

**PUBLIC INVESTORS ARBITRATION
BAR ASSOCIATION**

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"The Investor's Interest
is the Public's Interest"

ROSEMARY SHOCKMAN, PRESIDENT

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October 1, 1997

Via Federal Express

Arthur Levitt, Chairman
Securities & Exchange Commission
450 5th Street NW
Washington, DC 20549

Office of Chief Counsel

RECEIVED
OFFICE OF THE SECRETARY

OCT 10 1997

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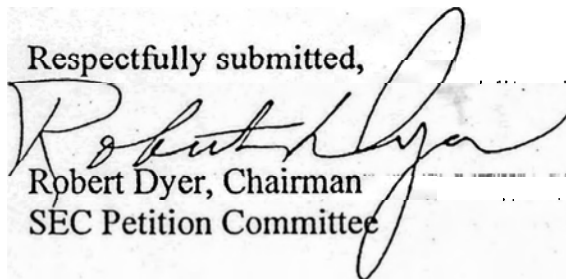
Division of Market Regulation

RE: Public Investors Arbitration Bar Association's Petition for
NASD rule changes

Dear Chairman Levitt,

On behalf of the Public Investors Arbitration Bar Association, I enclose the original and six copies of a petition to the Commission requesting enactment of three NASD rules designed to create a more neutral playing field for public investors. Those who regularly represent customers in arbitration are uniform in their concern about the sharply declining quality of arbitral justice in the past several years. These rules will go along way toward restoring and preserving public confidence in the compulsory arbitration system.

Respectfully submitted,



Robert Dyer, Chairman
SEC Petition Committee

RD/nw
Enclosures

Rules of Practice

Securities and Exchange Commission

Rule 192. Rulemaking: Issuance, Amendment and Repeal of Rules of General Application.

(a) *By Petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge, in writing, receipt of the petition and refer it to the appropriate division or office for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate. The Secretary shall notify the petitioner of the action taken by the Commission.

Federal Administrative Procedure Act

5 U.S.C. § 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -

(1) compel agency action unlawfully withheld or unreasonably delayed;

Approved May 1, 1998

**Minutes of the
October 16, 1997 Meeting of the
Securities Industry Conference on Arbitration**

-Held in Scottsdale, AZ at the Hyatt Scottsdale at Gainey Ranch-

Members Present:

James E. Beckley, Public Member
James E. Buck, NYSE
Robert S. Clemente, NYSE
Philip S. Cottone, NASD
Arlene Collins-Day (by conference call), AMEX
Paul J. Dubow, SIZ
Linda D. Fienberg, NASD
Beth A. Fruechtenicht, PCX
Thomas R. Grady, Public Member
John C. Katovich, PCX
Deborah Masucci, NASD
Nancy Nielsen, CBOE
Fredda Plessner, SIA
Thomas J. Stipanowich, Public Member

Invitees Present:

Paul Andrews, SEC (by conference call)
Robert Love, SEC (by conference call)
Helene McGee, SEC (by conference call)
Catherine McGuire, SEC (by conference call)

Public Members Emeritus Present:

Peter R. Cella
Constantine N. Katsoris

Mr. Beckley called the meeting to order at approximately 8:15 a.m. The conference was informed that Beth Fruechtenicht had been appointed Director of Arbitration of the Pacific Exchange.

1. **Approval of the July 10, 1997 minutes:**

Mr. Clemente moved to approve the July 10 minutes. Mr. Stipanowich seconded the motion.

Mr. Dubow suggested certain modifications prior to approval as follows:

- a. At Page 4 regarding California Senate Bill 19, the last sentence should read, "It was Mr. Dubow's opinion that Governor Wilson will probably veto this bill."

- b. At Page 5 second paragraph under New Business, after “State Supreme Court case” insert – “*Engalla v. Kaiser Permanente*”

The Conference voted unanimously to approve the minutes, as amended.

2. List Selection Rule – Draft dated September 18, 1997.

Mr. Stipanowich moved to approve the List Selection Rule as drafted. Mr. Clemente seconded the motion.

Mr. Love stated that certain issues needed to be resolved and noted suggestions from SEC staff. He informed the Conference that if the rule as drafted was proposed by an SRO to the SEC, the unresolved issues would be raised with whichever SRO first filed the proposed rule change. That review process would probably take more time and be less efficient than addressing the issues now.

Ms. Fienberg noted that the NASD is in the process of designing computer software to facilitate the list selection process. They discovered that the program had to be written as a stand-alone program and an outside computer consultant has been hired to design and code the software. One of the goals of the program was to minimize staff involvement in the selection process. The number of cases on the NASD docket requires automated treatment of the list selection process. Ms. Masucci noted that NASD’s list selection version is very similar to the SICA version, and NASD would take comments on both rules and incorporate them as necessary.

Mr. Stipanowich amended his motion to approve the list selection rule in substance and await a new plain English version, and other changes, after working with SEC staff. Mr. Clemente seconded the amended motion, and the Conference approved the rule in substance. *A copy of the draft List Selection Rule, dated September 18, 1997 is attached to these minutes as Exhibit 1.*

Mr. Clemente will confer with Nancy Smith to arrange for making final changes to the rule. Mr. Clemente suggested that the Drafting Subcommittee schedule a conference call to discuss pending changes. A conference call was scheduled for October 30, 1997 at 11:00 a.m. (EST). A conference call will be held with SICA Members to approve the rule in final form.

3. Optional Arbitration.

Ms. Stipanowich raised the topic of optional arbitration for consideration by the Conference.

Ms. Masucci stated that for many people, arbitration is already voluntary where there is no arbitration agreement. She also emphasized that there are other alternatives to arbitration, such as non-binding mediation. She believes that the emphasis should be placed on non-binding alternatives.

Mr. Clemente agreed with Ms. Masucci, but was also concerned about public perceptions. He said the concept we are looking at is a way of avoiding writing so many rules; arbitration was much simpler before McMahon. The Ruder Report recommended a lot of changes and we are becoming overburdened by too many complex rules.

Mr. Clemente stated that the NYSE ran a pilot program offering the AAA as an option several years ago. Six major firms agreed to consider the AAA option on a case by case basis. Certain cases were earmarked by the firms for participation in the program. In addition, customers could request arbitration with the AAA.

Mr. Buck stated that he liked the idea of looking at the AAA alternative again. HE also stated that we (SICA) have to defuse the hostility against arbitration, and that the plaintiff's bar argued that when they were offered the AAA alternative during the NYSE's pilot program, there were too many conditions put on it by the firms.

Mr. Dubow stated that the NYSE's AAA pilot program experience varied from firm to firm. Dean Witter had no objection to it, but they would not agree to it for cases in Florida. Mr. Dubow stated that under the pilot program, the plaintiff had to request AAA arbitration and the industry was not allowed to put conditions on it. But the major deterrent to the plaintiff's bar was the cost of AAA arbitration – AAA fees were far greater than SRO fees.

Mr. Dubow also stated that publicly about an alternative forum will not defuse complaints about arbitration. Claimants and attorneys will still argue that they were forced to go to arbitration and that arbitration procedures are unfair. Mr. Dubow found the AAA proposal interesting, but expressed concern about AAA rules not containing an eligibility provision. Mr. Dubow would prefer to have the eligibility rule retained, regardless of forum, due to the fact that arbitrators do not often dismiss cases on statute of limitations grounds. Mr. Dubow generally thought that the AAA has good panels in San Francisco.

Mr. Clemente stated that Mr. Stipanowich's proposal goes a little further, - it goes to opting out of ADR, altogether, perhaps at a specific dollar amount. Mr. Clemente noted that the proposal would require that one side file a notice of intent to opt out of SRO arbitration which starts clock, and that the other side would have a certain amount of time to object. The parties could agree and pursue matters in court, or select mediation, or another forum.

Mr. Beckley suggested that perhaps it is time for SICA do what it did with non-attorney representatives (NARs) and attempt to collect opinions from all sectors – firm in-house counsel, plaintiff's bar, and people in position to get complaints, like AARP. Another advantage of Mr. Stipanowich's proposal is that this would be the first comprehensive survey of arbitration since McMahon.

Mr. Clemente opened that SICA may be at point where it can no longer do an effective job of all of these complaints. Ms. Masucci stated that participants don't wait to realize the benefits of one improvement before tinkering with the improvements. She also noted that the length of hearing is becoming a problem. The NASD is seeing lawyerly tactics that are breaking down the process and they have tried to address the problem by adopting more rules to clarify procedures. However, this has created more rules for lawyers to manipulate. She also said that the NASD was seeing situations where lawyers are treating the Panel as their adversary, and that arbitrators are being accused of bias if they try to impose limits on the parties. Professor Katsoris stated that a strong chair should not let that happen.

Mr. Dubow stated that a major issue is the need for good arbitrators – concern about repeat arbitrators is silly. Attorneys don't want repeat arbitrators because they want nonexpert arbitrators who fall for their lines, like juries.

Mr. Cella stated that he'd like to point out that the view just expressed indicates the need for more experienced chairs. We are all now subject to the endless hearing syndrome.

Ms. Masucci stated that the most important thing is that list selection will help address the criticisms. If parties are more involved in the selection process, they will not criticize the arbitrators selected. Eventually the result will be a more professional roster of arbitrators. In addition, parties do not want to choose arbitrators with no award history and routinely strike them.

Ms. Plesser raised the issue of the perception problem and that arbitration at the SROs is still viewed as a secret society. She suggested that SICA be more proactive about educating the public about arbitration. Education would achieve the same end as the proposal.

Ms. Fienberg stated that she didn't think education would solve the perception problem as long as arbitration is mandatory at an SRO forum. Ms. Plesser responded that the term "mandatory" is filled with emotion. If it is truly the case that customers understand how arbitration works, the bad perceptions would possibly be diminished.

Mr. Clemente stated that those opposing arbitration are the ones that make the most noise. The list selection rule is good, but objections are already coming that as long as SROs are determining who is in pool, there will be perception problem.

Mr. Clemente moved to establish a SICA subcommittee to consider options to SRO-sponsored arbitration including the AAA alternative, opt-out provisions and other forms of ADR, as well as educational programs aimed at public customers and registered representatives. Mr. Grady seconded the motion. The Conference unanimously approved.

Mr. Buck then interposed that the Conference might consider putting the options alternative in the context of the PIABA petition to the SEC to have a 19(c) proceeding. Mr. Cottone suggested that the subcommittee come back with ideas about their own mission. Mr. Beckley stated that he dimly remembered that there may have been an SEC release on firm agreements not limiting customers to just one forum. Ms. Masucci reminded the Conference that in 1987 the SEC recommended that SROs consider giving the option of AAA as a forum.

Mr. Beckley asked Mr. Love if he had any recollection of a release on the issue. Mr. Love noted that the SEC's brief in Roney, as well as a subsequent litigation release stated that predispute arbitration clauses that limited SRO arbitration choices otherwise available by rule were invalid.

Upon request from Mr. Beckley for volunteers for the new subcommittee, the following persons volunteered:

Mr. Clemente, Mr. Cottone, Ms. Fienberg, Ms. Plesser, Ms. Fruechtenicht, Mr. Dubow, Ms. Masucci, Ms Nielsen, Mr. Stipanowich, Mr. Beckley, and Professor Katsoris.

The subcommittee scheduled its first meeting for October 28, 1997 at 4:30 p.m. (EST).

4. Pilot Clinical Program

Paul Andrews spoke on behalf of the SEC and stated that the pilot clinical program is designed to offer help to small investors in New York who have claims that attorneys typically won't take due to the small dollar amount. Five law schools in New York City have expressed an interest in the program. The schools that have firmly committed to participating initially are Pace University and Fordham University. Professor Katsoris also noted that there would be a teaching component for students.

The Association of the Bar in New York City also is working with the project and is enthusiastic about the program. The Association intends to refer claims of less than \$15,000 to the clinic programs. The Association will first try to obtain a lawyer for cases between \$15,00 to \$30,000 before referring them to the clinics.

Mr. Dubow stated that the SIA had problems with the clinic program because the Association has no input into case management. He noted that Professor Ruder had a pilot program at Northwestern University and that students seemed to only want to try the cases and never consider settlement. He stated that it was important to have an experienced person running the program. Mr. Andrews stated that all of the schools are cognizant of the issues and are interested in teaching all aspects of handling a case, including settlement negotiations.

Mr. Buck opined that the proposal was a very responsible response to Arthur Levitt's suggestion that there be clinics for small cases, and that such a program is highly desirable.

5. Presentation by PIABA of the 19c Petition to amend the NASD Code of Arbitration Procedure re: 1) AAA opt-out; 2) Panel Composition; and, 3) Rotational Selection of Arbitrators.

On behalf of PIABA, Rosemary Shockman and Professor Joseph Long, presented the Conference with PIABA's 19(c) Petition. Ms. Shockman stated that the origin of the petition was the frustration claimants' lawyers have with composition of panels and the arbitrator selection process. PIABA's opinion is that the list selection procedures seems to be taking a long time to be adopted, and they are also frustrated that the AAA option has gradually disappeared from arbitration agreements (Schwab dropped AAA in 1997). Thus, the ability to use AAA has been largely foreclosed and PIABA feels strongly that a neutral forum should be available. Ms. Shockman also stated that the administration process at AAA is much more consumer-sensitive and that AAA has been very able to respond to requests for hearings.

Mr. Buck said that the NYSE had a AAA pilot program several years ago. Claimants were provided with information on AAA, and it was purely voluntary. The NYSE found that not very many plaintiffs requested to go to the AAA.

Mr. Beckley stated that his experience with the NYSE pilot program was that he met with resistance from the defense bar, specifically Shearson. When Mr. Beckley tried to go to AAA, the firm wanted to negotiate several things that were not consistent with AAA rules.

Ms. Shockman stated that another reason why AAA hasn't been used more was that the claimants' lawyer may have been unaware that the provision was in the agreement due to the fact that when clients would request a copy of their customer agreement, the firms would refuse to provide it.

Ms. Shockman and Professor Long were advised that the NASD Board has adopted a list selection process. **The NASD is writing compute code** to get a new system to cull out conflicts and make


geographical selections so that staff is not involved in the selection process. Ms. Masucci stated that the NASD has been attempting to address complaints. The NASD is in the final process of appointing arbitrators to cases soon after pleadings have been closed, and that the scheduling of hearing dates is now in the control of the parties. Ms. Masucci indicated that changes take time, but that things are moving in the right direction. Ms. Masucci also stated that she was not convinced that a large number of the plaintiffs' bar would choose the AAA.


Ms. Shockman stated that the submission of this rule is not a criticism of personnel at NASD who are trying for change. She stated that with the AAA the public customer gets a more neutral panel, in addition, the AAA does not have the 6-year eligibility rule.

Mr. Stipanowich inquired of Ms. Shockman what role she (and PIABA) want SICA to take on this issue. Ms. Shockman responded that PIABA's first goal is to have SICA support the rule change, and to the extent there is no support, to forestall negative comments from SICA.

Mr. Buck asked if SICA gave its support or implemented some rule changes, would this be what PIABA wants, without PIABA seeking an actual 19(c) proceeding. Ms. Shockman stated that PIABA cares more about the goal than the publicity.

This concluded the presentation by PIABA.

 Mr. Beckley asked the SEC Staff what their procedure would be in the absence of any intervention by SICA. Ms. McGuire stated that the Staff would review the Petition in due course and determine what to recommend to the Commission.

 **Mr. Dubow moved that the SEC be asked to defer consideration of PIABA's 19c Petition without prejudice until after the SICA subcommittee on options to arbitration completed its study.** (there is not record of a second to the motion, if any).

Mr. Stipanowich suggested that the motion would better come from SICA as a whole, rather than from the SIA. The Conference indicated general agreement with that statement. **By general agreement, SICA as a whole moved to request PIABA to withdraw its 19(c) petition without prejudice pending completion of the subcommittee's study.**

It was the understanding of the Conference that PIABA would be asked to provide information to assist the subcommittee in the study.

6. Translating the Uniform Code of Arbitration into Plain English.

Professor Katsoris discussed the Fordham project, using the services of two third-year law students on the Fordham Law Review. He anticipated that the rewrite project would be completed by the end of October. He would submit the draft to SICA well in advance of the February meeting.

7. NASD's Proposal to Extend the Time to Answer (UCA Section 13).

The meeting then considered the NASD's proposal to amend UCA Section 13c regarding the time for Respondents to file answers. NASD proposes that the time period be changed from the current 20

business days (with a two-week extension generally granted), to 45 calendar days with no further extensions, except in dire circumstances. Ms. Masucci stated that the change came from the NASDR arbitration counsel who had been barraged by requests for additional time to answer in the majority of cases each year.

Mr. Buck noted that the Federal Rule is only 20 days, and that most states provide 30 days in which to answer. Mr. Dubow stated that he saw no reason to amend the rule. Respondents will only ask for more time, Mr. Buck stated that if the rule is to be changed, SICA would adopt the federal rule. Mr. Beckely stated that under state and federal practice, defendants typically ask for additional time and that the request is usually part of a “feeling-out” process which promotes settlement.

Due to the general opposition to the proposal, the NASD withdrew its proposal to amend UCA Section 13(c), indicating that the NASD would pursue it as a pilot program.

8. New Business

Ms. Masucci stated that the NASD’s “Mediation Week” was very successful. An NASDR press release was distributed to the Conference on the issue. Ms. Masucci reported that 12 cases were successfully mediated telephonically and the NASD would attempt to extend this approach.

Ms. Masucci also distributed a letter from Frank Zarb delineating the difference between mandatory arbitration for customers and the NASD’s position on employment arbitration.

Ms. Fienberg discussed the changes in the CRD system and additions to the NASD web site.

Mr. Stipanowich noted the National Conference on Uniform State Laws will be meeting in Houston at the end of October to draft additional portions of the revised Uniform Arbitration Act. He offered to make available NCUSA materials.

The next meeting of SICA will be held on February 6, 1998 at the Pacific Exchange in San Francisco, CA.

The Spring meeting of SICA was set for May 1, 1998 in New York at the NASD’s new offices.

There being no other new business or matters for discussion, the Meeting was adjourned.

Minutes Approved: _____
(Date)

Exhibits to Minutes: 1 (List Selection Rule – draft dated 9/18/97)

SICA

October 16, 1997

Minutes

LIST

NASD computer ^{design} issue for its list selection rule. Screens by region, ind public, site, w/USD etc. move to file SICA rule.

NANCY expect Clement call Monday.

appr'd in substance → by telephone.

what is going on w/ NASD list sel. ad P.E.

30~~th~~ conf call on revised list rule. Tell Nancy 2:30

10/1

Securities Arb Optional / Options to mediation options --

Book AAA voluntary option (noted conditions imposed fair to firm → in his pilot. Didn't apply in FLA.

Stipemoid

Uniform rule — they're working at opt-in procedure for higher level of review (app. of what English tried).

→ some kind of report

MAR Bill Levine IAS - businessman. murdered report is suspect is DWR broker. (when at One RR steered investors to IAS).
→ Notes: Options, AAP, other ASC, opt out, constituent election.

Send 34-26805 to packley in access to multiple she for

Book: put in context of PIABA petition. He'd link them. Tell people who filed what they're making. No 19ccs conf. "this piece of paper" try to get there up 19ccs to investor worse.

TimeTable for Revised NASD Rules

pen damages
resub in this wk
fee early
next week
elig. p. filed
within this Fri
list select
comp. w/ next 3 wks
emp. dcr. rule
filed thru wk.

Petition

Joe Long OAL professor.

Rosemary Shockman (AAA president) summarized.
Frustration w/ arb comp - selection.

Schwab last large firm to have AAA. They dropped
in June 1997. Only small Amer window option.

Next SICA
- Feb 6 SFRAN.
May 1st

DM - why would you choose?

RS - arb selu. p. r. role in choosing arb.

better consumer response re on hearing timing.
(Back they don't have as much business)

Issue relation of NASD volume and fee increases.
if cases are released, pressure of b.

RS think they have more matched panels, better
input at panel selection.

T. Styanowicz: what do you want from us.

RS: support of rule changes. or don't be negotiated.
BABA pulled into pet/alt options since

per Bentley: Bk Dyer generous after NASD D. omg issue and his long history Amer window issue.

Quinn proposed that SICA ask SEC to
defer until they consider

Calla - with no withdraw pet. for now - they

Followup - with what happens.

5. PLAW ENGLISH.

to Answer extensions: NASD withdraws will do on experimental basis of NASD

not
B. Dwyer case in CA.
similarly case

noted. possible telephonic mediation
NASD noted mediation and settlement week success.

ASIC

due to send vs her handouts

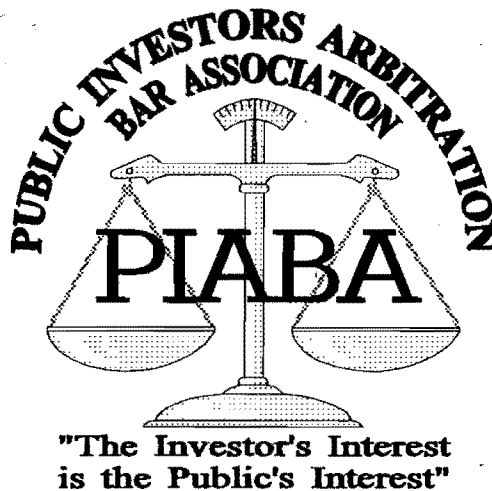
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filing this week or next
employment

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or rap. had
no compens. etc.

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OFFICE OF THE SECRETARY

OCT 27 1997

October 21, 1997

Ms. Margaret H. McFarland
Deputy Secretary
Securities and Exchange Commission
Washington, D.C. 20549

RE: Rulemaking Petition, File No. 4-403

Dear Ms. McFarland:

We are in receipt of your letter dated October 3, 1997, indicating the SEC has received PIABA's October 1, Rulemaking petition. Please note the following address correction:

Public Investors Arbitration Bar Association
c/o Robin S. Ringo, Executive Administrator
1111 Wylie Road, #18
Norman, OK 73069
Toll Free: 1-888-621-7484
Office: (405) 360-8776
Fax: (405) 360-2063
E-Mail: piaba@mindspring.com

Should you have any questions or require additional assistance, do not hesitate to contact me. Thank you for your consideration.

Sincerely yours,

Robin S. Ringo
Executive Administrator



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November 5, 1997

Catherine McGuire, Esq.
Chief Counsel
Division of Market Regulation
U.S. Securities & Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: Securities Industry Conference on Arbitration Committee on Creative Options

Dear Ms. McGuire:

As you know, at the recent quarterly SICA meeting in Phoenix on Thursday, October 16, the membership voted unanimously to set up a committee for the purpose of considering a number of "creative options" to the present system of SRO-sponsored securities arbitration. At the same time, **SICA members unanimously voted to request postponement of PIABA's petition (now styled Rulemaking Petition, File No. 4-403).**

The Committee conducted its first conference call on October 28. At that time, it was agreed that we will explore several issues, including the following:

1. providing investors with the option of arbitrating before panels of the American Arbitration Association or other non-SRO forum;
2. permitting an "opt out" to the judicial system;
3. initiatives to better educate investors;
4. factors currently influencing results in securities arbitration;
5. mediation and other dispute avoidance and resolution processes as alternatives to binding arbitration.

We will be pursuing this agenda over the coming months, and plan to conduct a series of meetings for the purpose of collecting information on these issues. The

Catherine McGuire, Esq.
November 5, 1997
Page Two

hoped-for result will be a set of proposals to SICA, which we hope will in turn become one or more proposals to the SEC.

In light of this action, we respectfully request that the SEC postpone consideration of the Petition submitted by PIABA regarding a 19(c) proceeding to amend the NASD arbitration rules. While we concur that alternatives should be examined, we would like to explore the possibilities fully before more rule changes are made.

Thank you again for your continuing assistance. Feel free to contact me at any time regarding the status of the Committee's work.

Sincerely,



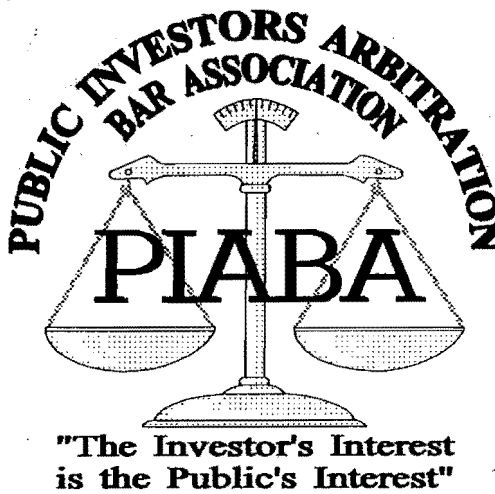
Thomas J. Strpanowich
Chair, SICA Committee on Creative Options
on behalf of:

Jim Beckley
Robert Clemente
Phil Cottone
Paul Dubow
Linda Fienberg
Beth Fruechtenicht
Gus Katsoris
Deborah Masucci
Nancy Nielsen
Fredda Plesser

TJS:bd

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#1
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December 2, 1997

Margaret H. McFarland
Deputy Secretary
United States Securities and
Exchange Commission
Washington, D.C. 20549

RECEIVED
OFFICE OF THE SECRETARY
DEC 16 1997

RE: *Rulemaking Petition*
File No.: 4-403

Dear Ms. McFarland:

Pursuant to the Freedom of Information Act, I would appreciate it if you would provide me with copies of all correspondence and comments that you have in your file relating to PIABA's Rulemaking Petition which was received in your office on October 2, 1997. If there is any charge, please bill me with the return, and I will promptly send you a check.

Sincerely,

Diane A. Nygaard
Diane A. Nygaard

DAN:dkm

cc: Robin Ringo

2

FALK & SIEMER, LLP

EST. 1890

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December 16, 1997

RECEIVED
OFFICE OF THE SECRETARY
DEC 23 1997

Ms. Margaret H. McFarland
Deputy Secretary
Securities & Exchange Commission
450 Fifth Street NW
Washington, DC 20549

4-403

Re: Proposed NASD Changes

Dear Ms. McFarland:

I write to urge the Commission to adopt the proposed rules submitted by the Public Investors Arbitration Bar Association.

The proposal would give public customers an option to arbitrate before the American Arbitration Association, a neutral venue, generally before a panel near their hometown. The NASD does not provide a neutral forum and oftentimes the panels do not sit in the investor's hometown, often causing the investors to travel great distances.

I object to and strongly urge the Commission to deny the NASD proposal to increase its fees for arbitration. Of course, if a neutral forum were offered to public investors such as the AAA, the burden on the NASD would be dramatically reduced and there would be no need for additional fees.

I, also, want to go on record as objecting to the proposed rules on punitive damages.

Sincerely yours,



Donald G. McGrath

DGM/mb

THE NYGAARD LAW FIRM

6800 COLLEGE BOULEVARD
SUITE 540
OVERLAND PARK, KANSAS 66211
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DIANE A. NYGAARD, P.A.
LICENSED IN KANSAS,
MISSOURI AND COLORADO
ARBITRATOR AND MEDIATOR FOR
A.A.A., N.A.S.D., N.Y.S.E.

March 4, 1998

VIA FACSIMILE
(202-942-0065)

Kate McGuire
Chief Counsel
Division of Market Regulations, SEC
450 Fifth Street, NW
Washington, DC 20549

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Division of Market Regulation

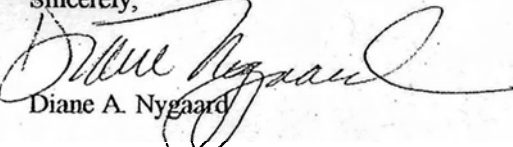
Re: PIABA Rule Proposals

Dear Kate,

PIABA has now had an opportunity to discuss your request that it withdraw from consideration its three proposed rule changes. This is the first time PIABA has availed itself of the opportunity to try to proactively address serious problems in the arbitration process by filing proposed rule changes. Based upon our discussions, it is apparent that this is not the customary way in which rule changes are promulgated. Nevertheless, the system should be able to accommodate such suggestions and filings from both industry organizations, as well as consumer groups.

We understand that revisions or rewritings may be made by staff attorneys and are certainly available to assist with that process. Having made this decision, PIABA will proceed to work to see that the rules are changed in accordance with its suggestions.

Sincerely,


Diane A. Nygaard

cc:PIABA Board of Directors



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 13, 1998

Representative Bill McCollum
United States House of Representatives
2266 Rayburn House Office Building
Washington DC 20515-0908

Re: Letter Regarding Public Investors Arbitration Bar
Association (PIABA) Petition Filed with SEC

Dear Representative McCollum:

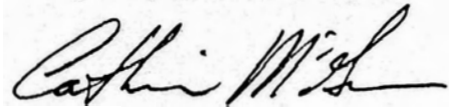
Your correspondence, dated February 20, 1998, enclosing a copy of a letter from your constituent, Robert Dyer of Allen, Dyer, Doppelt Milbrath & Gilchrist, P.A., has been referred to the Division of Market Regulation for response. Mr. Dyer's letter concerns a petition that PIABA submitted to the Commission requesting enactment of several NASD rules which PIABA believes would improve the SRO-sponsored arbitration system. The three rules proposed by PIABA would (1) establish the American Arbitration Association as an alternative venue for customer arbitrations; (2) change the composition of arbitration panels hearing customer arbitrations; and (3) provide for a rotational system for the selection of arbitrators. In his letter to you, Mr. Dyer expressed concern that the Commission was considering postponing taking action on PIABA's petition.

In accordance with applicable procedures, when the Commission received PIABA's petition, it referred it to the Division of Market Regulation for our consideration and recommendation. Since that time, we have been engaged in a dialogue with Diane Nygaard, Esq., President of PIABA, as well as other PIABA representatives, regarding the issues raised by the petition and other efforts to improve the SRO arbitration process. These efforts include pending SRO rule filings as well as the work of the Securities Industry Conference on Arbitration (SICA). SICA is an organization made up of representatives from the various SRO arbitration forums, the securities industry, the plaintiffs' bar, and the public that studies and advises SROs on arbitration procedures. It is currently considering some of the same issues raised in the PIABA petition. As a general matter, the Commission staff actively works with groups such as SICA and PIABA to better understand the concerns of persons affected by Commission and/or SRO rules and consider potential improvements to those rules and regulations.

Representative Bill McCollum
Page.2

I hope that this response addresses any concerns that you may have arising out of Mr. Dyer's letter. Please contact me at (202) 942-0061 if you have additional questions concerning the Commission's rulemaking process.

Very truly yours,



Catherine McGuire
Chief Counsel
Division of Market Regulation

CM/LSP/dn



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

April 28, 1998

Diane A. Nygaard, Esq.
President,
Public Investors Arbitration Bar Association
3490 Piedmont Road, N.E.
Suite 900
Atlanta, Georgia 30305

Re: Referral to SICA of Public Investors Arbitration Bar
Association (PIABA) Rulemaking Petition Filed with SEC

Dear Ms. Nygaard:

As you are aware, we have been reviewing the rulemaking petition submitted to the Commission by PIABA on October 2, 1997. In that petition, PIABA urges enactment of several NASD rules which PIABA believes would improve the SRO-sponsored arbitration system. Specifically, the three rules proposed by PIABA would (1) establish the American Arbitration Association as an alternative venue for customer arbitrations; (2) change the composition of arbitration panels hearing customer arbitrations; and (3) provide for a rotational system for the selection of arbitrators.

PIABA petitioned the Commission under Section 19(c) of the Securities Exchange Act of 1934 ("Exchange Act"), which provides that the Commission, by rule, may amend the rules of a self-regulatory organization, or SRO, "as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of [the Exchange Act] and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of [the Exchange Act]...." 15 U.S.C. §78s(c).

Under the Commission's rules of practice, when any person submits a petition to the Commission for the issuance, amendment or repeal of a Commission rule, it is referred to the Division or Office having general responsibility for or oversight of the particular subject matter implicated by the rule. The staff of that Division considers the petition, collects relevant information, and makes a recommendation to the Commission on the action that the Commission should take regarding the petition.

Under Section 19(c), if the Commission determines that a SRO rule should be amended or adopted, the Commission must notify the affected SRO(s) and publish notice of the proposed rulemaking in the Federal Register. Not only are interested persons given the right to make written submissions, but the Commission is also required to give interested persons an opportunity for the oral presentation of data, views and arguments. Transcripts of oral

Diane A. Nygaard, Esq.
April 28, 1998
Page 2

presentations must be kept. Any rule ultimately adopted by the Commission pursuant to Section 19(c) must contain a statement of the Commission's basis for and purpose in so amending the SRO's rules.¹ The Commission must therefore make a judgment, independent of any assertions in a rulemaking petition, that the proposed rule meets the criteria set forth in Section 19(c). This process is a lengthy and rarely used method of imposing rules on SROs.

The Commission has not sought, except in rare circumstances, to require specific SRO rules to be implemented by adopting a Commission rule under Section 19(c) mandating that SROs adopt rules as the Commission directs. Rather, SROs are generally first given the opportunity to review their rules and propose amendments as they deem necessary. Indeed, SROs regularly file amendments to their own rules under Section 19(b) of the Exchange Act, and the Commission reviews those rule filings.

In accordance with these procedures, we have reviewed PIABA's petition. We have concluded that PIABA's proposed rule amendments should first be considered by the SROs for possible SRO rulemaking. For this reason, we have referred this petition to the Securities Industry Conference on Arbitration (SICA) for consideration and recommendation. As you know, SICA is an organization made up of representatives from the various SRO arbitration forums, the securities industry, the plaintiffs' bar, and the public that studies and advises SROs on arbitration process and procedures. One of its purposes is to make recommendations on uniform SRO arbitration rules and amendments to them. We understand that SICA is currently considering some of the same issues raised in PIABA's rulemaking petition. We have therefore requested that the petition be placed on the agenda for discussion at the next scheduled SICA meeting in May 1998.

We have also referred PIABA's petition directly to the NASDR for its consideration. We understand that the NASDR is currently considering some of the issues related to your petition, such as list selection criteria. We have requested that both entities report their timetables for consideration of these proposals to the Division staff.

We hope that PIABA will continue to work cooperatively with SICA and the SROs regarding the concerns raised in its rulemaking petition, as well as on other issues considered by SICA. We look forward to considering any SRO rule proposals to amend the uniform code of arbitration procedures resulting from this dialogue.

¹ In order to amend an SRO rule pursuant to Section 19(c), the Commission adopts a rule directing the SROs to amend their rules as set forth in the Commission rule. The SROs must then comply with the Commission rule by submitting appropriate rule changes to the Commission for approval.

Diane A. Nygaard, Esq.
April 28, 1998
Page 3

Please contact me at (202) 942-0061 if you have additional questions concerning the Commission's rulemaking process and the PIABA petition.

Very truly yours,



Catherine McGuire
Chief Counsel
Division of Market Regulation

CM/LSP/dn

cc: Robert Dyer, Chairman, SEC Petition Committee
Public Investors Arbitration Bar Association

Securities Industry Conference on Arbitration



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

April 28, 1998

Linda D. Fienberg, Esq.
Executive Vice President
NASD Regulation, Inc.
1735 K Street, NW
Washington, D.C. 20006

Re: Referral to SICA and NASDR of Public Investors Arbitration Bar Association (PIABA) Rulemaking Petition Filed with SEC



Dear Linda:

We are writing this letter to you both in your capacity as the chairperson for the next scheduled meeting of the Securities Industry Conference on Arbitration (SICA) as well as your capacity as the person with responsibility over NASDR Arbitration. We are referring to SICA and the NASDR for their consideration the enclosed petition that PIABA submitted to the Commission requesting enactment of several NASD rules that PIABA believes would improve the SRO-sponsored arbitration system. The three rules proposed by PIABA would: (1) establish the American Arbitration Association as an alternative venue for customer arbitrations; (2) change the composition of arbitration panels hearing customer arbitrations; and (3) provide for a rotational system for the selection of arbitrators.



PIABA petitioned the Commission under Section 19(c) of the Exchange Act, which provides that the Commission, by rule, may amend the rules of an SRO "as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of [the Exchange Act] and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of [the Exchange Act]...." 15 U.S.C. §78s(c). **The Commission has historically used its Section 19(c) authority when there has been no other mechanism in place to effectively instigate uniform SRO rules. The staff believes that the rule amendments advocated by PIABA should in the first instance be considered by the SROs for possible SRO rulemaking, rather than Commission rulemaking.**

Since one of SICA's purposes is to make recommendations on uniform SRO arbitration rules and amendments to those rules, we believe that it is logical to have the arbitration rules proposed in the petition considered through this mechanism. In fact, we understand that, among other initiatives, SICA is currently considering some of the issues raised in PIABA's petition. For this reason, **we ask that the petition be placed on the agenda for the next SICA meeting scheduled for May 1, 1998 at the NASD's offices in New York City.**

Linda D. Fienberg, Esq.
April 28, 1998
Page 2

In addition, the NASD is currently undertaking major regulatory action to implement many of the recommendations made in the Ruder Report. We therefore also request that the NASDR look at PIABA's proposals in connection with its proposed reforms.

Thank you for your cooperation with this request. We look forward to seeing how SICA and the NASDR address the issues raised by PIABA in its petition, and look forward to reviewing any proposed amendments to SRO arbitration rules that may arise from consideration of PIABA's petition or any other NASDR or SICA initiative. **Please advise me within 60 days of reasonable timeframes for both NASDR and SICA consideration of these issues.**

Please feel free to contact me at (202) 942-0061 if you have any questions concerning this matter.

Very truly yours,



Catherine McGuire
Chief Counsel
Division of Market Regulation

CM/LSP/dn

Enclosure

cc: Diane Nygaard, Esq., President,
Public Investors Arbitration Bar Association

Approved October 22, 1998

**Minutes of the
May 1, 1998 Meeting of the
Securities Industry Conference on Arbitration
Hosted By:
The National Association of Securities Dealers Regulation, Inc.
New York, NY**

Members Present:

James Buck, NYSE
David Carey, NYSE
Robert S. Clemente, NYSE
Paul J. Dubow, SIA
Theodore Eppenstein, Public Member
Jean Feeney, NASD Regulation
Linda D. Fienberg, NASD Regulation
Beth A. Fruechtenicht, PCX
Thomas R. Grady, Public Member
Justin Klein, NASD Regulation
Fredda Plessner, SIA
Paul Sexton, CBOE
Thomas J. Stipanowich, Public Member
Janice Stroughter-Giff, AMEX
Nandita Yagnik, PHLX

Invitees Present:

Paul Andrews, SEC *
William Fitzpatrick
MaryAnn Gadzialla, SEC
Phil Hoblin
Robert Love, SEC
Helena McGee, SEC *
Catherine McGuire, SEC*
Florence Peterson, AAA
Laura Pruitt, SEC

Public Members *Emeritus* Present:


James Beckley
Peter R. Cella
Constantine N. Katsoris

*Via Conference Call

The Securities Industry Conference on Arbitration convened on May 1, 1998 at 9:10 a.m., Chairman Beth Fruechtenicht presiding.

...

5. PIABA Rulemaking Petition



Ms. Pruitt of the SEC discussed the SEC's letter dated April 28, 1998, regarding PIABA's Petition filed with the Commission under Section 19(c) of the Exchange Act. Ms. Pruitt reported that upon review of PIABA's petition, the Commission has determined to refer PIABA's petition to SICA and the NASDR for consideration. The Commission believes that the rule amendments proposed by PIABA should first be considered by SICA and the SROs. In addition, the Commission noted that several of the changes as proposed by PIABA are currently being reviewed by SICA. The Commission, therefore, requested that SICA address the issues raised by PIABA and keep the Commission apprised its progress. Ms. Fienberg stated that the NASD would submit a letter to the SEC on the AAA option and appointing arbitrators on a rotational basis. On a motion duly made and seconded, the Conference determined to refer the Commission staff's April 28, 1998 letter to the Options Subcommittee for further review and response.

...

There being no other new business or matters for discussion, the Meeting was adjourned at 1:07 p.m.

Nandita Yagnik, Esquire
Secretary

From: Pruitt
Sent: Wednesday, August 12, 1998 2:29 PM
To: yagnickn@phlx.com
Cc: LoveR
Subject: Revision to SICA May 1 Minutes

Nandita:

In addition to the revisions sent to you by Robert Love, I also have something to add. My revisions concern Paragraph 5 of the May 1 draft minutes, discussing the PIABA rulemaking petition. The phrase "Commission staff" should replace "Commission" throughout. The paragraph should therefore read:

"Ms. Pruitt of the SEC discussed the SEC staff's letter dated April 28, 1998, regarding PIABA's petition filed with the Commission under Section 19(c) of the Exchange Act. Ms. Pruitt reported that upon review of PIABA's petition, the Commission staff has determined to refer PIABA's petition to SICA and the NASDR for consideration. The staff believes that rule amendments proposed by PIABA should first be considered by SICA and the SROs. In addition, the Commission staff noted that several of the changes as proposed by PIABA are currently being reviewed by SICA. The Commission staff therefore requested that SICA address the issues raised by PIABA and keep the staff apprised of its progress. Ms. Feinberg stated that the NASD would submit comments on the AAA option and appointing arbitrators on a rotational basis. On a motion duly made and seconded, the Conference determined to refer the Commission staff's April 28, 1998 letter to the Options Subcommittee for further review and response."

If you have any questions, please feel free to e-mail me.

Thanks alot,

Laura Pruitt



NASD
REGULATION

An NASD Company

NASD Regulation, Inc., Dispute Resolution
1735 K Street, NW., 4th Floor
Washington, DC 20006-1500
202 728 8000
202 728-8407
202 728-8833 (fax)

SECURITIES AND EXCHANGE COMMISSION
RECEIVED
JUL 07 1998
DIVISION OF MARKET REGULATION

LINDA D. FIENBERG
Executive Vice President and
Chief Hearing Officer

VIA FACSIMILE

June 30, 1998

Catherine McGuire, Esq.
Chief Counsel
Division of Market Regulation
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: Referral to SICA and NASDR of Public Investors Arbitration Bar Association (PIABA) Rulemaking Petition Filed with SEC

Dear Caite:

This letter responds to your April 28 letter concerning PIABA's rulemaking petition. In your letter, you ask for a timetable for consideration by NASD Regulation and by SICA of three PIABA rule proposals. These proposals would establish the American Arbitration Association as an alternative venue for customer arbitration; provide for a rotational system for the selection of arbitrators; and change the composition of arbitration panels that hear customer arbitrations.

SICA has established a subcommittee to consider PIABA's proposal to establish alternative venues for customer arbitrations. Members of the SICA subcommittee include SRO, PIABA, and SIA representatives, and individuals who represent neither the customer nor firm constituencies. The group is working on developing a voluntary pilot program pursuant to which customers in described cases would be able to bring their claims to a non-SRO forum so long as the forum met certain procedural safeguards. Professor Thomas Stipanowich, a member of SICA and Chair of the SICA subcommittee, will write to you separately to describe SICA's work on this proposal.

NASD Regulation is in the process of completing a rule for the list selection of arbitrators. We plan to file the rule with the SEC for notice and comment next week. In addition, we have almost completed constructing the computer software ("NLSS") that will be necessary for the list selection process to function. Since the rule proposal is not

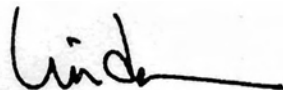
Catherine McGuire, Esq.
June 30, 1998
Page 2

controversial, we would appreciate expedited SEC treatment. Subject to approval, the list selection process will be operational in the last quarter of 1998. The proposed rule and computer program provide for a rotational system for the selection of arbitrators and is described in detail in the rule filing.

We believe that with list selection the parties will have significant control of who the arbitration panel will be in their cases. Accordingly, we do not plan at this time to propose a change in the composition of arbitration panels that hear customer arbitrations.

Please let me know if you need any further information on these matters.

Very truly yours,



Linda D. Fienberg
McGuireSEC.doc

cc: Professor Thomas J. Stipanowich

Approved October 22, 1998

Minutes of the
August 27, 1998 Meeting of the
Securities Industry Conference on Arbitration
Hosted by the Chicago Board Options Exchange, Incorporated
Chicago, Illinois

Members Present

Robert Clemente, NYSE
Paul Dubow, SIA
Theodore Eppenstein, Public Member
Angelo Evangelou, CHX
Linda Fienberg, NASD Regulation
Beth Fruechtenicht, PCX
Thomas Grady, Public Member
Joanne Moffic-Silver, CBOE
Nancy Nielsen, CBOE
Fredda Plessner, SIA*
Patrick Sexton, CBOE
Thomas Stipanowich, Public Member
Janice Stroughter-Giff, AMEX
Nandita Yagnik, PHLX*

Invitees Present

Robert Love, SEC
Helene McGee, SEC*
Catherine McGuire, SEC*
Laura Pruitt, SEC

Public Members Emeritus Present

James Beckley
Constantine Katsoris

* Via Conference Call

The Securities Industry Conference on Arbitration convened on August 27, 1998 at 10:20 a.m.,
Chair Beth Fruechtenicht presiding.

...

3. PIABA Rulemaking Petition

Mr. Clemente called attention to Bill Fitzpatrick's letter (Tab 3) discussing the PIABA rule-making petition and proposing, among other things, the elimination of arbitrator classifications, the creation of objective standards for qualifying as an arbitrator, and party control over the

composition of panels. Mr. Clemente proposed that SICA establish a subcommittee to study the elimination of arbitrator classifications.

Ms. Fienberg raised the related issue of expanding the use of a single arbitrator, noting that requiring 3 arbitrators on a panel is a major impediment to cost reduction and administrative efficiency. Although conference members spoke in favor of the expanded use of a single arbitrator, several obstacles to eliminating arbitrator classification and increasing the use of single arbitrator panels were raised. Mr. Dubow stated that the securities industry would oppose increased use of single arbitrators as long as arbitrators who are affiliated with the securities industry are eliminated by rule from serving as the sole arbitrator. Professors Katsoris and Stipanowich noted the perception of bias created by a controversy resolved by a single arbitrator who is affiliated with the securities industry and the concomitant rationale in support of classification.

Observing that maintaining classifications creates an artificial perception that "industry" arbitrators can not be impartial, Mr. Clemente proposed linking non-classification of arbitrators with list selection. Mr. Beckley stated that until list selection has been implemented, it is premature to discuss the elimination of arbitrator classifications. (Mr. Clemente informed SICA that the NYSE is actively offering the parties several optional methods for selecting arbitrators.)

No action was taken on the proposal that SICA establish a subcommittee to study the elimination of arbitrator classification.

Ms. McGuire stated that that it is consistent with PIABA's rulemaking petition to explore the options raised by SICA members, including the use of single arbitrators and list selection. She also noted concern about arbitration costs.

With regard to single arbitrator panels, Mr. Grady stated that SICA should consider linking it with certain procedures which benefit consumers, such as (1) claims would be heard within six months, (2) no motions would be allowed, and (3) discovery assistance.

Ms. Fienberg directed the Conference's attention to NASD Regulation's June 30, 1998 response (Tab 3) to the SEC staff's request for comments on PIABA's rulemaking petition.

...

There being no new business or matters for discussion, the meeting was adjourned at 1:45 p.m.

/s/ Nancy Nielsen

Acting Secretary

Approved March 14, 2000

Minutes of the
January 18, 2000 Meeting of the
Securities Industry Conference on Arbitration
Hosted by NASDR
Boca Raton, Florida

Members Present

James E. Buck, NYSE
Robert S. Clemente, NYSE
Paul Dubow, SIA
Theodore Eppenstein, Public Member
Linda D. Fienberg, NASDR
George H. Friedman, NASDR
Thomas R. Grady, Public Member
Nancy Nielsen, CBOE
Wendy J. Phillippay, PCX
Fredda Plessner, SIA *
Rose Schindler, NASDR
Thomas J. Stipanowich, Public Member

Invitees Present

Mary Ann Gadziala, SEC*
India Johnson, AAA
Robert A. Love, SEC
Helene McGee, SEC*
Steve Sneeringer, SIA
Beth Wiener, JAMS
Catherine Zinn, JAMS

Public Members Emeritus Present

Constantine N. Katsoris*

The Securities Industry Conference on Arbitration ("Conference" or "SICA") convened on January 18, 2000 at 9:00 a.m., Professor Thomas Stipanowich presiding.

...

PIABA President's Committee on the Future of Arbitration

Professor Stipanowich informed the Conference about the PIABA President's Committee on the Future of Arbitration. This committee includes non-PIABA

members and is actively considering reform issues. He recommended the group as a good contact for SICA.

The Conference considered what to communicate to the PIABA Board regarding the pilot program and agreed to forward the pilot documents, together with a renewed request that PIABA publicize the pilot and place hyperlinks to the alternate providers on its website. SICA further determined to renew its request that PIABA withdraw its SEC Rule 19(c) rulemaking petition, and that, if PIABA does not actively support the pilot, to request that the Board agree not to make negative remarks about the program.



...

There being no further business, the Conference adjourned at 3:15 p.m.

/s/ Nancy Nielsen _____
Secretary

Les Greenberg

From: Diane Nygaard [diane@nygaardlaw.com]
Sent: Monday, July 02, 2007 7:40 AM
To: 'Les Greenberg'
Subject: RE: PIABA Rulemaking Petition (SEC File No. 4-403)

Hello Les,

I do not remember that PIABA ever withdrew its petition. ...

Diane

From: Les Greenberg [mailto:plgreen@att.net]
Sent: Friday, June 29, 2007 1:15 PM
To: Diane@nygaardlaw.com
Subject: PIABA Rulemaking Petition (SEC File No. 4-403)

Dear Ms. Nygaard,

Please find attached a pdf copy of some correspondence that I received in response to a FOIA to the SEC. It appears that the SEC asked PIABA to withdraw the Petition, but that it was eventually forwarded to NASDR and SICA for comment and reply

Various SICA Meeting Minutes (5/1/98, 8/27/98 and 1/18/00) refer to the Petition. A link to a pdf copy of each is available at http://www.LGEsquire.com/LG_Links.html. It appears that, by 1/18/00, SICA renewed a request that PIABA withdraw the Petition.

Would you please advise me as to what finally occurred with respect to the Petition? Did PIABA withdraw it from consideration? Did the SEC reject it? Did it just wither and die?

Thank you in advance for your assistance.

Les Greenberg, Esquire
Culver City, CA
(310) 838-8105