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ARBITRATION

SICA MINUTES
January 19, 1996
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**Minutes Of The Meeting of the
Securities Industry Conference on Arbitration
January 18, 1996
NASD
Ft. Lauderdale, Florida**

Ms. Masucci called the meeting to order and welcomed everyone to the NASD offices in Ft. Lauderdale. She asked that each person in attendance introduce themselves for the record.

MINUTES

After discussion, it was decided to table the approval of the Minutes of the September 15 meeting until the next meeting. A number of participants expressed a need to change the Minutes as written. It was requested that all changes be submitted to Lydia Gavalis of the Philadelphia Stock Exchange by the end of the following week so that the Minutes could be rewritten in accordance with the changes requested.

It was recommended that the Minutes be recorded in a uniform fashion without identifying speakers unless the person's identity is relevant to the discussion or if a person requests to be identified. The Minutes should not reference back to materials in the briefing books unless the referenced materials are attached as part of the Minutes. The SRO participants agreed to meet prior to the next meeting to determine the future process for recording Minutes including the appropriateness of assigning the task to one person and the drafting of yearly summaries for reference purposes.

NONATTORNEY REPRESENTATION

The Conference discussed the need to develop a communications plan to educate state bar organizations, consumer groups and other interested parties regarding the findings of the SICA nonattorney study. It was determined that there should be a comprehensive communication/education program developed for this purpose but that it not be limited to the issue of nonattorney representation. The SRO participants agreed to meet by teleconference prior to the next regularly scheduled meeting to develop such a plan. In conjunction with this the Conference was advised that the Investor Awareness booklet drafted during 1995 was still being revised especially in light of substantial comments suggested by the staff of the SEC.

On the issue of nonattorney representation, the discussion acknowledged that nonattorneys do represent parties in arbitration in other business settings. For example, in the union setting, nonattorneys often represent union members. These nonattorneys, however, are employees of the union who have loyalty to union members. As employees, there is no profit motive

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associated with their activities or concern regarding split loyalties and there is no issue regarding attorney/client privilege. The fact that nonattorneys operate in other areas but under this different criteria should be part of the education program.

The Conference was advised that the State of Florida was proceeding with its own meetings and hearings on nonattorney representation.

The Conference discussed amendments to section 15 and educational material on this issue since the meaning of certain language in previous drafts was still unclear to some participants. After discussion it was decided not to invest any further time in redrafting the sections until SICA received the recommendations of the NASD Arbitration Policy Task Force on this issue.

MCMAHAN AND COMPANY V. DUNN NEWFUNT I LTD. ETAL

The advice of the Conference was sought regarding the impact of a recent vacatur of an AMEX arbitration award. The court decision implied that the Uniform Code provision regarding replacement of arbitrators after the hearing on the merits had begun was fundamentally unfair at least in situations where a majority of the panel is replaced. The Conference was in agreement that no rule change should occur at this time. However, arbitrator training should include the concerns of the court set forth in the decision especially the need to permit parties to offer repeat evidence and testimony to replacement arbitrators.

ARBITRATOR DISQUALIFICATION CRITERIA

The Conference was provided with a reorganized version of the adopted arbitrator disqualification criteria. These are attached as Exhibit A.

UPDATE OF UNIFORM CODE OF ARBITRATION

The Conference was advised of the availability of an updated version of the Uniform Code prepared by the Pacific Stock Exchange. It was noted that the updated version contained the date of the latest amendments directly after each affected rule.

DEFAULT PROVISIONS OF THE UNIFORM CODE

The Conference considered a request that the Uniform Code be amended to provide for automatic default provisions where a party has not answered a claim nor requested an extension of time to answer. After discussion, it was determined that no action would be taken on the request.

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TRACING UNIFORM CODE

Professor Katsoris advised the Conference that he was writing a chapter for an ABA desk top publication that included a section tracing the Uniform Code Sections to the SRO Codes. He asked SRO participation to accomplish this task.

CONSIDERATION OF A NINTH REPORT

The Conference decided to proceed with drafting a Ninth Report of SICA.

NASD ARBITRATION POLICY TASK FORCE

The NASD advised the Conference that the APTF would deliver its recommendations to the NASD Board of Governors on January 22, 1996. A special SICA meeting was scheduled for February 8, 1996 at Fordham University to receive a presentation on the Report. It was requested that Professor Ruder and Linda Fienberg be invited to brief SICA on the Report.

ANY OTHER BUSINESS

The Conference was advised of a concern regarding the practice of a West Coast Law Firm to refuse to submit an executed submission agreement on behalf of a member firm. The law firm files a motion to stay the arbitration on the eve of a scheduled arbitration hearing. A participant believed that the practice was a special situation involving nonattorney litigation. It was decided that further information regarding the specific law firm and its practices was required before any further discussion.

The Conference was reminded that an open issue from the last meeting was research on the difference between a demand for arbitration and the requirement for an executed submission agreement. The NASD committed to provide the research at the next regularly scheduled SICA meeting.

NEW PUBLIC MEMBERS

After discussion, the Conference voted to accept the nomination and appointment of Professor Thomas Steponovich to replace Peter Cella as a *public member of SICA*. Professor Steponovich will be invited to the February 8 special meeting.

No further business, the meeting was adjourned reminding the Conference that the next scheduled meeting would be April 11, 1996, hosted by the SIA & PSE in San Francisco. Further meeting dates will be scheduled at the February 8 special meeting.