

Approved July 15, 1999

Minutes of the  
April 13, 1999 Meeting of the  
Securities Industry Conference on Arbitration  
Hosted by the New York Stock Exchange  
Boca Baton, FL

Members Present

Robert S. Clemente, NYSE  
Paul Dubow, SIA  
Theodore Eppenstein, Public Member  
Angelo Evangelou, CHX  
Linda D. Fienberg, NASDR  
George H. Friedman, NASDR  
Beth A. Fruechtenicht, PCX  
Thomas R. Grady, Public Member  
Nancy Nielsen, CBOE  
Fredda Plessner, SIA

Invitees Present

Mary Ann Gadziala, SEC\*  
Robert A. Love, SEC  
Helene McGee, SEC\*  
Laura Pruitt, SEC  
Jeffrey R. Schwartz, SEC\*  
Kevin Zambrowicz, SEC\*

Public Members Emeritus Present

James E. Beckley  
Constantine N. Katsoris

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on April 13, 1999 at 8:30 a.m., Chair Beth Fruechtenicht presiding.

**1. Minutes of the February 5, 1999 Meeting**

Ms. Fruechtenicht called for amendments to the draft of the minutes of the February 5, 1999 meeting (Tab 1). The Conference proposed two editorial corrections. Upon motion duly made and seconded, the conference unanimously approved the minutes, as amended. (Attachment A)

**2. Non-SRO Pilot Program**

The Conference considered the press release, guidelines, evaluation form and submission agreement that were submitted by the subcommittee on options to SRO arbitration. Clarifying amendments were

\* Via Conference Call

proposed to the materials. In addition, following a proposal by Ms. Plessner, the Conference agreed to amend section 8(b) of the guidelines to toll the answer due date for claims filed under the pilot until respondent is notified by the SRO or the claimant that the claim is proceeding at the SRO.

Mr. Eppenstein questioned SRO procedures if a firm advises that a claim is not eligible under the pilot and suggested an amendment to section 8(b) requiring the firm to provide the reason for ineligibility to the SRO. Ms. Fienberg informed the Conference that the NASDR's general counsel's office has advised that failure to comply with the pilot program cannot be the basis for a disciplinary action. Ms. Fienberg also informed the Conference that the NASDR filed a rule change to specify that failure to pay an award from any forum may be the basis of a disciplinary action. The Conference agreed to amend the guidelines to require a firm to provide to the SRO the reason for its decision that a claim does not qualify for the pilot program.

Mr. Beckley pointed out concerns regarding the overly broad language in section 3(b) that eliminates claims "arising from" putative or certified class actions. The Conference resolved to adopt a new section 3(a) providing that a claim that cannot be filed at an SRO cannot be part of the pilot program (remaining section 3 paragraphs renumbered).

The Conference discussed outstanding issues with respect to the arbitration providers available to administer cases under the pilot. Mr. Dubow presented the SIA Arbitration Committee's draft arbitration rules for the pilot. Based upon the AAA 1993 Securities Arbitration Rules, the draft is proposed due to the AAA's adoption of its Commercial Rules for securities cases. Issues with the AAA Commercial Rules involve the number of arbitrators, the composition of panels, forum fees, and award availability and content. Mr. Friedman will contact the AAA about its willingness to participate under the pilot program guidelines.

The Conference determined to delay formal adoption of the guidelines and issuance of the press release pending the resolution of outstanding issues regarding the alternate arbitration providers.

### **3. Re-Nomination of Thomas Grady as a Public Member of SICA**

Professor Katsoris presented Professor. Stipanowich's letter (Tab 3), on behalf of the public Members, commending Mr. Grady for his good work on behalf of SICA and renominating him for a second term as a public member. Upon motion duly made and seconded, the Conference unanimously appointed Mr. Grady for a second term.

#### **4. Plain English Translation of Uniform Code of Arbitration**

Mr. Clemente presented the latest version of the plain English translation of the Uniform Code and indicated that the NYSE's legal advisory group has reviewed the translation and noted ambiguities. Mr. Clemente requested formal adoption of the pure translation when completed and suggested that phase 2 of the project should focus on reordering the code to comply with the order of case proceedings and making appropriate substantive changes. He called particular attention to Section 4 of the code, which was the most complicated and difficult section to translate. Mr. Clemente will distribute the translation in a 3-column format, with the third column intended to accommodate proposed changes, clarifications and substantive amendments.

Professor Katsoris volunteered to continue to make the Fordham students available. Mr. Clemente advised the Conference that the Fordham group is working on the *Arbitrator's Manual*. He also stated that the ABA is revising and expanding the Code of Ethics.

Mr. Love expressed the Commission's strong interest in plain English and thanked those who began the project.

#### **5. NASD & NYSE Arbitrator List Selection Method**

Tabled.

#### **6. Unlicensed Practice of Law**

Tabled.

#### **7. California Legislation**

Tabled.

#### **9. SICA Statistics**

Mr. Clemente submitted the compiled SRO arbitration case statistics for 1998.

#### **10. Scheduling Future Meetings**

The NASDR will host the next meeting on July 15, 1999 at its office in San Francisco.

The fall meeting will be held in Palm Desert, CA, in conjunction with the PIABA Annual Meeting on October 21-23, 1999. The specific date is to be determined.

#### **11. New Business**

There was no new business.

## **Meeting with SIA Subcommittee on Arbitration**

At 10:45 a.m., the following representative from the SIA Arbitration Committee ("Committee") joined the Conference:

Judith Belash, Goldman, Sachs & Co.

Don Davidson, Paine Webber Incorporated

Linda Drucker, Charles Schwab & Co., Inc.

Paul Matecki, Raymond James

Ken Meister, Prudential Securities Incorporated

Steve Sneeringer, A.G. Edwards & Sons, Inc.

Edward Turan, Salomon Smith Barney Inc.

### **1. Non-SRO Pilot Program**

The Committee informed the Conference that most firms that intend to participate in the pilot program intend to select the AAA as the alternate forum and that the firms were caught unaware by the AAA's discontinuance of its Securities Arbitration Rules. The proposed draft rules are intended to standardize the rules governing the pilot cases and to reduce the variables in contention between the parties.

### **2. Plain English Translation of Uniform Code of Arbitration**

The Conference informed the Committee of the status of the project to translate the Uniform Code into plain English. The Committee expressed its support for the project. Ms. Fienberg stated that the NASDR intends to divide its arbitration rules into separate rules for member, customer and employee cases.

### **3. Mediation**

The Committee suggested that SICA take a more active role in promoting mediation as an alternative to arbitration. Discussion ensued regarding 1) ways that SICA could be involved in mediation, 2) the necessity that mediation be voluntary and confidential, 3) the role of rules in mediation, 4) the cost and therapeutic benefits of mediation versus arbitration, and 5) mediator training issues.

### **4. Industry Representation on SICA**

The Committee requested that the Conference consider adding an additional industry representative, such as an attorney who represents the industry as outside counsel. Discussion followed concerning the proposal, including 1) the requirement that 1 of the 3 public members be an academic and the 2-term limit, 2) the neutrality of the public members, 3) the importance of compromise to the success of the Conference, and 4) perception problems with SICA's current composition and those that could be generated by a change in composition. The Conference agreed to further discuss the Committee's proposal.

There being no further business, the meeting adjourned at 1:35 p.m.

/s/ Nancy Nielsen \_\_\_\_\_  
Secretary