Minutes of the Meeting of the
Securities Industry Conference on Arbitration
February 27, 1996
American Stock Exchange
New York, New York

MEMBERS PRESENT

James E. Beckley, Public Member
David Carey, NYSE
Peter Cella, Public Member
Robert Clemente, NYSE
Elliott Curzon, NASD
Arlene Day, Amex
Paul Dubow, SIA
James Duffy, Amex
Karl Eiholzer, MSRB
Constantine N. Katsoris, Public Member
James O'Donnell, NASD
Deborah Masucci, NASD
JoAnn Moffat Silver, CBOE
Janice Stroughter, Amex
JOHN RAMZI AMEX

PRESENT VIA CONFERENCE CALL

Lydia Gavalis, Phlx
Thomas R. Grady, Public Member
John C. Katovich, PSE
Rosemary MacGuinness, PSE
Nancy Nielsen, CBOE
Thomas Stipanowich, Public Member
Nancy Smith, SEC

INVITED GUESTS

Elizabeth King, SEC
Robert Love, SEC
Mary Gadziala, SEC
Cate McGuire, SEC

Ms. Stroughter called the meeting to order. The meeting focused on five areas covered by the NASD Arbitration Policy Task Force Report: predispute arbitration clauses, eligibility, collateral litigation, arbitrator selection and punitive damages.

Catherine McGuire voiced the opinion that the SEC would like to see resolution from SICA regarding eligibility and punitive damages.

The Conference first reviewed the Task Force's recommendation that predispute arbitration agreements should contain a statement that the FAA governs securities arbitration. The SIA and the public members opined that including such a reference would cause confusion in that parties would not know which standard of law to apply in securities arbitration: the SROs, state law or the FAA. For example, it was noted that a choice of law provision in a pre-dispute arbitration clause could be in conflict with the FAA. In addition, the SIA noted that any new disclosures required by a new rule should be executed on or after 120 days rather than the 60 days suggested by the Task Force. The NASD noted the comments.

The Conference then focused on the Task Force's recommendation regarding the eligibility rule. Mr. Beckley stated that the proposed Task Force rule was far worse than the current system in that it requires that arbitrators know and follow the law. Mr. Beckley expressed concern that the Task Force's proposed rule would cause collateral litigation after the conclusion of an arbitration hearing. He expressed the view that parties would file motions to vacate based upon the fact that arbitrators exceeded their authority by making a matter ineligible, or that the arbitrators did not correctly apply the law. In addition, Mr. Beckley stated that the proposed rule was not necessary in that the problems associated with the eligibility section involved primarily partnership claims and that the number of limited partnership cases filed with the SROs are declining. Professor Katsoris voiced objections to the rule and stated that the rule was cumbersome and not good for investors and that he would object to the rule in response to a 19b-4 filing by the NASD. Beckley also stated that PIABA was opposed to the NASD's proposed rule. The SIA concurred in opposing the NASD's rule.

In the area of punitive damages, there was agreement between the public members and the SIA that the issue of punitive damages should not be addressed at this time. The SIA voiced concern about the lack of a standard in the NASD's proposed rule and the public members were opposed to a rigid cap on the amount that could be awarded. The SIA's Board was scheduled to meet on March 6 and the SIA would be prepared at that time to make a formal statement.

The Conference next focused on the NASD's proposed list selection process for appointment of arbitrators. This recommendation was received well by the Conference. It was noted that it may be difficult for the SROs with small caseloads to implement a list selection for arbitrators. It was suggested that perhaps a smaller list than that suggested by the Task Force might alleviate some of the problems.

The meeting concluded with agreement among the SROs that further meetings by telephone would be held in order to move forward with the recommendations.