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PRESENTATION TO THE
SECURITIES INDUSTRY CONFERENCE ON
ARBITRATION - THURSDAY MORNING, FEB. 8, 1996
HELD AT FORDHAM LAW SCHOOL AND CHAIRED BY PROFESSOR KATSORIS

PRESENT:
Kenneth L. Andrichik (NASD)
James E. Beckley (Public Member)
James E. Buck (NYSE)
David L. Carey (NYSE)
Peter R. Cella (Duignan & Cella)
Robert S. Clemente (NYSE)
Ethan Corey (SEC)
Phillip Cottone (NASD)
Elliott Curzon (NASD)
Paul J. Dubow (Dean Witter)
Karl Eiholzer (MSRB)
William J. Fitzpatrick (SIA)
Linda Feinberg (Task Force)
Mary Ann Gadziala (SEC)
Lydia Gavalis (Philadelphia Stock Exchange)
Thomas R. Grady (Public Member)
Philip J. Hoblin, Jr. (SIA)
John C. Katovich (Pacific Stock Exchange)
Constantine N. Katsoris (Public Member)
Elizabeth King (SEC)
Deborah Masucci (NASD)
Edward Morris (NYSE)
Nancy Nielsen (CBOE)
James O'Donnell (NASD)
Boyd Page (Task Force)
Janice M. Stroughter (AMEX)
Joanne Moffit Silver (CBOE)

WELCOME

Professor Katsoris thanked everyone for coming and asked each participant to briefly introduce themselves and their affiliation. Prof. Katsoris stated that Boyd Page and Linda Feinberg would present their report as they see fit and then turn the floor over for questions and discussion. After lunch, SICA would have a meeting itself and discuss the Report entitled Securities Arbitration Reform, and how to proceed in light of it.

FIRST SPEAKER: MR. BOYD PAGE

Being here today is an honor. Everyone in this room took a role in shaping the arbitration process today. Arbitration has become the exclusive form of settling disputes in the industry. A number of problems have also evolved, making the present system not as effective. Cases are not quickly resolved, and we couldn't expect it to remain so simple, since all cases are now resolved through arbitration. It has become incumbent on the system to improve the process. While efforts have proven somewhat successful, there have been a number of disagreements between participants in the process. If there ever could be agreement, we must compromise on key issues and address the concerns of both sides and sit

back and evaluate and see if there were viable compromises that could improve the system as a whole.

Are there improvements that both sides could agree upon that would improve the process? I spoke to reporters on this and they asked me "Did you get what you wanted", and I told them plainly "no". I sat down with people involved in the business sector, lawyers, SICA, SROs and the AAA to find out what they did regarding dispute resolution. I sat down with employment lawyers and tried to ask a lot of questions, one of which was particularly interesting: "Do you think that arbitration should be voluntary?" With one exception, nobody was really interested in returning to court. As one person put it "arbitration is not good, but it's better than court." It became apparent that no agreement could be reached by all of the segments with which we had spoken.

David Ruder's position that we were going to come through with a report and he wanted it to be a unanimous report. Even if there was disagreement between us, we

wanted the report to be unanimous. We were put in a room and tried to agree. We had to sit down and really think: "Is this point a 'deal killer'"? "Can we come to some kind of agreement?" The report involved balance and compromise of different groups. It's not a perfect solution -- not solely protective of the investor or industry -- some advantages to both and some disadvantages to both. It came down to the final weeks and we had to ask this question: "Is this issue worth 'tanking' the report for"?

I think the report which is before you is the unanimous feeling of the Task Force -- it provides a significant improvement over present procedures. It is not intended to downplay or undermine anything you have done to contribute to the process. You must recognize that with many varied groups, the only way you are going to reach an agreement is to put them in a room and tell them they need to reach an acceptable compromise. You like it as a "whole" or you reject it as a "whole". It will pass or fail as a "whole". My perspective is that punitive damages should not be limited; the industry would like no punitive damages. I believe that if you pick it apart, point by point, the report doesn't stand a chance.

You must look at it as: Is this something that as a whole improves the arbitration process that we have to live with? Does it improve the justice, the climate for the investor and for the industry? Can you live with the things you don't like? It will fly or sink as a whole – it represents a compromise by people of various segments. The rumor that I was the lone investor voice on that Committee is false. There were others. Moreover, Covington & Burling actually wrote the report

REPORT HIGHLIGHTS

PUNITIVE DAMAGES

This was the most hotly-debated issue from both sides. The industry's fear is that some runaway arbitration panel will come down with a an insane verdict, putting them out of business, etc. The investor's concern is that you need the threat of punitive damages to act as a deterrent against fraud and to penalize people who engage in fraudulent conduct. It is also a current area of on-going litigation. The Task Force had to agree: was there a need for punitives? There is a need for it. There was an understanding and an appreciation that there was a place for it in arbitration. We got to the issue: should there be any caps? Should

there be restraints? The Task Force wanted the opinion and the insight of the overseer of the process -- the Commission -- and spent the better part of a day with the staff of the Commission gaining their perspective on different issues -- including punitive damages issues. As a part of our negotiations, we looked at many factors: the federal and state environment and the legislative environment on the whole. We looked at what the results had been from arbitrations as far back as we had records for, and we also considered the input of the Commission. Both sides indicated that they probably could live with caps. The staff of the Commission indicated to us it could live with Caps. The legislative environment clearly indicated a trend toward caps. There was disagreement on exactly what the caps should be. One of the issues where some of the people had to make a decision was on whether we could live with the compromise. That was a very hot issue.

THE 6-YEAR RULE

Strong feelings on both sides -- did it serve a purpose or not? Strong disagreement between industry and the public sector on this and there were strong arguments made by the investors that the 6-year rule basically is being used as a statute of limitations,

notwithstanding the fact that the SEC's release in 1989 approving arbitration rules made it clear that no provision in the contract should be used to limit or extend the statute of limitations. As a group we agreed that the 6-year Rule has no place -- but you have to look at the key language "shall not extend applicable statutes of limitations". Sometimes that language can be very favorable to one party. We could live with that. There was no need for the 6-Year Rule. The industry felt it needed a trial period on this issue. On the investor side, there was real concern that it's real easy after three years to say "I was abused on a particular case and it should have been kicked out."

CASE LOAD

The present case load is going well into the thousands. In trying to address this issue, we are encouraging parties to evaluate cases early and solve them early. I've heard many war stories blaming "the other side" for untimely responses. We came up with a system that has both sides review their case and give them means to evaluate it if they need help; i.e. mediation and early neutral evaluation that give their opinion of what they would win if the

case went to arbitration. To have the parties come to grips with what an independent believes a case is worth. The big problem is communication . We tried to provide for mediation at the early steps. It is our belief -- try to develop a system which will generally take care of the key documents from both perspectives. To get the exchange of documents automatically otherwise the parties will be sanctioned. And these sanctions can be pretty severe -- this will facilitate getting key documents at the outset of the dispute to give an opportunity to mediate or early neutral evaluation and this will provide each side with an opportunity for independent analysis which is not binding. They may, if they wished, proceed regardless of what the independent thinks.

ARBITRATOR SELECTION

We are trying to improve the training of arbitrators and trying to obtain more evaluations; i.e. getting participants to fill out forms. We intend to create a bigger pool of arbitrators to facilitate more of a selection. I've heard many horror stories of people having terrible arbitrators, etc. and I would ask "Well, did you report it?" and the answer would be "No." We need feedback to determine what type of job the arbitrators are doing. The

question is how to force arbitration participants to fill out the forms? We cannot force them, but it is a problem on how to weed out bad arbitrators. We encourage increased training, especially CLE and also discussed increased compensation. Is compensation really an issue? Is training an issue? If you look at the reality of the public community, it is difficult to ask them to take more than a day away from their jobs for $225/day. That is just not enough money. Employers are not pleased about that. We're proposing to raise it somewhat to entice more qualified people. We are also looking at flexibility in scheduling; i.e. allowing an arbitrator to devote 1/2 or 3/4 days to arbitration. This I believe will improve the quality of arbitrators. Implementation of these ideas is important from both perspectives.

3 TIER SYSTEM

While not much different - other than an increase in some of the base numbers. Appointing a sole arbitrator to hear/decide cases up to $50,000 . The 3-tier system will affect more complex cases and in very large cases may be particularly important.

NON ATTORNEY REPRESENTATION

The issue of whether or not it was a detriment to the process to have non-attorney representation was addressed by the Task Force. The general feeling, was that the non-attorney does more of a disservice then a service. There are problems and concerns about unethical behavior, lack of insurance, etc. We felt we didn't have enough information to just blatantly eliminate non-attorney representation. There was no way to prove if the investor would be disadvantaged by limiting non-lawyer participation, so we deferred this issue pending further study. However, we will try to weed out bad apples. There was also the question of whether it is the unauthorized practice of law. This is a very sensitive issue. Since we did not have sufficient data to make a recommendation that they not be permitted to participate in the process, we could not justify eliminating it.

FUNDING THE RECOMMENDATIONS

This will involve significant costs, and who will pay for it? The recommendations can be great in theory, but without commitment to fund them, it's pointless. Clearly, in the report we intended that this was a industry-sponsored forum and if they wanted it, they should be prepared to bear the majority of the expense. All indications I have is that the NASD is prepared to expend significant sums of money to implement this program, if it is approved.

That is pretty much my view of the report. It is perfect? I think it's basically a decision to either like it as a whole or not. I believe as a whole it is more beneficial than detrimental and represents an improvement over what we now have.

CONSTANTINE KATSORIS

Thank you Boyd. Now let's let Linda Feinberg speak and then we'll go around the room for questions.

LINDA FEINBERG

I agree with most of what Boyd said, with the exception that I believe the 6-Year

Eligibility Rule was as difficult an issue as punitive damages.

The most difficult part of this process will be the actual implementation of these recommendations. We hope to have a submission to the NASD Board by their March meeting. NASD will be looking for assistance with respect to the nitty gritty issues--punitive damages and the 6-year rule, etc. that the Task Force didn't see.

PRE-DISPUTE AGREEMENTS

Whether to keep "mandatory arbitration" -- for reality reasons, we decided not to take on the whole issue, and elected not to change the current system. I believe the Bar and most people believe it is better than court. Customers get essential and cost effective services in arbitration. Some recommendations were needed for changes for pre-dispute agreements -- i.e., more disclosures, and the NASD to take steps to enforce 21(f)4 precluding clauses which limit customers' rights. [Re application of FAA]

PUNITIVE DAMAGES

Our recommendations were twice the compensatory damages or a $750,000 cap

whichever is less. We felt this was a very fair way to resolve this issue. Both Title VII and CTFC have caps. Permitting a person to claim punitive damages in any state where the individual could claim them in court. We decided that the state law which should rule will be the state of domicile of the person/entity at the time of filing the claim. We also proposed that where the claimant is entitled to punitive damages, they cannot also receive RICO damages. They cannot get a "double award." However, we did not approve a uniform standard for assessing punitive damages.

6-YEAR ELIGIBILITY RULE

We recommended that the Eligibility rule be suspended for three years. We need to develop data to see whether it should be reinstituted or if other substitute procedures should be adopted. We are recommending that when arbitrators have failed to dismiss claims, pursuant to the statute of limitations defenses, that they provide written reasons. We recommended that the eligibility rule will only apply to claims that arose 6 years before the suspension of the rule. There should be rules for post 6-year cases. Claimants will have the

option to go to court for ineligible claims. We recommended data collection regarding what happens to claims. The Eligibility Rule has operated as an absolute bar without looking at collateral issues.

Some primary complaints related to arbitrator selection and competence. We recommend the development of a list for the selection of arbitrators and that arbitrators be placed on this list on a "rotating" basis. There will be three lists: a list of industry arbitrators, list of business arbitrators and a list for eligible chair arbitrators to be chosen. Parties will have the opportunity to select three times. If they cannot make a selection, then NASD will select one for them.

Arbitrators complained that they are never called. The placement on the list on a rotating basis may solve this problem. It is up to the NASD to determine if they are competent or not . I truly believe that the compensation must be raised -- and raised a lot, not to market, but considerably higher than $225/day.

We recommended a marked increased in arbitrator training, particularly for the Chair; especially in the areas of statute of limitations, discovery, etc. We recommend that

arbitrators play a key role in running the discovery process. We recommend that the arbitrator be selected 45 days after Respondent files its answer. The entire panel will have to be picked during that time period. Arbitrators complained that they cannot control their schedules, because hearings are routinely postponed, etc. We recommend that arbitrators pick dates for hearings with counsel, and those dates be changed only for cause and that the arbitrator makes the decision to postpone.

ARBITRATION EVALUATIONS

How do we get parties to fill in evaluation forms? I recommended we institute an up-front $100 fee to be refunded upon completion of the evaluation form. I met with much resistance on this and we did not recommend it. The question now remains how do we get people to fill out the forms. We must obtain some kind of written record.

DISCOVERY

All who provided presentations felt that they were "jerked around" in discovery, each blaming the other side. We hope that arbitrators will use sanctions available to them to enforce timely production of necessary documentation. We are also recommending "automatic production of documents." We will try to narrow down a list of documents specific to certain types of cases and these documents will be due immediately. This will assist in mediation and early neutral evaluation. We are looking for help from the NASD to frame these important documents, and they must obtain input from other forums in framing a list of documents that everyone would have to turn over. These of course would relate to the types of claims being made. We will leave to the arbitrators' discretion whether to permit discovery documents beyond what is on the list. We have recommended that deposition discovery be extremely limited and in some instances not permitted; i.e. in simple arbitration cases under $30,000 and only under special circumstances for other claims. We need to put a reminder to parties that information requests are not equivalent to interrogatories. We just need a list of very explicit information that is not available in the documents. Also

recommend that the number of requests be limited as in Federal discovery. We did not recommend additional discovery in all the 3 tiers, although we recommended modification. Clearly, simple arbitrations of $10,000 - $30,000 can be decided by one arbitrator and merely on a paper record, not a hearing, unless the customer specifically asks for a hearing. Standard arbitration of cases over $30,000 to $1 million we would have a couple of arbitrators presiding. In simple cases; i.e. $50,000, a single arbitrator can also be used.

NON-ATTORNEY REPRESENTATION

The Task Force agreed with the need for further study -- and didn't think that we had sufficient information to bar non-attorneys from the arbitration process. What we did recommend is that all non-attorneys certify that they have not been disbarred and have never been convicted of a crime, etc. We ask that the NASD institute a review process where customers can make a claim or filing against any attorney or non-attorney representative for conduct which is inappropriate. We felt that to eliminate it would also go against the current trend -- of the ABA and Federal agencies recommending an increase in NARs in disputes, including arbitration. This allows the small investor to have less expensive representation.

CONSTANTINE KATSORIS

What options do we have if no-one is satisfied with all of your conclusions, especially in the area of punitives? Is it cast in stone? I mean, we have a 3 year trial period for the 6-year rule, why not a trial period for punitives? Is it all or nothing, or can we discuss issues piecemeal?

BOYD PAGE

As far as this Committee is concerned, the package is what it is. I am not telling you that you can't appoint another Committee to get more information, I think that on those levels it is a process that needs to be hacked out again over a couple of years and come up with their conclusions.

DEBORAH MASUCCI

A process has been so disposed -- we may revisit sections some time later. The rules are being framed daily, based on trends.

BOYD PAGE

You need to look at it as though you're drafting a satellite. The rules now will receive closer scrutiny.

LINDA FEINBERG

If you wanted, for example, to change the $750,000 punitive damages cap, that would blow this thing apart. On the other hand, if you had a suggestion regarding how the selection process could be improved, we welcome that and it would be considered.

BOYD PAGE

You have to look at it as "Is this an improvement over what we have today?" or are we better off with the status quo and come back and revisit the issue.

CONSTANTINE KATSORIS

I would like to compliment Linda and Boyd for a fine job on this report.

If you have a package, where do you go from here, to a 19(b) filing? What if it's picked apart at that level?

BOYD PAGE

That could happen. If you determine that this is more beneficial to the process than negative, then there is a lot to be done on implementation. Basically this is a policy report.

CONSTANTINE KATSORIS

We'll now start taking questions and we'll travel around the room clockwise.

NANCY NIELSEN

I question the issue of a single forum. If you have a customer single forum, how would that impact member to member disputes?

LINDA FEINBERG

You now have 10 SRO's and 10 different staffs. It is the Task Force's view that the member to member issues were important and there would have been a lot of hostility with a one-forum recommendation

BOYD PAGE

We think that the SEC has expressed a desire that there be alternatives for investors and there is some merit there. We wrestled with the Coopers report -- but conceptually if

you combined all of the resources and were able to adopt a uniform forum, cases could be handled more efficiently and would help to avoid a negative public perception if it was controlled by one forum. This was a single issue of such magnitude that it would warrant a lengthy investigation in and of itself.

JOAN MOFFIT SILVER

How does your recommendation for early mediation fare with the SROs who have a small case load?

BOYD PAGE

I don't think that any of the forums have to change anything unless they feel it necessary. Small SRO's cannot bear the cost of change. I think the SEC feels it's a good thing for SRO's to have different forums.

DEBORAH MASUCCI

There will be certain parts that SROs will not adopt -- but each SRO should look at the experience of the NFA. That is a small program and they found mediation to be very effective.

LINDA FEINBERG

There is way to outsource mediation.

DEBORAH MASUCCI:

We would work with all of the SROs to assist them in this area.

TOM GRADY

Are you already drafting the rules?

LINDA FEINBERG

We are working in the very early steps of drafting.

TOM GRADY

You expect that the rules are going to be presented in a 19(b) filing by the NASD? Would you be looking for SICA to endorse it and what is the timing?

DEBORAH MASUCCI

We are looking at the scope of the rules. We will be moving quickly. We will be looking to the members of SICA for input on what language should be presented. Our objective is a global filing. We hope to do the filing in May, but right now we are scoping

the project.

TOM GRADY

Linda, you also mentioned that you were comfortable with the 2 times/$750,000 punitive damages and caps. Did you address any state legislation on this? Are you aware of any state where punitive damages are being so limited by rules?

LINDA FEINBERG

I'm not aware of it, but SRO rules operate by adoption by SEC. I didn't think it was an issue.

TOM GRADY

What about dual regulation and dual legislation. That doesn't pre-empt the state from enacting its own rules. I bring up the point because punitive damages is the most hotly-debated issue; I question whether it can be done.

CONSTANTINE KATSORIS

I think in its present form the cap is going to be challenged.

TOM GRADY

In the 6-year rule -- What if a claim is not eligible, what happens? Is the claimant free in any case to pursue avenues in court?

LINDA FEINBERG

We hope to address this in the rules that if you are not eligible to arbitrate, you can go to court and we'll make it clear in the rules.

PETER CELLA

Let me congratulate you on the report, it's fine work. However, the continued use of pre-dispute arbitration clauses was not addressed. If the use of such clauses were eliminated in customer agreements, many of the difficult issues being addressed could be resolved. Without the McMahon decision, claimants would be free to pursue their securities claims outside of securities arbitration as they could pre-McMahon. The securities industry ably defended itself against customer claims under the then prevailing circumstances.

BOYD PAGE

Are you talking about the customers? One of the things which occurred to us -- the concern of the wisdom of the arbitration forum from the industry's perspective -- and

throughout we did inquire of the parties. Are you willing; do you want us to come out with something that says arbitration is not mandatory for anybody? That arbitration is voluntary for both parties -- other than one person. No-one wanted that. Not one of the Task Force members was willing to make it voluntary.

PETER CELLA

Many of the issues addressed by the Ruder Task Force would be resolved if the public customer were not bound to arbitrate.

Let me go on. I am concerned with the public's perception regarding certain of the suggested rule changes that, for example, would provide for an immediate change with regard to the awarding of punitive damages, whereas other major rule changes, such as the "six-year eligibility" rule are conditioned by having "sunset" provisions for their elimination solely at the option of the NASD. In short, the public becomes bound by a materially altered punitive damage rule to the advantage of the securities industry, while other rules changes, ostensibly benefitting the public, are not assured of performance at all. Where is the honest playing field?

BOYD PAGE

Clear?

PETER CELLA

How much longer will it take to eliminate from contracts already in force restrictive provisions that work to the disadvantage of public investors? A 19(b) punitive damage rule filing will substantially modify a customer's right to unconditioned punitive damages while other rules of benefit to customers, gives to the NASD the opportunity to alter those rules in its sole judgment. This causes some concern.

BOYD PAGE

Let me try to address your questions -- you make reference to concern for investors giving up certain rights without the industry giving up any rights. I thought that has been the intent of the Task Force to address. I think this underscores the importance and timeliness of implementation. We tried to make it clear that the Federal Arbitration Act controls. We have made it clear that the choice of law cannot be used to restrict in any way. You made reference to common law rights. Linda did research that. There is currently a very sweeping thinking that would restrict punitive damages in every type of action.

BOYD PAGE

The one thing you mentioned which I wish were different is the test period on eligibility. I don't like that; I think I would not like to have that. Linda was correct in telling you that up to the last minute this was an issue of contention. Is there an optimum resolution? No, but on both of the key issues -- I had to decide, does this compromise, even though I realize that it could be adverse in certain situations, offset by the positives this has to offer to public investors -- I made the decision that I think this is more beneficial than detrimental.

JAMES BECKLEY

Boyd and I have worked on the report intensely -- the list selection program is not going to be implemented immediately, is that correct?

BOYD PAGE

Let me elaborate. It will be employed quickly in a number of areas. There are areas where we just don't have enough arbitrators to go through a pool. We will make efforts to recruit and train arbitrators.

DEBORAH MASUCCI

The recommendation of three lists -- going out to each case -- presents a problem since we presently do not have sufficient pools in every city. There will be a phasing in to get to that ultimate goal. There will be some modifications to that as we go along.

JAMES BECKLEY

That is disappointing from the standpoint of claimants, the list selection was a huge reason for us to endorse the package. If this is going to be delayed significantly -- you're saying January of 1997, that's disappointing.

DEBORAH MASUCCI

There really is nothing debatable -- there is a desire to move forward, but at this stage it just cannot be physically done.

BOYD PAGE

This is not a shock to you -- we have been emphasizing the aspect of recruitment of arbitrators.

JAMES BECKLEY

If one of the rules is submitted in a 19(b), is the SEC locked into an "all or nothing" viewpoint?

DEBORAH MASUCCI

The SEC ruling will not be "all or none". If there is a great deal of controversy, the SEC may ask us to bifurcate and file separately . We are presenting it as "one rule." We view this as a package and if rules were to come in in bits and pieces, it would be counter-productive.

BOYD PAGE

It will be presented as a package.

CONSTANTINE KATSORIS

I am not sure of the SEC's position if it hasn't seen it. It is going to be approved or disapproved exactly as it is? The process is that it has to come out for public comment. This group is not the public -- the public will still have a chance to have its say.

DEBORAH MASUCCI

If there is a model, the model was used in 1989. We are looking at it as a package.

JAMES BECKLEY

It has been suggested that this package has already been ruled on by the Commission and that it's a done deal.

MARY ANN GODZIALA

One, there has to be public comment initiated. Did the Commission make any changes to the package? As far as I'm concerned, the SEC did not see it. You cannot make any judgment that the Commission has considered it.

Check with Jim. Not sure he agrees this reflects her comments

BOYD PAGE

Jim, let me elaborate. As part of our investigation process, we solicited the representatives of the SEC staff to pick their brains on certain issues and that was the extent of their involvement.

DEBORAH MASUCCI

We don't view this as a "done deal." We view it as an integrated package, and the SEC staff has given us the impression that they have bought into every part. This is a best

effort on everyone's part. Let's stop debating and move the process in a positive way, and that's what I hope we could do here today.

JOHN KATOVICH

I agree with Peter. This is an excellent report and a job well done. I did want to make one comment. This is interesting in terms of process. Is it negative or beneficial? It is good they are viewing it as a package and they are now going to put forth to the SEC. But it certainly is taking credit from SICA. and I don't know if SICA will have much of a voice in this. If there were separate arbitration agreements, whether small investors really understand what is going on vis a vis....using a separate document from the customer's agreement.

BOYD PAGE

We talked about it in a group in different ways. Perhaps it could be a separate page along with a 4 page document . There is clearly a feeling that disclosure needs to be highlighted. People on the Task Force felt that an separate page would be a good idea, but

were not prepared to make it mandatory because of cost and paperwork.

JOHN KATOVICH

Did it consider that if NASD submitted this rule and others did not, what impact would that have? i.e., the 6-year eligibility rule, etc.

BOYD PAGE

We view the point irrespective of what forum.

JANICE STROUGHTER

Regarding increasing compensation -- what about an increase in fees? Is the NASD ready to increase arbitrator compensation and not increase filing fees?

BOYD PAGE

We decided not to address that issue. Yes, we agreed compensation should be increased -- $400 or $500 -- or make it market; either way it should be significantly higher than it presently is. We felt we should let the parties negotiate this. We were not prepared to decide how much and it was our view that the industry should bear most of it and should be subject to the assessment that all arbitrations are subject to.

JANICE STROUGHTER

Regarding a global filing -- Global filing implies that SROs have gotten board approval and if not, the NASD would move forward without the board approval of other forums, is that correct?

DEBORAH MASUCCI

It is our objective to file by May.

JANICE STROUGHTER

Are you saying you are going to file anyway?

PHILIP HOBLIN, JR.

Are you going to put it through SICA or are you going to send me a letter a week in advance saying "this is what we're going to do?"

DEBORAH MASUCCI

We are trying to concentrate on the central issues and we want to move it along. We are trying to get the drafting of it outside the NASD. We are trying to move the rule process so that all interested parties participate, but it moves along swiftly.

BOYD PAGE

As it is written, I heartily endorse it. If it went to the SEC and a provision was changed, such as arbitrator selection, I would use my influence to criticize changing it because there is such a delicate balance in the report between issues.

BOB CLEMENTE

I also join in complimenting the Task Force on the job they did. Was there any specific reasoning which led to the selection of 39 strikes in the arbitrator selection processes; and is it the intention of the NASD to withdraw these rules if they are not adopted as a package?

DEBORAH MASUCCI

We cannot answer that.

JAMES BUCK

Will there be more NASD rules on the pre-dispute arbitration agreement? I mean, proposing rules on what someone else has to put in their contract? This is a hotly debated

issue. Is there some indication that you have agreement ?

BOYD PAGE

Realistically there are areas -- can we agree on any uniform language? The hard part will be in implementation.

Jim Buck

In the proposed list of documents for the industry, would you foresee that the list of documents will be in the rule or in a memorandum? How will that be implemented?

BOYD PAGE

We sat and discussed what key documents both sides had which were important; i.e. marketing materials, blue sheets, tax returns; many things, but also of critical importance that we eliminate all the B.S.

We took some statistics from a typical case, and came up with three or four categories of documents that would be relevant in each case and an additional 2-3 categories that might be relevant for particular cases. I think it would be impossible to have a boilerplate for every conceivable case brought in front of an SRO.

Will it be in the rule? That depends on implementation. Deciding on the basic categories: that will be a tough decision.

JIM BUCK

How did you come up with a $750,000 cap on punitives?

BOYD PAGE

It was a compromise.

JIM BUCK

How will you get support from both sides?

BOYD PAGE

We came up with the best deal we could. With all due respect -- if you think this is an improvement, it should go through.

JAMES BECKLEY

The report from PIABA directors is going to take serious issue with the punitive damages provision because of the deterrent effects. They have serious reservations about the eligibility provisions, but as for the rest of the package, they are prepared to endorse the

package, without the punitives issue.

EDWARD MORRIS

I want to also congratulate you on this report. It's fine work. I have one question regarding the prohibition on going to court on a procedural basis. Do you really think you can keep people from going to court?

BOYD PAGE

I am not as knowledgeable on that point. I think that by making clear that this will be controlled by the FAA and will remove a lot of rights to go to NYS Court.

EDWARD MORRIS

How do you get around Section 4 of the FAA?

Did the Task Force look at the Submission Agreement?

BOYD PAGE

No.

EDWARD MORRIS

My third question -- on compensation, you might have a public perception problem.

$225 a day seems low to you, but most family incomes are below $50,000.

BOYD PAGE

There's no denying we need better arbitrators. How do you entice someone qualified? We thought that increased compensation and providing flexibility in scheduling are two ways we could get better arbitrators.

EDWARD MORRIS

All I'm saying is that you might have a perception problem on the public's part.

ETHAN COREY

I'm not speaking on behalf of ~~Mike McGuire or anyone else, but it seems to me that~~ the staff. Code. You mentioned that the industry and plaintiffs bar disagreed about the scope of documents that will be subject to ENE discovery motions and mandatory discovery ~~or~~ do you feel there is enough ~~of an~~ agreement about the scope of documents to be produced for ENE to function ~~no matter the level of effort to be produced. Will you still have enough to~~ effectively? ~~make an informed judgment?~~

BOYD PAGE

Dispositive motions and statute of limitations...There are a number of state common law claims, fraud, etc.; i.e., was there tolling? In many cases it is impossible to make a judgment early. Early mediation -- will both sides have everything on the table to evaluate their claim? No. Will they have enough to reasonably evaluate? Yes. Regarding ENE, the

parties are not limited to the list of documents. It's a case by case process.

WILLIAM J. FITZPATRICK

The SIA has no formal position at this time, but we believe it should be a more democratice process. If you think the industry is unanimously enamored of caps for punitive damages, you are mistaken. As far as the report as a whole the people on the Task Force are to be congratulated. We have tried unsuccessfully to resolve the punitive damages issue together with PIABA and now the Task Force is acting as mediator. I appreciate the work that the Task Force did.

PHILIP HOBLIN, JR.

There should be a joint report by all SROs. I don't think it will fly. There should be no implementation unless all SROs are pro or con.

PHILIP HOBLIN, JR.

Arbitration did not begin with McMahon, arbitration goes back to 1925 and before.

PHILLIP COTTONE

I am more convinced that with this report we are going to have a much improved process.

JIM O'DONNELL

The Task force was independent. The idea of a single forum was not from the NASD. We need to work very closely together and come together as a group of organizations with rules and coordinate their implementation. It is our intention to work very closely with other SROs that this will happen in a time frame that makes sense for all of us.

[Morning meeting concluded and SICA meeting to resume after lunch.]

Corrected: 4/15/96

DISCUSSION BY THE
SECURITIES INDUSTRY CONFERENCE ON
ARBITRATION - THURSDAY, FEB. 8, 1996
AFTERNOON SESSION - SICA'S RESPONSE TO REPORT
HELD AT FORDHAM LAW SCHOOL AND CHAIRED BY PROFESSOR KATSORIS

PAUL DUBOW

The Rules should be brought to SICA, not only NASD. Bring forth rules and leave the two most difficult ones for last. There are many procedural, but some mechanical and these issues -- it would be easier to get settlement on. I think that would be the productive way to go.

DEBORAH MASUCCI

We have looked at three sections: the arbitration agreement, punitive damages and eligibility. We will not have drafts until the 26th of February. We decided to start there first because they were the hardest. We fully intend to give SICA copies of the rules as they develop. All I ask is that you provide comments quickly.

PAUL DUBOW

Are they going to be sent to the individual members of SICA?

DEBORAH MASUCCI

Yes. I don't think everyone would be comfortable with only a few people writing the rules. Because of the time period I think that sending it out to everyone makes sense. We intend to have certain members of SICA help with the actual writing.

JIM BUCK

I think that the provisions in the individual firm contracts is going to meet with great resistance. I think's it's odeous to dictate what a person can put in their contract. I think it should come to the whole group. I think there is more chance of the Commission approving it if we all agree, it would have a better chance of approval. Bringing those other groups in is a significant part of what is going on here.

DEBORAH MASUCCI

But you're talking about getting together every two weeks.

JIM BUCK

I cannot commit everyone, but I can commit the NYSE. I think that is what I would like to happen next.

JIM BECKLEY

Public members are committed to meet every two weeks if that is what it takes.

DEBORAH MASUCCI

We were contemplating a meeting for March 1.

JAMES BECKLEY

We were planning on a meeting for February 27.

PAUL DUBOW

I think we need to get the directions of the board.

DEBORAH MASUCCI

There are a lot of rules that have to be drafted and input has to be provided. I think we should start the process moving as soon as possible and take that into account as the time progresses.

JIM BUCK

The issue of the punitive damages rule will take a lot of discussion. My view is that over the next three terms of the Court, we are probably going to hear more about punitive

damages. The court will tell us what the law of the land will be on punitive damages anyway. If that issue dragged a little, I feel it won't matter too much.

DEBORAH MASUCCI

I feel that if that issue is going to drag, it will drag during the discussions after the rule is drafted.

PAUL DUBOW

I think that we should wait on that. You have here a Task Force that were to make recommendations. Just because seven people say "all or nothing, we have to make it all or nothing." We have difficulty living with that. There are things that need to be changed.

JIM BUCK

I can't believe that if the SEC receives 10 of the 12 rules as at by SICA and approved by SICA, that they'll rule we must have "all or nothing."

PAUL DUBOW

Suppose all the arbitration rules pass, and the punitive damages are not resolved. I don't believe it does too much harm. I think we should put forth the rules we agree on.

DEBORAH MASUCCI

People we discussed this with want this to go "as a package." If the industry and the public will back away from some, we will back away, but I think that now we should stop debating.

PAUL DUBOW

They didn't tell us about the Committee. You made it up, you made the recommendations and now you make up the rules and now you want to bring those rules forth.

JIM BECKLEY

Earlier it was told that input of this discussion would not affect the issues of policy or your decision to file. By doing this you take away any rights SICA has in the approval process.

The board is not obligated to accept lock, stock and barrel the report.

DEBORAH MASUCCI

The decisions were made -- some people liked them, and some people didn't like them.

Personally, I believe that we should move on the decisions that were made, and we should go with them.

PHILIP HOBLIN, JR.

We just got the report and now we hear "Either you accept it or not" and that is what we are up against; now we have to decide on the rules that were already made. It could be trouble down the road.

PHILLIP COTTONE

What you're saying is that your organization would like to make changes to the Task Force recommendations?

PAUL DUBOW

I am saying that there are issues that should be discussed.

CONSTANTINE KATSORIS

I don't see why we can't go separately. Why can't SICA come up with 10 and SRO's go with them and you go with what you want.

DEBORAH MASUCCI

If the rules are made, then the discussion will open up. Keeping in mind that there are broad principles that need to be changed; can they be changed, I am not certain.

JIM O'DONNELL

I am telling you my major concern is that Mike Siconolfi, etc. will start exposés talking about how the rules are being written, etc. and that detracts from momentum.

PHILIP HOBLIN, JR.

Any leaks to Siconolfi didn't come from this group. We didn't even know about the report.

JAMES BECKLEY

What about the comments that this is an NASD report.

JIM O'DONNELL

This was an independent group. This is not an NASD report; this is the Task Force's report. I would hope that it doesn't look like NASD wants its rules filed first. The objective of bringing the Task Force together was not NASD's idea. It was a strategic planning

committee. They recognized, and wanted a Task Force study done, because they recognized that if something wasn't done, that the value of this service and the service to customers is going to go downhill. We brought the people together with the thought that they would be independent and make recommendations with all in mind. They did what this group couldn't do independently and couldn't do collectively. SICA has looked at this problem and has not been able to solve the problem. These people have presented this to us in the hope that it would solve the problem. You're talking about going with the easy things and holding back on the hard things. A year from now we will still be talking about the tough things. This is an opportunity to do something that this Task Force recommends we do and save a valuable service. The SROs should get together, we should prepare the rules together. I think we should stop and think about what is the right way to go forward. We can go forward and recommend it and get something done that we all think is on balance a good idea and I would like to know if there is an alternative which would have the same result.

PAUL DUBOW

You're saying move together.

JIM O'DONNELL

Yes.

PAUL DUBOW

The NASD went and conducted this study and appointed this group and the NASD boards are going to prepare these rules and want other SROs to follow. In hindsight, what should have happened is that you could have come here and gotten opinions here and seen whether a Task Force should be formed, etc. and maybe then we could accept the recommendations on an all-or nothing basis, and we would agree that we would be bound by their suggestions. But what is happening here is that our first knowledge was in the papers and you say take it or leave it.

JIM O'DONNELL

We're not saying that. If one of the SROS had the same idea to form a group like this one and move forward. It didn't happen. The times I spent with SICA, I don't think they could agree on who would even be on the panel. We are not interested in the credit.

CONSTANTINE KATSORIS

Last year the NYSE reviewed many of these same issues openly at its symposium, and the only difference was no-one voted on them.

JIM O'DONNELL

Focus on the substantive issues. You will come to the conclusion that many of the issues that have been bothering us for years and let's get to writing the rules and let SICA have its say. SICA did agree on many things up to this point and that is a substantial framework for the arbitration process we have today.

PHILLIP COTTONE

I think it's positive that we're getting the feedback here today. SICA can have comments on the role and let's have a product we can go forward with. This is not the dispositive word on what's going on in the next 50 years.

CONSTANTINE KATSORIS

If I could make a prediction, I would say that we could agree on everything in the report with the exception of punitive damages. I think we could agree with everything else.

JIM O'DONNELL

Let's look at how many people will be affected by punitive damages per the history of the arbitration process. There is a resolution to the problem, it is time to stop the debate.

PHILIP HOBLIN, JR.

It's just been presented to us, we're not just going to rubber stamp it.

JAMES BECKLEY

What role do you see SICA playing?

JIM O'DONNELL

I am not sure what role they should play.

JIM BUCK

What affects the people are the rules you are going to draft and that is what I am interested in. I think we should discuss the text of those rules. My suggestion is that

Punitive Damages drafting should wait, rather than have the effort to draft rules fracture early; I believe that we will get help from Congress on punitives anyway.

JIM O'DONNELL

It you stall, you upset the balance of issues and then everything changes.

1ST MAN ON KATSORIS' RIGHT (AAA?)

Well then draft that rule, but let the group debate this rule because and these are the people who are going to have to live by the rule.

JIM O'DONNELL

Debbie has offered to send them to you as soon as they are ready. Do you have an idea which might expedite the drafting of this rule?

JIM BUCK

You already have someone to draft it. Submit it to us and we can convene and give the feedback and put together a package that will ultimately go to our boards.

DEBORAH MASUCCI

What I am doing with my staff is taking each section that has to be drafted and what

other sections of the code it affects. I would be happy to talk about it on the 27th. At that juncture we could talk about other issues.

PAUL DUBOW

The rule language will be gone over on the 27th?

TOM GRADY

Have you started drafting?

DEBORAH MASUCCI

Right now we're working on the scope of the rule language. We can discuss this on the 27th.

[Meeting adjourned and next meeting will be held at the American Stock Exchange on Tuesday, February 27, 1996.]