the SROs ***do*** disclose the nature of their arbitrator evaluation processes.

Greenberg proposal that SEC specifically oversee whether SROs are following the other proposals.

SICA believes this is self-evident and somewhat premature (since the proposals have not been approved). Naturally, SEC oversees SRO conduct under approved rules.

Please feel free to contact me if you have any questions or wish to discuss this further.

Very truly yours,



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