Approved July 10, 1997

MINUTES OF THE MEETING OF THE

SECURITIES INDUSTRY CONFERENCE ON ARBITRATION

APRIL 15, 1997

The Securities Industry Conference on Arbitration (SICA) met on April 15, 1997 at 9:40 a.m., in Room 621, at the New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y. 10005. The following persons were in attendance:

MEMBERS PRESENT:

James E. Beckley - Public Member
James E. Buck - NYSE
David L. Carey - NYSE
Robert S. Clemente - NYSE
Philip S. Cottone - NASD Regulation
Elliot R. Curzon - NASD Regulation
Paul Dubow - SIA
Linda Fienberg - NASD Regulation
Bill Floyd-Jones - AMEX
Beth Fruechtenicht - PCX
Thomas R. Grady - Public Member
Deborah Masucci - NASD Regulation
Rosemary A. MacGuinness - PCX
Joanne Moffic-Silver - CBOE
Edward W. Morris, Jr. - NYSE
Nancy Nielsen - CBOE
Fredda Plesser - SIA
Thomas J. Stipanowich - Public Member
Janice M. Stroughter-Giff - AMEX

INVITED GUESTS:

Paul Andrews - SEC
Peter Cella - Public Member (Retired)
Mary Ann Gadziala - SEC
Constantine N. Katsoris - Public Member (Retired)
Robert A. Love - SEC

1. Fredda Plesser was introduced to the conference as the new SIA representative.

2. SRO members were reminded to submit their 1996 arbitration statistics (Tab 9) if they have not as yet done so.

3. The conference reviewed the minutes from the meetings of October 17, 1996, November 8, 1996 and January 17, 1997 (Tab 1). The minutes from each of the prior meetings, with additional amendments, were approved. It was agreed that those who had drafted the respective minutes would make the additional changes. (The approved minutes of the October 17, 1996, November 8, 1996, and January 17, 1997 meetings are attached.)

4. The next item was the NASDR's current proposed amendment to its eligibility rule (Section 4 of Uniform Code of Arbitration), recently approved by the NASD Board and attached to a memo to SICA dated April 14, 1997 which was distributed.

The discussion focused on the proposal's language that would permit a challenge to the eligibility of a claim that has been ordered to arbitration by a court. A challenge to eligibility would be permitted, notwithstanding the court order, in those cases where the claimant had brought the initial court action in breach of a predispute agreement that required arbitration.

Ms. MacGuinness made several suggestions to clarify the rule. Mr. Beckley requested that it be noted that the discussion of the NASDR's eligibility proposal should not be considered as SICA's approval of the proposal. Ms. Fienberg said that NASDR would review SICA's comments and that their goal was to file it with the SEC in early May.

5. The conference next considered the SEC's suggested use of "Plain English" in drafting rules. For purposes of illustration SICA's list selection rule proposal was used. Mr. Andrews stated that the Commission favored the use of Plain English in the drafting rules adopted by SICA. Mr. Andrews distributed examples of "Plain English" versions of SICA's proposed list selection rule and the NASDR's proposed list selection rule along with a two page hand-out entitled "Plain English At a Glance." A copy of the SEC's Draft: A Plain English Handbook, is attached.

Mr. Love said that it would be better to start drafting in "Plain English" now with each new proposed amendment rather than wait for a time when the entire code could be rewritten. Mr. Love also noted that the use of Plain English is not intended to change the substance of the existing rules but only to make the rules more readable.

Professor Stipanowich supported the idea of drafting rules with the use of Plain English. Mr. Dubow expressed concern over rules written in the second person and suggested that use of such language is better for a guide rather than rules.

6. The Conference discussed a proposed list selection rule. Mr. Clemente explained the changes made to the proposed list selection rule by the subcommittee (Tab 3). It was noted that the subcommittee decided that the proposed list selection rule, like that of the AA rule, should not specify the manner of implementation, nor the number of arbitrators on each list, in order to ensure that the SROs would have the flexibility, based upon their needs and resources, to effectuate the general intent of the rule without imposing an undue burden on a particular forum.

Discussion of the proposed rule focused on the language regarding the classification of arbitrators. Mr. Dubow noted that bank employees may not possess the necessary expertise to be classified as a

Securities Industry arbitrator. An additional suggestion would exclude from the definition of a "Securities Arbitrator" a person who spends a substantial portion of their time representing clients whose interests are adverse to the securities industry. Mr. Dubow also raised questions regarding the operation of peremptory challenges in multi-party litigation.

Mr. Love raised questions regarding peremptory challenges when an administrative appointment is made or if an arbitrator should become unable to serve after the start of the first hearing session. Although provided for in the rule, Mr. Clemente agreed that the language needed to be clearer on that point. Mr. Love also suggested that the language pertaining to bank employees engaged in securities activities not be tied to the securities examinations.

At Mr. Clemente's suggestion the list selection rule was referred back to the drafting committee with the following suggestions:

1. To draft the rule using Plain English;
2. To clarify certain aspects of who should be classified as a securities industry arbitrator;
3. To clarify the use of peremptory challenges to arbitrators who are administratively appointed.

7. The next item for consideration was the proposed amendment to the Uniform Code regarding Discovery (Uniform Code of Arbitration Section 20), and the creation of a companion Guidebook for Discovery (Tab 4). Mr. Clemente advised the conference of the subcommittee's meeting as well as its discussions with a representative of the NASDR's NAMC's Advisory Committee on Discovery, and that committee's apparent inability to reach consensus among themselves on the issue of discovery.

The conference generally agreed that discovery disputes are resolved most efficiently when arbitrators are appointed at an early date. Professor Katsoris supported the creation of the Guidebook for Discovery and continued to voice strong opposition to the idea of a list of documents that would be subject to mandatory production in all cases. Professor Katsoris said that mandatory document production would infringe on the arbitrator's authority to resolve discovery disputes. Mr. Beckley questioned the scope of the confidentiality requirement in the proposed Guidebook. The NASDR indicated that it was leaning towards use of a discovery guide book as opposed to a definite discovery rule and that discovery is an issue related to the early appointment of arb

Upon Mr. Clemente's suggestion the discovery amendment and the Guidebook were referred back to the drafting committee with the following suggestions:

1. To translate the proposed rule into "Plain English".
2. To conform the time periods in the rule with the use of calendar or business days;
3. To clarify when a request for additional information may be served.

8. The NASD advised the Conference of its proposal to substantially increase the schedule of fees for the filing of claims. Ms. Masucci advised the conference that the NASDR's proposal would substantially increase filing fees and hearing deposits across the board with approximately 70% of the overall increase being borne by the industry. This proposal would on average increase customer filing fees by 50% and member filing fees by 100%; customer and member hearing session deposits by 50%; and member surcharges by 300%. The NASD will be discussing the proposal with its constituents in the coming weeks.

The increase in fees covers additional expenses resulting from implementation of certain recommendations of the Arbitration Policy Task Force including early appointment of arbitrators and increased arbitrator compensation. The increase in fees also reduces the subsidization of the arbitration program while increases fees to users.

Ms. Masucci said that although the NASD Regulation supports an increase in the honorarium it does not support the concept presented at previous meetings (Tab 5), of a sliding scale where the size of the honorarium would increase with the amount of damages sought in the Statement of Claim.

9. Mr. Beckley's proposal to amend Section 13(2)(iii) of the Uniform Code so as to provide for a default judgement where a party has failed to file an answer (Tab 6) was the next item discussed. The amendment would bar the party who failed to answer from presenting any defense at the hearing rather than leaving it up to the discretion of the arbitrator(s). After a brief discussion, Mr. Beckley acknowledged the proposal was a bit draconian and withdrew it from consideration. A new draft, to be submitted by Mr. Beckley, will be considered by the drafting committee.

The next meeting will be jointly hosted by Mr. Beckley and the Chicago Board Options Exchange on July 10, 1997.

The conference scheduled its fall meeting for October 15, 1997, in Arizona to coincide with PIABA's annual meeting.

On motion Adjourned.

Robert S. Clemente
Secretary