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March 1, 2007

VIA EMAIL: McGuireC@SEC.gov

Ms. Catherine McGuire
Chief Counsel
Division of Market Regulation
SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, N.W.
Washington, D. C. 20549

Re: Petition for Rulemaking
SEC File No. 4-502

Dear Ms. McGuire:

Thank you for forwarding, on February 7, 2007, what appears to be a copy of a letter dated November 6, 2006 from Professor Constantine N. Katsoris (Katsoris) to the Securities and Exchange Commission (SEC).

As you are probably aware, I have commenced litigation against the SEC regarding its relationship with the Securities Industry Conference on Arbitration (SICA) as an advisory committee, in violation of the Federal Advisory Committee Act and other matters, and with respect to its unreasonable delay with respect action concerning Petition for Rulemaking (SEC File No. 4-502)(Petition).[1] Thus, comments not contained herein are reserved. I do not intend nor should the SEC consider this correspondence as a waiver of any of my rights in that litigation.

Essentially, SICA has provided the SEC with minimal advice or recommendations on the subjects set forth in the Petition.

[1] Via letter, dated February 21, 2007, counsel for the SEC in the litigation provided me with permission to communicate directly with you on the subject of the Petition.

I. Legal Research

Sections III and IV of the Petition set forth details of the relevant problems. In one instance, a self-regulatory organization (SRO) caused an arbitrator to recuse herself from a hearing panel, on the alleged ground of bias, as she wished to provide co-panelists and counsel with a copy of applicable legal authority of which they were otherwise not aware.

Katsoris states, "The *Arbitrator's Manual* ... and perhaps the *Guide* will be changed to include when research would be permitted (for example, looking up cases cited in briefs) ... that some legal research is appropriate.... SICA decided to commence such a review. I have appointed a subgroup to undertake this effort."

The SEC, pursuant to a Freedom of Information Act (FOIA) request, which is currently the subject of litigation, forwarded to me a copy of minutes of a SICA meeting (February 28, 2006), wherein SICA discussed the Petition. The minutes reflect, "[S]ome Conference members were concerned that we not appear to be restricting the arbitrators' ability to use whatever resources they deem necessary to make the best decision in the case before them. ... [T]he Subcommittee should ... clarify when such research would be permitted...." This concern is not reconciled with the NASD's recently published policy, "Arbitrators are reminded that they are not to engage in any outside legal research...," which was detailed in Supplemental Information to the Petition dated June 22, 2005.

In substance, SICA rendered no useful recommendation or advice on the issue and, again, referred the matter to a subcommittee. Further, the vague reference to "some legal research" is unhelpful.

II. Mandatory Peer Evaluation

Section V of the Petition sets forth details the relevant problems.

Katsoris states, "SICA believes that, while parties and arbitrators should be encouraged to complete survey forms, a mandatory program was not necessary or appropriate." However, he does not state upon what facts, if any, SICA's alleged belief is based nor does he state any information upon which one could rely to believe that a voluntary procedure has been or would be effective.

In substance, SICA rendered no useful recommendation or advice on the issue.

III. Eliminate Industry Arbitrator or Reveal Information Provided to Co-Panelists

Section III.E of the Petition sets forth details of the relevant problems.

Katsoris states, "SICA deferred consideration of these issues...." He refers to the purported information, which an industry arbitrator is able to convey secretly to his/her co-panelists, as "deliberations," when, in fact, it constitutes secret evidence.

IV. Train Arbitrator in Applicable Law

Sections III and IV of the Petition set forth details of the relevant problems.

The NASD conducted training in the law until about 1992. It is feasible. (See, Section II.F.1 of the Petition.)

Essentially, the issues of removing securities industry arbitrators from arbitration hearing panels and lack of training in the law are interwoven. They tilt the playing field in favor of the securities industry. A non-industry arbitrator, not knowledgeable in the law, i.e., the primary standard in the decision-making process, has no other guide, but his/her gut feelings, upon which to base a decision. SROs presently permit industry arbitrators secretly to inform co-panelists as to purported standard practices that are acceptable in the securities industry. The underlying assumption is that a standard practice is legal and proper. Some so-called standard practices of the securities industry have been found to be improper, unethical and/or illegal. Thus, it is more likely that the panel's decision would be favorable to the securities industry.

Katsoris states, "[S]trict application of the law could in many instances be harmful to investors." Why is that? Would it also be "harmful" to the securities industry? Is SICA suggesting that arbitrators consciously disregard the law? SICA's position should alarm the SEC, the nation's chief securities law enforcement agency.

In 1988, the SEC wrote to SICA, suggesting that SROs improve training in the law. SICA never responded and the SEC did not pursue the matter. It was just after that time that SROs ceased any training in the law. It appears that you were involved in the SEC's efforts.[2]

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[2] "Following the *McMahon* decision, the SEC sent a letter to SICA recommending substantial reforms of the existing informal arbitration process. The SEC recommended that arbitrators should be trained in securities and relevant state law.... While the SROs did not adopt all of the SEC's recommendations...." ("Fairness in Securities Arbitration: A Constitutional Mandate?" by Sarah Rudolph Cole (2/7/06).)

V. Arbitration Agreement Disclosures

Section VI of the Petition sets forth details of the problem.

Katsoris states, "For the reasons articulated above, SICA believes that the first part of the proposal (SROs include in their pre-dispute arbitration agreements whether their arbitrators are trained in the law and required to follow it) should not be adopted." In essence, SICA believes that, even though SROs do not train arbitrators in the subject of the law and SROs inform arbitrators that they may disregard the law in their decision-making process, public investors should not be made aware of this shocking approach to the purported search truth and justice.

Please include these comments with recommendations that you make to the Commissioners. Additionally, I would appreciate a reasonable opportunity to respond to SEC Staff recommendations before Staff transmits them to the Commissioners.

Please communicate with me in the event that you desire further information.

Very truly yours,

Les Greenberg

Digitally signed by Les Greenberg
DN: cn=Les Greenberg, c=US, o=Law Offices of Les Greenberg, ou=Attorney at Law, email=LGreenberg@LGEsquire.com
Reason: Petition for Rulemaking (SEC File No. 4-502)
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"In his 1987 letter, Mr. Ketchum was blunt. The self-regulatory organizations, he said, 'have administered virtually no formal training for arbitrators on matters relating to either arbitration law, relevant state law or securities law. The current level of training should be addressed promptly.'" ("When Naiveté Meets Wall Street," New York Times, 12/3/89.)

"Letter from Richard G. Ketchum, Director of Division of Market Regulation, SEC, to SICA members, *in* Mark D. Fitterman, Catherine McGuire, & Robert A. Love, *SEC Initiatives for Changes in SRO Arbitration Rules*, SECURITIES ARBITRATION 1988, at 257, 279 app. A. (PLI Corp. Law & Practice Course, Handbook Series No. 601, 1988)." (Emphasis added.) ("Making It Up As They Go Along: The Role of Law in Securities Arbitration" by Barbara Black and Jill I. Gross (4/16/02).)