

From: LoveR
Sent: Tuesday, May 18, 1999 5:35 PM
To: McGuireC; JensonP
Cc: SchwartzJ
Subject: NON-SRO arbitration pilot

You will notice on the calendar for next Tuesday a telephone conference with the SICA subcommittee on non-SRO options.

Tom Stipanowich called me twice today about this. He advised me first that Steve Sneeringer told him that some of the securities firms that plan to participate in the pilot would like the flexibility to include cases under \$100,000 within the pilot. You recall that at the May 11th meeting the dollar threshold was added to address the AAA's concerns about having to use a three person panel for cases under \$100,000.

The current intent, within SICA, is not to change the arrangement with the AAA, but instead to change the Guidelines for the pilot to allow firms to choose multiple fora that can handle different cases at different thresholds: the cases that go to other than AAA could be for any amount, while the cases at the AAA would be \$100,000 or above.

Steve Gallagher of the AAA isn't thrilled with this result. He thinks all the non-SROs should use the same guidelines. He has not suggested lowering the threshold for a three person panel at the AAA. During the day, Stipanowich has changed from thinking that this isn't a significant hurdle to thinking it may be. Gallagher is concerned that after participating in this, the result will be that somehow firms will steer a lot of under \$100,000 cases into the other forums if there are forums that offer three arbitrators for under \$100,000 (I think

He is also concerned that AAA's name will be mentioned in connection with the pilot but without any cases to show for it. And he is concerned that the AAA name will be at issue when the other fora use the old AAA securities rules without AAA administration.

Gallagher is also upset with Stipanowich's reaction to other information Gallagher provided to him. Gallagher's wife is a broker for A.G. Edwards.

Stipanowich asked that AAA find someone else to do the administering.

I also asked Stipanowich, who kept referring to what he expected Jams/Endispute to do, if anyone actually knew any of that. Uhm, not really is the reply. I suggested that he might want to learn whether any realistic arrangement with it is possible before assuming it to be the fallback from AAA.

Stipanowich also wondered aloud at what point this project was worth continuing to the end -- and I told him to wipe those thoughts from his mind and keep truckin'. Tuesday May 25th at 11:00; told him that I'd be there and that you might. Robert.

From: LoveR
Sent: Tuesday, October 26, 1999 1:06 PM
To: McGeeH; PruitL; SchwartzJ; McGuireC; JensonP; ZambrowiczK; CorcoranJ; EnglandK
Subject: SICA summary

October 21, 1999 SICA Meeting in Palm Desert, California.

For those of you (just forward this to anyone I have inadvertently missed in the address list) who either had poor telephone connections, or who were cut off early (I tried to have them get you back but that didn't work) here's a summary of the October 21, 1999 SICA meeting:

* Beginning Discussion. Began with a discussion by Paul Dubow of California arbitration related law. One pending bill would pretty much eliminate all consumer predispute adhesion contracts (and since arbitration would be treated the same as other contracts the bill wouldn't conflict with the FAA), [REDACTED]. Paul also noted the the 9th Circuit differs from the others, and reads the FAA as not applying to employment contracts (because that's what the statute says) while the other circuits limit the exclusion to the railroad or seamen workers (I forget which) listed in the statute.

* Minutes. The minutes were approved as printed in the meeting materials with only a few typos corrected.

* SICA Chairperson. Tom Stipanowich is the new "chairperson" of SICA. Nancy Nielson will continue as recording secretary. The chairperson's role is to manage the meetings and the agenda; and to have materials distributed for the meetings. NASD wanted an SRO chair, with Robert Clemente and George Friedman to split the chore. (It was RC who nominated TS.) NASD objections include the facts that TS didn't have the staff to gather, print, prepare, copy and distribute the materials on time for the meetings (and that the NASD and NYSE would get stuck with that part of the work anyway, only it would be more cumbersome with this structure); [REDACTED]

[REDACTED] Tom is on the board of the AAA, which NASD perceives as raising possible conflict issues. [REDACTED]

* Non-SRO Pilot. We reviewed the pilot status. It apparently remains on course for a mid-January 2000 debut. Seven firms committing to 100 cases to award. Five firms elected JAMS and two elected a choice of JAMS or AAA as non-SRO provider. At the meeting we modified the press release to remove both a negative tilt and statements promoting unreasonable expectations. The guidelines have been cleaned up and looked cleaner. They discussed the evaluations and how mechanically they will keep a SICA master list to keep track of the cases, where they stand, whether evaluations were turned in, whether the SROs received the awards; since these tasks are still assigned to a mythical "they", [REDACTED]. George Friedman will prepare a "fact sheet" for users on how all this might work; I think the idea is to put the information in the packets for parties. I asked that someone "lawyer" the JAMS rules; I've read them and found a few places where I can't figure out what the words mean; I'll call TS with my comments. Let me know if you had any when you read them. There also was a discussion of whether to hand out a questionnaire to the PIABA audience regarding possible use of the pilot. After angst about whether this data would ever have to

be shown to anyone, and whether they should ask for suggestions when they didn't intend to change anything, they opted to ask instead for a show of hands about possible pilot use. The general sense is that the pilot might be useful and welcome for a certain subset of high dollar cases, as well as for cases of any dollar amount for those parties who simply loathe the SROs.

Report on PIABA meeting discussion of the non-SRO pilot. One item for discussion late in the day at the PIABA meeting was the non-SRO pilot. I'm including my notes here for continuity. The basics were repeated; unfortunately, the PIABA materials included drafts of the press release, etc.

The presenters included in addition to a SICA contingent, Catherine Zinn of JAMS.

New for me (or at least I forgot) is how JAMS gets its money. The rules show that it gets an administrative fee of the greater of \$200 or 4% of the professional fees (arbitrator payment). But JAMS also gets about half of the arbitrators' hourly fee (\$250 to \$400); JAMS would not disclose to PIABA the contracts regarding this split.

One PIABA questioner criticized the backgrounds of JAMS arbitrators, stating that the pool is mediator, not arbitrator based, and that it is defense bar dominated; Zinn replied that whatever the attributes of its pool at-large, the subset selected for the pilot would be appropriate. She also promised training;

Some PIABA questioners also wondered how they would know about arbitrator histories; past JAMS awards of course are non-public; one guy even asked that JAMS go back to past parties and arbitrators to seek releases for the awards.

* NFA report. Somehow, after the agenda was set, Ted Eppenstein hijacked the agenda and had Cindy Cain of the NFA come in and take 45 minutes of an already tight schedule to give an arbitration 101 at the NFA, highlighting some differences between NFA and securities SRO arbitration. I think there was some anecdotal subtext regarding the challenge to an arbitrator by the firm/respondent deep into the process.

I have collected for whoever might be interested a copy of the handouts NFA provides to arbitrators and parties. The brochures are very attractive, and might be useful when assessing the SRO data. Let me know by Friday if you want these; otherwise I am not keeping them.

* Removal of arbitrators after the beginning of a hearing. The NASD presented its paper on going forward with a proposed rule change that would enable it, and other SROs, to remove an arbitrator after the hearing stage of a case has begun. The reactions were mixed, and the conference actually discussed the benefits (removing arbitrators who taint the process) from the risks (litigation over whether an arbitrator should have been removed, and whether the SROs were biased in the process).

Some wondered whether the issue arises frequently enough to warrant going forward on this.

The public participants/members were mixed, although they seemed mildy to side in favor of the rule. (Note that while the NASD's examples

have included cases where an investor wanted the removal, Ted Eppenstein's one example was of where the firm wanted the removal, and the investor didn't.) Tom Grady (PIABA) seemed to be still leary of the idea, as was Paul Dubow (SIA). The discussion helped to focus on a distinction between challenges based upon disclosures or facts learned about an arbitrator and challenges based upon arbitrators' performance during a case. The removal proposal is directed at the former not the latter. Stipanowich phrased these as passive (disclosures) and active (conduct of the hearings). The NASD's next draft will address that distinction. When we met earlier with the NASD to discuss this, we had encouraged them to use a slightly higher standard for removal after a case has begun than beforehand; the idea was to retain the flexibility they use before parties are too invested in the progress of the case to remove a questionable arbitrator, and to avoid having arbitrators removed too easily after a case had begun.

[REDACTED]

[REDACTED]

[REDACTED]

* Service of the complaint. Seth Lipner of PIABA joined the meeting. He added PIABA's concerns about service. There apparently are concerns about the methods for serving the fly-by-night firms and reps. Linda Fienberg noted they use the CRD address of record. She stated that under NASD disciplinary process, that is good service even if the respondent doesn't receive the complaint. Professor Lipner noted that in some jurisdictions that won't do unless at first the NASD obtains a consent to service of process at the state secretary of state. They discussed briefly whether the U-4 needed to be amended to include this. Some proposal will be developed for consideration at the next SICA.

* What to do about high fees. Seth Lipner also addressed the NASD's high fees. He first questioned the high fees for some tasks, like 15 minute telephone conferences (LF defended these by pointing out the time arbitrators need to prepare). But the basic thrust of Lipner's remarks was to note that three arbitrators are too expensive for small cases. Traditionally, the industry has resisted a single arbitrator for larger cases, because they would be singly public arbitrators. Lipner would sell the idea by asserting that the single arbitrator couldn't award punitive damages. Lipner asked (rhetorically?) whether the fees had a chilling effect of claimants from even bringing a case. They also noted that the NASD has its pilot on single arbitrator use, which the staff is now reviewing.

* ABA Ethics Code revision. Just a reminder that the ethics code isn't a done deal. It is now being sent to about 20 ABA committees. If you have concerns, there still is time to flag them. I intend to discuss a few items with George Friedman to understand better, but don't think I have any we need to press strongly.

* Class actions. No action on the information item. In theory the SICA subcommittee meet (it hasn't yet) in order to articulate better where it thinks the existing rule may need amendment.

* Extensions of time for answers under the NASD rules. Notwithstanding the inflammatory letter Tom Grady submitted, there doesn't seem to be anything behind it. He had no examples to provide (although he said he'd bring a better package next time); my sense is that he might have had one case where an extension was provided. LF and GF were astounded at the item because they have routine reports on extensions, and believe they've granted only a handful.

[REDACTED]

* Exchange of exhibits and assertions of privilege. Ted Eppensteins'

letter also didn't have any factual support. Despite our best efforts, we didn't have much luck disentangling the separate issues of (1) whether too many documents were held back for rebuttal or that the process somehow was tainted and (2) that privileges were being asserted groundlessly. I pointed out the treatment of privileges in the Commission's approval order of the discovery guide. Ted nonetheless proposed removal of the rebuttal provision. LF stated that new chairperson training would (continue) to address these issues. Grady insisted that this was an arbitrator enforcement issue, not a rule language issue. Eppenstein says he'll bring a clearer presentation of his issues to the next meeting. (We discussed the discovery guide briefly. I pointed out the Federal Register's typo. Fienberg militantly mischaracterized the effective date issue, stating that because the guide was a rule she had to file it, and because it wasn't a rule she couldn't have an effective date. [REDACTED])

Fastforward [sic] to PIABA sessions. A highlight of the PIABA meeting concerned arbitrator sanctions. Coming quickly on the heels of Tom Grady's assertions that arbitrators never enforce their discovery orders or sanction parties or counsel for withholding documents or other bad behavior, the first PIABA session I attended had Samantha Rabin of the Securities Arbitration Commentator spend more than a half hour discussing SAC's review of a three and a half year time period of cases for arbitrator sanctions. She noted that in her sample two of three requests for sanctions were granted. She read from awards in case after case where parties or counsel (questionable authority) were sanctioned for these abuses. Sanctions included money fines, barring evidence, barring witnesses, etc. These were from both investor and member cases. She stated that explanations were much better in the NASD awards than in the NYSE awards -- and begged that the NASD not crack down on useful awards as she feared they might.

* NASD intent to ban paid non-attorney representatives. The NASD tried to enlist the conference in its plan to ban paid non-attorney representatives. Clemente wanted to know what prompts the move. The NYSE doesn't have many NARs, it believes in part due to its insistence that they obtain powers of attorney, which scares off the claimants. LF attributes that to the different client/case mix. RC wanted to know how the NASD planned to police compliance with an assertion that one isn't being paid; would there be some sort of administrative process; or use of affidavits? Wondered whether untruths (i.e. the NAR was paid) would affect the validity of an award? NASD doesn't plan to police. A counter party could police (i.e. a firm could show the arbitrators the NARs advertisement of fee for service); the firms are leery of this role; they don't want to be perceived as impeding the client's access to a representative of its choice. It was also noted that a NAR misrepresentation could be violation of law (i.e. misrepresentation as an attorney). LF wants to avoid the use of any kind of formal affirmations of compliance to avoid burdens on family representatives [REDACTED]

Stipanowich made a helpful contribution. He suggested that the conference work to distinguish among arbitration fora, that they are not all the same. He stated that this type of arbitration does need counsel, and they should avoid any appearance of trying to impose this concept on other forms of arbitration. Grady and Stipanowich supported the NASD. The conference will consider a SICA rule at the next meeting (subcomm. of G.Friedman, Grady and Stipanowich.)

* Next SICA meetings. January 18, 2000 at the NASD's office in Boca Raton, Florida. March 13, 2000 back at the Marriott Desert Springs Resort in California to coincide with the SIA's law and compliance meeting.

[REDACTED]

NON-
RESPONSIVE
AND
DELIBERATIVE
PROCESS

\RAL.

From: <rclemente@nyse.com>
Sent: Thursday, January 20, 2000 2:31 PM
To: teppenstein@eppenstein.com; George.Friedman@nasd.com; tstipano@pop.uky.edu; bwiener@jamsadr.com; czinn@jamsadr.com
Cc: LoveR; pcella@prodigy.net; paul_dubow@msdw.com; wphillipay@pacificex.com; linda.fienberg@nasd.com; "Hyland, Amy" <Amy.Hyland@nasd.com>; ijaaaatl@aol.com; ckatsoris@mail.lawnet.fordham.edu; nielsenn@cboe.com; fplessers@sia.com; sneerisg@agedwards.com
Subject: Re: Final Versions - Press - Correction
Attachments: SICAPilot; SICA Pilot Prog -; PILOTguidelinesfinal.doc; submission(securities)(FINAL).doc; SICA Pilot Prog - Arbitration; RFC822.TXT



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(18 KB)



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s)(FINAL)_...



SICA Pilot Prog -
Arbitration ...



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Please excuse my error (trying to do too many things at once). The Press Release is to be released on Monday January 24, 2000 not February 3, 2000. Also you should probably discard all previously distributed versions to avoid confusion.

Robert Clemente on 01/20/2000 12:54:49 PM

To: teppenstein@eppenstein.com, George.Friedman@nasd.com, tstipano@pop.uky.edu, bwiener@jamsadr.com, czinn@jamsadr.com
cc: pcella@prodigy.net, paul_dubow@msdw.com, wphillipay@pacificex.com, linda.fienberg@nasd.com, "Hyland, Amy" <Amy.Hyland@nasd.com>, ijaaaatl@aol.com, ckatsoris@mail.lawnet.fordham.edu, lover@sec.gov, nielsenn@cboe.com, fplessers@sia.com, sneerisg@agedwards.com

Subject: Final Versions - Press

Attached are the final versions of the SICA Pilot Program Press Release and Fact Sheet for release on Monday February 3, 2000, (it is my understanding that they will be sent on Friday to the Press with embargo for release on Monday). I am also attaching the Pilot Program Guidelines, Submission and Evaluation forms.

(See attached file: SICAPilot press release.doc) (See attached file: SICA Pilot Prog - FACT SHEETfinal.doc) (See attached file: PILOTguidelinesfinal.doc) (See attached file: submission(securities)(FINAL).doc) (See attached file: SICA Pilot Prog - Arbitration Evaluation FORM.doc)

Contact my office if you have any difficulty viewing these files.

SECURITIES INDUSTRY CONFERENCE ON ARBITRATION PILOT PROGRAM FOR NON-SRO-SPONSORED ARBITRATION ALTERNATIVES

PREFATORY NOTE

Since 1977, the Securities Industry Conference on Arbitration (SICA) has played an important role in the development of procedures for arbitration offered by the self-regulatory organizations ("SROs") including the National Association of Securities Dealers (NASD), the New York Stock Exchange (NYSE), the Chicago Board Options Exchange (CBOE), the American Stock Exchange (AMEX), the Pacific Exchange and other SROs. One of SICA's enduring goals has been to ensure the reasonable expectations of the investing public regarding the fairness of SRO arbitration.

Over the same period, court decisions embracing arbitration have presented challenges to SICA and the SROs. As arbitration has evolved to address a broad range of disputes steered into arbitration by the Supreme Court's decisions in McMahon and Gilmer, the process has become more like litigation. In response to these concerns, a New York Stock Exchange Symposium on the future of securities arbitration was conducted in the fall of 1994 and the NASD Task Force on Arbitration, chaired by Professor David Ruder, published its results in January 1996. At the same time, some courts have more closely scrutinized the use of binding arbitration provisions in standardized contracts, and more attention is being paid to the choices available to consumers in private "ADR" programs.

In the Fall of 1998, SICA appointed a Subcommittee to explore ways in which investors might be provided with options to the present system of SRO-sponsored arbitration. SICA's action coincided with a proposal by the Public Investors Arbitration Bar Association (PIABA) to provide investors, among other things, the option of arbitration before the American Arbitration Association (AAA).

The SICA Subcommittee considered several alternatives, including the possibility of some form of opt-out to the court system. It became clear that the most promising alternative was the choice of non-SRO-sponsored arbitration. With this in mind, the Subcommittee developed the attached Guidelines for a two-year Pilot Program. Several brokerage firms have collectively agreed to arbitrate, at the request of a customer, 100 cases to award at non-SRO sponsored forums. Because many cases are settled before arbitrators issue an award, it is expected that more than 100 cases will be administered under the Pilot Program. The Guidelines do not endorse any particular provider of dispute resolution services. They do, however, (1) establish criteria for firms that want to offer investors the option of non-SRO sponsored arbitration, including applicable "due process standards," and (2) provide a mechanism to collect data for the purpose of assisting SICA in evaluating the Pilot Program.

4. **Choice of Non-SRO Forum; Due Process Requirements.** Firms that participate in the Pilot Program may choose any provider of arbitration services whose rules conform to the following due process requirements:
 - (a) The forum shall be independent of all parties.
 - (b) All parties shall have the right to be represented by an attorney at any time during the proceeding.
 - (c) The parties shall have the right to attend all hearings.
 - (d) The forum shall provide hearing locations reasonably convenient to the parties.
 - (e) The forum shall have adequate procedures for the pre-hearing discovery of documents and information.
 - (f) The Claimant(s) and the Respondent(s) shall equally participate in selecting arbitrators.
 - (g) The arbitrators' award shall be in writing and conformed copies shall be signed by a majority of the arbitrators. The award shall be served upon the parties.
 - (h) The arbitrators shall have the authority to allocate any administrative or hearing fees.
 - (i) The arbitrators' award should be final and binding upon the parties, subject to review in accordance with the applicable law.
 - (j) If the non-SRO forum conducts arbitrator training, qualified members of the plaintiff and defense bars must participate as trainers.
 - (k) The non-SRO forum shall provide for a refund of Customer filing fees in cases where the Respondent declines to participate.
5. **Remedies.** The parties' remedies shall be the same as those allowed at the time of the filing of the Statement of Claim under the rules of the SRO where the Statement of Claim is or would have been originally filed, notwithstanding any contrary rules of the non-SRO forum.
6. **Single Arbitrator Option.** If all parties agree, the case may be heard by a single arbitrator. If this option is exercised, the parties shall confer early in the process to select an arbitrator from the pool supplied by the forum.
7. **Mediation.** The use of mediation is encouraged. The parties may agree to submit the

dispute to mediation at any time.

8. Initiation of Arbitration in Pilot Program. A case can be filed by a Customer at the non-SRO forum in either of the following ways:

(a) Direct filing at non-SRO forum

- (i) A Customer may file directly with the non-SRO forum but must set forth in the Statement of Claim or Demand for Arbitration the name of the SRO where the Statement of Claim would have been filed had the non-SRO forum not been available. The firm may decline to take part in the proceeding if:
- (a) the non-SRO forum is not one designated by the firm as a forum where it agreed to arbitrate disputes under the Pilot Program; or
 - (b) the SRO named by the Customer does not have jurisdiction over the parties, or;
 - (c) the claim is not eligible under Sections 2 or 3.
- (ii) All applicable statutes of limitation are tolled from the date of filing with a non-SRO forum until 60 days after the firm notifies the Customer that it declines to arbitrate at the non-SRO forum.
- (iii) The firm shall answer the Statement of Claim or Demand unless it informs the Customer in writing, prior to the date the answer is due, that the Statement of Claim or Demand does not qualify and the reason therefore under the Pilot Program.

A firm's refusal to arbitrate a claim at the non-SRO forum shall be final.

(b) Initial filing at an SRO

A Customer may file the Statement of Claim with an SRO. The SRO will serve the Statement of Claim on the Respondent. Within 15 days of receipt of the Statement of Claim, the firm will advise the SRO, in writing, whether the Statement of Claim qualifies for the Pilot Program. If the firm determines that the claim does not qualify for the pilot program it shall advise the SRO of the reason therefore. The firm's time to answer the Statement of Claim is not tolled during this time period.

- (i) If the firm determines that the Statement of Claim qualifies for the Pilot Program, then the firm's time within which to respond to the Statement of Claim shall be tolled until the firm is notified that the Customer does not wish to proceed at a non-SRO forum.

(ii) The SRO shall inform the Customer that the claims may be arbitrated at a non-SRO forum. The SRO shall advise the Customer (a) to contact the firm if it is interested in proceeding at a non-SRO forum; and (b) that the processing of the claim will be suspended for up to 15 days pending the Customer's decision whether to proceed at a non-SRO forum. The SRO shall also notify the firm if the Customer does not wish to proceed at a non-SRO forum.

(iii) Participating firms shall, upon request, provide the Customer with the rules of the non-SRO forum(s) where the Customer may choose to file a claim.

(iv) If the Customer does not advise the SRO that it has chosen to arbitrate at a non-SRO forum within 15 days, the SRO arbitration will proceed.

(v) If a Customer chooses to arbitrate at a non-SRO forum, the Customer must notify the SRO, in writing, of its decision. The SRO will return all pleadings, fees and deposits to the Customer upon notification. The SRO will then close the case and notify the parties.

(vi) If the Customer chooses to arbitrate at a non-SRO forum, there will be a tolling of all statutes of limitation from the date of filing with the SRO until 60 days after the date that the case was closed by the SRO.

(vii) For each case that is referred to the Pilot Program and resolved outside of the SRO, participating firms shall pay a fee of \$750 to the SRO where the Statement of Claim was originally filed. This fee covers the SRO's cost of processing and serving the Statement of Claim.

9. **Evaluation of Pilot Program.** SICA will endeavor to evaluate the operation of the Pilot Program by various means, and to report its findings. SICA will work with the non-SRO forums to develop a process by which survey forms will be given to the parties and their counsel. The forms are to be returned to SICA's designate before the award is received by the parties.

10. **Transmission of Awards to SROs.** The participating firms will send copies of all awards from the non-SRO forums to the SRO where the Statement of Claim was originally filed, or would have been filed.

11. **Payment of Awards.** Participating firms shall pay all awards within 30 days of receipt unless a motion to vacate is filed. They also agree that failure to do so shall be a violation of Rule IM-10100 (d) of the NASD Code of Arbitration Procedure.

Securities Industry Conference on Arbitration Pilot Program

SUBMISSION TO ARBITRATION

Instructions: All Parties should complete and sign this form, and retain a file copy. Attach additional sheet(s) if necessary. Three copies of the completed form, along with required filing fee(s), should be sent to the administering organization.

Date: _____

The named parties hereby submit the following dispute for binding arbitration under the auspices of :

the American Arbitration Association JAMS Other _____ ,

pursuant to the _____ Rules as modified by the attached Guidelines for the SICA Securities Arbitration Pilot Program.

THE NATURE OF THE DISPUTE (CHECK AS MANY BOXES AS MAY APPLY):

CHURNING UNAUTHORIZED TRADING FAILURE TO SUPERVISE NEGLIGENCE OMISSION OF FACTS

BREACH OF FIDUCIARY DUTY UNSUITABILITY MISREPRESENTATION ONLINE TRADING

OTHER _____

CLAIM OR RELIEF SOUGHT BY CUSTOMER (and Amount, if Any):

CLAIM OR RELIEF SOUGHT BY FIRM/BROKER-DEALER (and Amount, if Any):

HAD THIS CLAIM BEEN FILED AT AN SRO, IT WOULD HAVE BEEN FILED AT: NASD NYSE Other _____

DESIRED QUALIFICATIONS OF ARBITRATORS:

Please complete the reverse side of this form

Securities Industry Conference on Arbitration

Pilot Program

SUBMISSION TO ARBITRATION (CONTINUED)

We hereby agree that we will abide by and perform any award rendered hereunder, and that the award may be confirmed (with judgment entered) or challenged, in any court of appropriate jurisdiction.

Name of Customer(s)	Name of Firm/Broker-Dealer
Address	Address
City, State and ZIP Code	City, State and ZIP Code
Telephone Fax	Telephone Fax
E-mail Address: _____	E-mail Address: _____
Signature	Signature
Name of Attorney for Party	Name of Attorney for Party
Name of Firm (if Applicable)	Name of Firm (if Applicable)
Attorney's Address	Attorney's Address
City, State and ZIP Code	City, State and ZIP Code
Telephone Fax	Telephone Fax
E-mail Address: _____	E-mail Address: _____
Signature	Signature

Please complete the other side of this form

SICA PILOT PROGRAM TO PROVIDE INVESTORS CHOICE OF NON-SRO FORUM FOR RESOLUTION OF DISPUTES

The Securities Industry Conference on Arbitration (SICA) is set to launch a two-year pilot program to provide customers with a broader choice of arbitration forums where they may resolve disputes with their brokerage firm. SICA is an organization comprised of Public Members (representatives of the investing public), the Securities Industry Association (SIA), and the securities self regulatory organizations (SROs) that provide an arbitration forum for the resolution of disputes in the securities industry, such as the National Association of Securities Dealers (NASD), New York Stock Exchange (NYSE) and other exchanges.

Arbitration has long been used to resolve customer/broker disputes because it is relatively fast and is an efficient alternative to the courtroom. Many investors sign a customer agreement which contains a provision calling for disputes regarding their account to be resolved by arbitration at one of the SROs when they open a securities account at a brokerage firm. Moreover, the SROs and the securities industry subsidize arbitration to make it less expensive for customers to resolve disputes. To give the public customers choice, SICA developed the Pilot Program to determine if in fact an alternate forum would be attractive to investors, notwithstanding its cost.

SICA developed Guidelines for the Pilot Program. The Guidelines provide for the voluntary participation of brokerage firms which will designate one or more non-SRO forums where a customer may file a claim. The choice to go to a non-SRO forum is up to the Customer. The guidelines also set forth minimum due process requirements that the non-SRO forums must meet to be eligible for the Pilot Program. At present, seven retail brokerage firms have volunteered to participate in the two year pilot; they are: Merrill Lynch, Morgan Stanley Dean Witter, PaineWebber, Prudential Securities, Salomon Smith Barney, A.G. Edwards, and Raymond James. Collectively the firms have agreed to arbitrate, to award, 100 cases at a non-SRO forum during the two-year pilot. Because many cases are settled before arbitrators issue an award, it is expected that more than 100 cases will be administered under the Pilot Program.

Beginning January 24, 2000, some customers whose claims qualify under the Pilot Program will have a choice to arbitrate at an SRO or the non-SRO forum(s) designated by the firm. Customers whose claims qualify under the pilot may file directly with the non-SRO forum selected by the firm. In addition, customers who file a claim with an SRO against one of the seven participating firms will be advised, if the claim qualifies, that they may arbitrate the dispute at a non-SRO forum. The customer may then choose whether to proceed at the non-SRO forum or remain in the SRO forum.

For additional information, contact Prof. Thomas J. Stipanowich, University of Kentucky College of Law, 139 Law Building, Lexington, KY 40506-0048, Tel. 606-257-3998, Fax 606-323-1061, E-mail: tstipano@pop.uky.edu

**Securities Industry Conference on Arbitration
Pilot Program
Fact Sheet**

- ◆ Public customers with qualifying claims, who are represented by counsel, may choose to arbitrate their dispute with participating brokerage firms at a non-SRO sponsored forum through a Pilot Program developed by the Securities Industry Conference on Arbitration (SICA)¹ (see *Guidelines for the SICA Securities Arbitration Pilot Program* – paragraph 3, for explanation of which claims qualify).
- ◆ The non-SRO forums selected by the brokerage firms to provide dispute resolution services for the Pilot Program are JAMS and the American Arbitration Association.
- ◆ JAMS, a leading provider of dispute resolution services in the U.S., offers its domestic and international clients a prestigious panel of justices, judges and attorneys who handle the most complex and high-stakes cases. With 20 nationwide offices, including major offices in business centers such as San Francisco, Los Angeles, Chicago, New York, Boston and Washington D.C., the company and its full-time neutrals are responsible for resolving more than 10,000 disputes annually.
- ◆ The American Arbitration Association (AAA), a public service, not-for-profit organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States.
- ◆ The following brokerage firms have volunteered to arbitrate qualifying cases at a non-SRO sponsored forum:

Merrill Lynch	(JAMS)
Morgan Stanley Dean Witter	(JAMS)
PaineWebber	(JAMS)
Prudential Securities	(JAMS)
Salomon Smith Barney	(JAMS)
A.G. Edwards	(AAA or JAMS)
Raymond James	(AAA)

¹ The Securities Industry Conference on Arbitration (SICA) is an organization comprised of Public Members (representatives of the investing public), the Securities Industry Association (SIA), and the securities self-regulatory organizations (SROs) that provide an arbitration forum for the resolution of disputes in the securities industry, such as the National Association of Securities Dealers (NASD), the New York Stock Exchange (NYSE) and other exchanges.

- ◆ The Pilot Program will run for a period of two years commencing January 24, 2000. The participating brokerage firms have collectively agreed to arbitrate, to award, 100 cases at non-SRO sponsored forums.
- ◆ Public customers who file qualifying claims with an SRO will be advised that, if they choose, their claim may be arbitrated at a non-SRO sponsored forum.
- ◆ A public customer may file a qualified claim against one of the participating brokerage firms directly with the non-SRO sponsored forum designated by the firm. Copies of the applicable rules may be obtained from the brokerage firm or on the following web-sites:

AAA: http://www.adr.org/rules/commercial/securities_rules.html

JAMS: <http://www.jamsadr.com/arbitrationrules/securities.htm>

- ◆ Arbitration forums sponsored by the SROs are subsidized and therefore the costs of arbitrating a dispute at a non-SRO sponsored forum may be higher. See the rules of JAMS and AAA for specific costs and fees.
- ◆ Claims submitted to arbitration at a non-SRO sponsored forum will be administered in accordance with the Guidelines for the SICA Securities Arbitration Pilot Program and the Securities Arbitration Rules of the non-SRO sponsored forum. Contact JAMS or AAA for applicable rules.
- ◆ Mediation is also available if the parties agree, at both the non-SRO and SRO forums.
- ◆ Arbitration hearings are not open to the public. However, awards issued by a non-SRO forum under this Pilot Program will be made publicly available in accordance with SRO rules.
- ◆ SRO-sponsored arbitration forums are subject to SEC and GAO oversight. Non-SRO sponsored forums are not subject to SEC or GAO oversight.

◆ **For additional information about filing a claim, contact:**

JAMS	Catherine M. Zinn (No. CA)	czinn@jamsadr.com 415-774-2615
	Beth Weiner (East/Central)	bwiener@jamsadr.com 212-607-2718
	Steve Farmakis (So. CA)	sfarmakis@jamsadr.com
AAA	John Germani	germanij@adr.org 888-320-4601

Address: JAMS
1101 17th Street, NW – Suite 808
Washington, DC 20036
Attn: Securities Program Pilot Program Administrator

Tele: (202) 942-9708
(800) 448-1660 – ext. 708

Fax: (202) 942-9186

Web Address: <http://www.jamsadr.com/arbitrationrules/securities.htm>

Filing Information for AAA:

Address: American Arbitration Association
2200 Century Parkway, Suite #300
Atlanta, GA 30345
Att: John Germani, Supervisor

Tele: (888) 320-4601

Fax: (404) 325-8034

Web Address: http://www.adr.org/rules/commercial/securities_rules.html

Other Inquiries:

All other inquiries about the program, including inquiries from the press, should be directed as follows:

<u>NASD</u>	George Friedman (<i>press inquiries</i>)	george.friedman@nasd.com 212-858-4488
	Amy Hyland (<i>press inquiries</i>)	amy.hyland@nasd.com 202-728-8304
	Lisa Angelson (<i>program inquiries</i>)	lisa.angelson@nasd.com 212-858-4051
<u>NYSE</u>	Ray Pellechia (<i>press inquiries</i>)	rpellechia@nyse.com 212-656-2001
	Robert S. Clemente (<i>program inquiries</i>)	rclemente@nyse.com 212-656-5608
<u>SICA</u>	Professor Thomas J. Stipanowich	tstipano@pop.uky.edu 606-257-3998
<u>SIA</u>	Margaret Draper	mdraper@sia.com 212-608-1500

S I C A
PILOT PROGRAM

ARBITRATION EVALUATION FORM

BY

PARTIES AND REPRESENTATIVES

AT FORUMS

OTHER THAN SELF-REGULATORY ORGANIZATIONS

CASE NAME _____ v. _____

DOCKET NO. _____ DATE OF COMPLETION OF THIS
QUESTIONNAIRE _____

HOST FORUM: **J.A.M.S./ENDISPUTE**

PURPOSE OF QUESTIONNAIRE:

You recently concluded a securities arbitration at J.A.M.S./Endispute through a pilot project established by the Securities Industry Conference on Arbitration (SICA). SICA is interested in obtaining your comments in regard to the administration of this matter. Please take the time to answer this relatively short questionnaire – *after the hearings are completed, but before a decision has been rendered* – so as to assist SICA in its efforts to continually improve the arbitration process.

MAILING INSTRUCTIONS:

AFTER COMPLETING THIS FORM, PLEASE MAIL IT IN THE ATTACHED POSTAGE-PAID ENVELOPE. THE INFORMATION WILL BE COMPILED ANONYMOUSLY AND THE RESULTS PROVIDED TO SICA AND J.A.M.S..

S I C A
PILOT PROGRAM

ARBITRATION EVALUATION FORM

BY

PARTIES AND REPRESENTATIVES

AT FORUMS

OTHER THAN SELF-REGULATORY ORGANIZATIONS

CASE NAME _____ v. _____

DOCKET NO. _____ DATE OF COMPLETION OF THIS
QUESTIONNAIRE _____

HOST FORUM: AMERICAN ARBITRATION ASSOCIATION (AAA)

PURPOSE OF QUESTIONNAIRE:

You recently concluded a securities arbitration at the AAA through a pilot project established by the Securities Industry Conference on Arbitration (SICA). SICA is interested in obtaining your comments in regard to the administration of this matter. Please take the time to answer this relatively short questionnaire – *after the hearings are completed, but before a decision has been rendered* – so as to assist SICA in its efforts to continually improve the arbitration process.

MAILING INSTRUCTIONS:

AFTER COMPLETING THIS FORM, PLEASE MAIL IT IN THE ATTACHED POSTAGE-PAID ENVELOPE. THE INFORMATION WILL BE COMPILED ANONYMOUSLY AND THE RESULTS PROVIDED TO SICA AND THE AAA.

INSTRUCTIONS FOR COMPLETION

This questionnaire consists of fifteen questions. Please mark the appropriate box (questions 1-3 and 5-15) with an X. Space has also been specifically provided for comments, if any, as to questions 4-14.

In addition, space has also been provided at the end for your own general comments, if any, about the forum, the arbitrators, or otherwise.

QUESTIONNAIRE

BACKGROUND INFORMATION

1. In this particular case, are you: Claimant; Claimant's Representative; Respondent; Respondent's Representative; Other _____
2. Have you been a party or representative of a party in any other arbitration?
 Never; Only Once; More Than Once but Less Than Five Times;
 More Than Five Times
3. Have you been a party or representative of a party in any of the following forums?
 AAA; Boston Stock Exchange; CBOE; Chicago Stock Exchange;
 NASD; NYSE; Pacific Stock Exchange; Other _____

HOST FORUM ADMINISTRATION

4. Why did you choose this forum?
Comment _____
5. Were you satisfied by the overall administration of this arbitration by the forum?
 Yes; No; Comment _____
6. How were the arbitrators selected?
 By the Forum; By the Parties;
Comment _____
7. Were you satisfied with the manner in which the arbitrators were selected?
 Yes; No; Comment _____
8. Were the hearings recorded?
 By stenographer; By tape recorder; Not recorded;
Comment _____

9. Were you satisfied with the Discovery and other Pre-Hearing Procedures?
 Yes; No; Comment _____
10. Was the staff of the forum accessible and responsive to your inquiries?
 Yes; No; Comment _____
11. Was your case handled promptly, including acknowledgment of correspondence, requests, and scheduling of hearings?
 Yes; No; Comment _____
12. Did you find the process cost efficient?
 Yes; No; Comment _____
13. Based upon this experience, would you use the services of this forum again?
 Yes; No; Comment _____

THE ARBITRATOR(S)

14. Did the arbitration panel decide all Discovery and other prehearing and hearing motions promptly?
 Yes; No; Comment _____
15. How would you rate the Chairperson and other arbitrators (if applicable) in your case in the following areas designated a) – e) below:

* * * *

a) Displayed Professionalism	Chairperson Or Single Arbitrator	Second Arbitrator	Third Arbitrator
Excellent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Good	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**b) Displayed Sensitivity
To Parties and their
Representatives**

	Chairperson Or Single Arbitrator	Second Arbitrator	Third Arbitrator
Excellent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Good	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**c) Displayed Ability to
Analyze Problems/Identify
Key Issues/Understand
Material Presented**

	Chairperson Or Single Arbitrator	Second Arbitrator	Third Arbitrator
Excellent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Good	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**d) Displayed Knowledge of
Securities Industry
Technology and Practice**

	Chairperson Or Single Arbitrator	Second Arbitrator	Third Arbitrator
Excellent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Good	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

e) Displayed Fairness and Appearance of Fairness

	Chairperson Or Single Arbitrator	Second Arbitrator	Third Arbitrator
Excellent	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Good	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Poor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

COMMENTS AND REMARKS

Please enter whatever additional remarks you may have, if any, about the forum, the arbitrators, or otherwise:

a) Forum _____

b) Arbitrators _____

c) Other _____

From: "Thomas Stipanowich" <SMTP:StipanowichT@adr.org>
Sent: Friday, December 08, 2000 11:22 AM
To: LoveR
Subject: SICA Pilot Program

Attachments: PILOTLET.DOC



PILOTLET.DOC (27
KB)

Robert,
In the interest of getting you the essential information about the SICA Pilot Program before the end of the week, I am attaching a Word version of my draft letter. As I mentioned in a phone message I attempted to leave on your machine yesterday, Robert Clemente had some indication from JAMS that as many as 2 or 3 cases may be somewhere in their pipeline. However, despite leaving an e-mail message with Catherine Zinn and a phone message with Beth Wiener, who I believe is supposed to be our primary contact at JAMS, I have not yet received a confirmation of this. In a conversation this morning with Steve Price, JAMS President, I mentioned our query; Steve was unable to help.

My point is that it is possible that at least some cases are working their way through the system, and that I may alter the letter at least slightly in the next day or so. Meanwhile, I wanted you to have the draft. Let me know if it is generally suitable for the purpose.

Best regards.

Tom <<pilot letter 12 04 00 --Robert Love.doc>>

Robert Love, Esq.
Special Counsel
Division of Market Regulation
U.S. Securities & Exchange Commission
450 5th Street NW
Washington, D.C. 20549

Re: Status of Securities Industry Conference on Arbitration (SICA)
Non-SRO Arbitration Pilot Program

Dear Robert:

On behalf of the Securities Industry Conference on Arbitration (SICA), I am responding to your request for a progress report on the SICA Non-SRO Arbitration Pilot Program. My understanding is that this information will be transmitted to Congressmen Dingell and Markey in response to their request for information regarding several matters noted in the June 27, 2000 letter concerning GAO's report, *Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards*.

Background

As you know, the Non-SRO Arbitration Pilot Program was initiated early in 2000 after two years of effort by SICA. The intent of the program was to provide investors with the choice of arbitrating disputes with participating brokerage firms in forums other than the NASD, New York Stock Exchange and other SRO- (self regulatory organization)-sponsored programs. Our collective belief was that the availability of such choices would be beneficial to investors. Moreover, we hoped that a body of experience with alternative programs might provide comparative data to further assess the relative effectiveness of SRO as well as non-SRO programs.

Because SICA does not have the authority to initiate such a program, it was necessary to work with members of the investors' bar (through the Public Investors Arbitration Bar Association) and the Arbitration Committee of the Securities Industry Association to create a level of consensus regarding the scope and nature of a non-SRO pilot program. It was also necessary to convince brokerage houses to agree to participate in such a program and to individually select non-SRO institutional providers to administer cases.

In the event, seven major brokerage houses agreed to participate in the pilot program. Five of these organizations selected Judicial Arbitration and Mediation Services (JAMS) as their independent provider for the program, one chose the American Arbitration Association, and one selected both JAMS and AAA. During the two-year pilot period, each of the firms agreed to permit investors to have a choice between arbitrating in the usual SRO program(s) or going to the independent provider's program. Six of these firms agreed to permit at least 15 cases to proceed all the way to an award in a non-SRO forum, the seventh agreed to permit 10 to proceed to award.

SICA, the NASD and the New York Stock Exchange made efforts to publicize the program and the rules for participation by investors. Procedures were established for routinely notifying claimants of the availability of the program in qualified cases. On January 24, 2000, the program was officially implemented.

At the time of implementation of the program, we were aware of the possibility that the program might not see a lot of cases. First of all, practical considerations led to a number of limitations on the kinds of cases that would be eligible for the program. For example, we elected not to permit participation by investors without counsel. Also, where individual brokers were named respondents along with a brokerage firm, the individual respondents' consent would be required before the case could be submitted to the non-SRO pilot program. Finally, and most significantly, we recognized that while the costs of SRO arbitrations are heavily subsidized by the industry, the costs of non-SRO arbitration would not be. Therefore, investors would be required to pay charges at or close to those normally charged by independent providers for arbitrators and administrative services.

The Program in Operation

In the months since the program was instituted not one case has thus far proceeded to arbitration at a non-SRO forum under the pilot program. As of October 31, 2000, Robert Clemente of the NYSE reported that of 92 cases filed against participating firms during the pilot period, the Exchange was informed of only six cases that qualified for the pilot. In none of these cases did the claimant elect to proceed to the non-SRO forum. During the same period, the NASD was notified of 52 eligible cases. In 20 of these cases, the NASD was informed that the customer was not interested in the pilot program; in 23 cases, the customer did not respond when notified of the pilot program. Eight cases are still pending. In only one case was there an agreement to use the non-SRO (JAMS) program, but the matter was apparently settled before being administered by JAMS.

Katsoris Survey

In an effort to determine why eligible parties elected not to participate in the pilot program, Fordham University law professor Constantine Katsoris, Public Member Emeritus of SICA, was charged with obtaining confidential information from those parties or their counsel. He furnished counsel with a survey form, along with a self-addressed, postage-paid envelope. Thus far, only four responses have been received, all from attorneys. Three of the four indicated that they had received sufficient information about the program, while one would have liked to have more information on the non-SRO program and the pool of arbitrators.

Asked why they elected not to use the pilot program, two of the responding counsel indicated that they were satisfied with the SRO forum (in both cases, the arbitration program of the New York Stock Exchange). Yet another indicated the case was a relatively simple one, and using the pilot procedure "would have meant delay and unnecessary complication." The fourth attorney expressed general dissatisfaction with

arbitration and wanted to go to court (although it is unclear whether this actually happened.)

One responding attorney indicated that he “wanted to wait for a large and complex case” before using the pilot program. Another was waiting for the alternate forums to develop “more of a track record.”

Although the survey data are sparse anecdotal evidence and comments from members of the plaintiff’s bar reinforce the impression that the primary reasons for non-participation in the pilot program are:

- (1) the relatively greater cost of arbitrating in unsubsidized non-SRO programs, including higher arbitrator fees and administrative fees;
- (2) the relative lack of familiarity of members of the investor’s bar with non-SRO programs, and the absence of a “track record”;
- (3) a level of comfort among some members of the investors’ bar with SRO-sponsored arbitration programs.

There have been suggestions that some might deem it appropriate to use the program in cases involving large sums and complex issues, but thus far this has not happened.

As chair of SICA, let me reiterate our commitment to improve the arbitration process and safeguard the interests of the investing public. We welcome your continuing input regarding the pilot program and other initiatives, and will be happy to discuss these issues with you or Congressmen Dingell and Markey.

Sincerely,

Thomas J. Stipanowich
William L. Matthews Professor of Law
University of Kentucky
Chair, SICA

From: "rclemente@nyse.com" <SMTP:rclemente@nyse.com>
Sent: Monday, January 22, 2001 12:16 PM
To: JensonP; LoveR; "teppenstein@eppenstein.com" <SMTP:teppenstein@eppenstein.com>;
"George.Friedman@nasd.com" <SMTP:George.Friedman@nasd.com>;
"ckatsoris@mail.lawnet.fordham.edu" <SMTP:ckatsoris@mail.lawnet.fordham.edu>;
"nielsenn@cboe.com" <SMTP:nielsenn@cboe.com>; "sneerisg@agedwards.com"
<SMTP:sneerisg@agedwards.com>; "tstipanowich@cpradr.org"
<SMTP:tstipanowich@cpradr.org>
Subject: Revised SICA Pilot Survey
Attachments: SURVEY(R.DOC)



SURVEY(R.DOC (23
KB)

Attached is a revised Survey form. Please submit any comments by 1/25/01. There after the revised form will be used in place of the original.

(See attached file: Survey(revised).doc)

5. Please indicate the reason(s) why participation in the program was declined.

6. Under what circumstances would you recommend to your clients that they participate in the Pilot Program?

Thank you again for taking the time to complete this survey. Please return it in the enclosed postage-paid envelope to:

Professor Constantine N. Katsoris
Fordham University Law School
140 West 62nd Street
New York, NY 10023-7485

From: LoveR
Sent: Thursday, January 25, 2001 10:01 AM
To: WyderkoS
Cc: WalshG; JensonP; McGuireC
Subject: Re[2]: SICA results -- important to read (after UK ok)

Thank you for the offer. I expect it would make sense for you two to meet with Caite, Paula and me to figure out how we could work together on this. I will be out of the country on travel the next two weeks, and Caite is on travel this week, and other than Monday in also on business in Europe next week (different locale). Why don't we pick up the week of February 12th. If you are interested in the interim, either stop by tomorrow to copy my code (sorry, I've no support staff that would actually help accomplish this) or ask Robert Clemente to send it to you (he wants congratulations, not reality about how much remains to do). Thanks again. Robert

Reply Separator

Subject: RE: SICA results -- important to read (after UK ok)
Author: WyderkoS at EST
Date: 01/25/2001 8:19 AM

Robert --

Thanks for the updates. We'll distribute the new pamphlets. Re: the plain English staffing issue, can OIEA help by providing staff?

Susan

-----Original Message-----

From: LoveR
Sent: Wednesday, January 24, 2001 7:12 PM
To: WyderkoS; McGuireC; JensonP; BusseyB
Cc: CorcoranJ
Subject: SICA results -- important to read (after UK ok)

Here's a summary of the significant SICA items in chronological, not importance order.

SICA Pilot: SICA's questionnaire to counsel/parties asking why they determined not to use the pilot asserts that it is confidential. The information is compiled by Professor Katsoris. I asked what the confidentiality meant, and what information gleaned from the questionnaires I could use in response to any further inquiries from the Hill. Similarly, SICA is weighing what reference to this data (as opposed to the identity of the responders in those cases where that person is identified) it should make in the next SICA report (there are some responses indicating satisfaction with the SROs). After tedious debate on how to characterize the replies (with the SROs wanting them to be a proxy for widespread joy with the process, and public member Ted Eppenstein asserting that he was privy to secret information indicating great woe with the process), I suggested that someone draft a short, flat report that doesn't say too much, and give others an opportunity to edit. They are even now circulating by e-mail revised versions of the confidentiality sentence. As for the pilot itself, there are rumoured citings of a couple of cases, with unclear status or case stage. There also may be a glitch in statistics -- the SROs think they've had x number of cases that qualified for the pilot, while the SIA's Amal Aly said that the data

provided to her by the SIA suggests that 2x cases qualify. They intend to sort that out.

New Procedures Pamphlet and Arbitrators' Manual: The revised documents were approved, and will be printed by the NASD. I've asked that the NYSE or NASD contact Susan Wyderko in order to provide her with an appropriate electronic format or paper supply of the updated procedures pamphlet which OIEA distributes to investors.

Plain English Code: SICA adopted the Plain English version of its Uniform Code of Arbitration as its own, replacing the former code. In its next public report, SICA will publish both versions side by side, allowing readers to compare, and if they want, to comment. But any comments would only provoke possible revisions to the new code. The new one is not out for comment before adoption.

The Division must decide how to staff this. The NYSE intends to adopt the Plain English version. It has sent the code to its legal advisory committee; then it will go to its public policy committee. Jim Buck thinks that after a four to six months cycle, they should be close to preparing a rule filing. I clearly advised them that I have not read more than a few small portions of the code, and have no view on the success of the composite. I told them our little office has lost 6 attorneys in 4 months in addition to others over a longer time frame, and that there has been no one to assign this to who realistically could do it. I asked Jim to have patience with us, and more important, to work with as he gets closer so that we are well coordinated.

Subpoena: There was a very productive discussion of issues raised by the draft subpoena rule that was before the conference. In very short hand, it concerns who can issue subpoenas, to whom, when, with approval by whom, and when is it returnable (very significant difference in returnable to counsel or to panel at hearing). There is an issue of the interplay with state law; I think the agreements can supplant state law. Steve Sneeringer reminded the group that he thought concerns about state law were holding up another filing (unsaid, punitive damages). There also is an issue of whether revisions could inadvertently expand attorney issued subpoenas where not now permitted. There are timing issues. Cella asked for training. Stipano called for real state law examples to help shape this. I've asked to be included in the notices for working group meetings (with the proviso that the likelihood of my being able to participate is very low).

Arbitrator classification and disqualification: PIABA came in with a proposal to alter disqualification standards to permanently ban from the pool (for all cases, not just discrimination cases) arbitrators with adverse findings in discrimination cases. It's at about 7 years now at the NASD. Buck noted that corporate officers are often routinely named in matters with no personal involvement; Feinberg noted that agency heads are similarly named (and litigation named after them) also without direct involvement; we noted that those same persons make decisions to litigate the allegations and accordingly may not be attractive to the parties. This hasn't been resolved, and will be considered more fully within SICA's discussion of arbitrator classification that it will take up in the March meeting. PIABA failed to make a timely submission of materials for this past meeting concerning arbitrator classification as it had undertaken to do at the November meeting in San Antonio. It provided some materials at the last minute, but did not provide the examples of real arbitrators that raised the concerns as they promised to do. They've simply opened the abstract conceptual discussion of who should serve, and with what hat. As you will recall, this ties in to the issue of single arbitrator usage, industry concerns over expertise, and proposals to eliminate classifications and go to "neutrals" (which I suspect PIABA would resist). CM I've sent you separately a proposal raised by the NYSE's

Jim Buck for another way on classification that we should discuss. I've alerted Jim to our respective travel schedules and availability to discuss the matter.

Digitizing: The NYSE and NASD are moving forward to collect and digitize the minutes.

Interest on Award payments: Henry Minnerop of Brown Wood asked of the interest on award provision applied to awards of attorneys fees. The NASD made it clear that it unambiguously did. Dubow advised the group that Minnerop had the question in his role as an arbitrator, not counsel, and that he, Dubow, had been asked the question and that he had advised Minnerop to write.

Online: There was a general discussion of future use of online media for the dispute resolution process, as opposed to addressing online trading issues that may arise in arbitration. NASD's George Friedman will make a presentation on its new computer system in March.


Katsoris and Stipanowich raised again the idea of having a web page for SICA. Many of us reminded them that maintaining such a site is important, difficult, and expensive. Who would do it? The chief desire seemed to be for advertisement. After an annoying exchange, this was put on hold.

ABA meetings of the Task Force on Electronic Commerce are taking place on January 27 and February 17. They are open meetings, and will include discussion of electronic litigation. If you want to go call Paul Dubow for more information.

Dubow noted that there was yet another non attorney representative battle flaring up in California. We are not following.

Note: Dubow has retired from Morgan Stanley Dean Witter and is a consultant to the SIA.

NASD noted the approval of its rule proposal allowing it remove sitting arbitrators; there was an internal NASD disconnect on its effective date that it is resolving. This was subject of a separate earlier e-mail to CM. No concerns.

 NASD gave only the briefest of presentations of its rule that would allow investors access to court in cases against a defunct broker-dealer. I expanded in order to advised the exchanges of the need to protect themselves. After the meeting, I asked Nancy Nielson, the secretary, to please make certain she looked at and understood the rule and possible implications for the exchanges so that the minutes reflect this, and help them protect themselves with similar filings if they feel exposed.

Stipanowich noted the publication of a new great book (he edited it) that is available through the ABA.

Next meetings are: Weds. March 21 (last day of Orlando SIA meeting); Monday June 18th (San Francisco); Tuesday October 16 (Amelia Island, to correspond with PIABA). RAL

From: Friedman, George [George.Friedman@NASD.com]
Sent: Friday, June 14, 2002 2:47 PM
To: Aly Amal (E-mail); Angelo Evangelou (E-mail); Brown Jeffrey (E-mail); Buck James (E-mail); Cain Cindy (E-mail); Catherine McGuire Esq. (E-mail); David P. Van Wagner (E-mail); Eppenstein Ted (E-mail); Fienberg, Linda; Grady Tom (E-mail); Helene McGee (E-mail); Jenson Paula (E-mail); Johnson India (E-mail); Laura Pruitt Esq. (E-mail); Liberti Daniel (E-mail); Mary Ann Gadziala Esq. (E-mail); Nancy Nielsen (E-mail); Paul Dubow (E-mail); Peter R. Cella Esq. (E-mail); Philip J. Hoblin Jr. Esq. (E-mail); Phillippay, Wendy; Robert A. Love Esq. (E-mail); Robert S. Clemente Esq. (E-mail); 'S. Sneeringer' (E-mail); Tom Stipanowich (E-mail)
Subject: FW: DRAFT FINAL REPORT ON SICA PILOT
Attachments: SICA Pilot Report Redline (FINAL 6-7-2002).doc



SICA Pilot Report
Redline (FIN...

Let's try it again, this time with the attachment!

<<SICA Pilot Report Redline (FINAL 6-7-2002).doc>>

> -----Original Message-----

> **From:** Friedman, George
> **Sent:** Friday, June 14, 2002 2:44 PM
> **To:** Aly Amal (E-mail); Angelo Evangelou (E-mail); Brown Jeffrey
> (E-mail); Buck James (E-mail); Cain Cindy (E-mail); Catherine McGuire Esq.
> (E-mail); David P. Van Wagner (E-mail); Eppenstein Ted (E-mail);
> Fienberg, Linda; Grady Tom (E-mail); Helene McGee (E-mail); Jenson
> Paula (E-mail); Johnson India (E-mail); Laura Pruitt Esq. (E-mail);
> Liberti Daniel (E-mail); Mary Ann Gadziala Esq. (E-mail); Nancy
> Nielsen (E-mail); Paul Dubow (E-mail); Peter R. Cella Esq. (E-mail); Philip J Hoblin
Jr. Esq.
> (E-mail); Phillippay, Wendy; Robert A. Love Esq. (E-mail); Robert S.
> Clemente Esq. (E-mail); 'S. Sneeringer' (E-mail); Tom Stipanowich (E-mail)
> **Subject:** DRAFT FINAL REPORT ON SICA PILOT

> At the last SICA meeting, I agreed to provide a redline version of the
> Final SICA Pilot Project report. The changes are those developed at
> the SICA meeting.

> Please provide any additional comments or edits to GUS KATSORIS no
> later than June 30th, after which the report will be finalized and published.

FINAL REPORT
SECURITIES INDUSTRY CONFERENCE ON ARBITRATION
Pilot Program for
Non-SRO-Sponsored Arbitration Alternatives

I HISTORY OF PROGRAM

Since 1977, the Securities Industry Conference on Arbitration (SICA) has played an important role in the development of procedures for arbitration offered by the self-regulatory organizations ("SROs") including NASD, the New York Stock Exchange (NYSE), the Chicago Board Options Exchange (CBOE), the American Stock Exchange AMEX), the Pacific Exchange and other SROs. One of SICA's enduring goals has been to ensure that the reasonable expectations of the investing public in the fairness and integrity of SRO arbitration are met.

Over the same period, court decisions embracing arbitration presented challenges to SICA and the SROs. As arbitration evolved to address the large number of disputes filed in arbitration after the Supreme Court's decisions in McMahon and Gilmer, the process became more like litigation. In response to these concerns, the New York Stock Exchange conducted a Symposium on the future of securities arbitration in the fall of 1994; and an NASD Task Force on Arbitration, chaired by Professor David Ruder, former chairman of the SEC, published its findings in January 1996. At the same time, some courts were more closely scrutinizing the use of binding arbitration provisions in standardized contracts. Accordingly, renewed attention was focused upon expanding the choices available to consumers in private "ADR" programs.

In the fall of 1998, SICA appointed a subcommittee to explore ways in which investors might be provided with options to the present system of SRO-sponsored arbitration. SICA's action coincided with a proposal by the Public Investors Arbitration Bar Association (PIABA) to

provide investors, among other things, the option of arbitration before the American Arbitration Association (AAA).

The SICA subcommittee considered several alternatives, including the possibility of some form of opt-out to the court system. It became clear that the most promising alternative was the choice of non-SRO-sponsored arbitration. With this in mind, the Subcommittee developed "Guidelines" for a two-year Pilot Program. Several of the major brokerage firms collectively agreed to arbitrate, (at the request of a customer) 100 cases to award at non-SRO sponsored forums. Because many cases are settled before arbitrators issue an award, SICA expected that more than 100 cases would be eligible for the Pilot Program. The Guidelines (attached hereto as **Exhibit A**): (i) set up criteria for firms that want to offer investors the option of non-SRO sponsored arbitration, including applicable "due process standards," and (ii) provided a mechanism to collect data to assist SICA to evaluate the Pilot Program.

Accordingly, on January 24, 2000, SICA initiated a two-year Pilot Program to permit public customers to elect to have their claims arbitrated at either JAMS or, in the case of two firms, also at the American Arbitration Association. The participating firms were A.G. Edwards, Merrill Lynch, Morgan Stanley Dean Witter, Paine Webber, Prudential Securities, Salomon Smith Barney and Raymond James. **The Pilot Program ended on January 24, 2002.** Eligible claims transmitted to one of the participating firms on or before January 24, 2002 will continue to conclusion at the designated non-SRO forum.

Deleted: , in cooperation with A.G. Edwards, Merrill Lynch, Morgan Stanley Dean Witter, Paine Webber, Prudential Securities, Salomon Smith Barney and Raymond James.

Deleted: where permitted

II SRO EXPERIENCE

As of the conclusion of the program, the SROs reported that approximately 277 cases were eligible for the pilot program but only eight cases were submitted.

III EVALUATION OF PROGRAM BY PARTICIPANTS

Eligible participants in the program were given a printed evaluation form ("Survey" -- a copy is attached hereto as Exhibit B), together with a prepaid return envelope addressed to Professor Constantine N. Katsoris, at Fordham University School of Law in New York. Professor Katsoris collected the responses and prepared a Memorandum (Copy attached hereto as Exhibit C) to SICA summarizing the details and comments reflected in the Survey Responses.

The Eleventh Report of SICA (2001) also briefly described the interim results of the Survey, noting that the principal reasons given by claimants for not taking advantage of the program were: the higher cost of the alternative forums over SRO costs; they generally preferred the SRO procedures with which they were more familiar, rather than the less familiar non-SRO procedures; and, possible delays resulting from moving to the non-SRO forum.

48 Survey Responses were received. The most significant questions of the Survey were numbers 5 and 6, which dealt directly with the questions of why the claimants did not elect the option, or under what circumstances they would use the alternative program. The responses to those two questions reaffirmed the basic themes that higher costs, more familiarity with the SRO forums, and possible additional delays were the main reasons claimants did not choose the non-SRO forums. The Survey Response forms have been available to SICA for inspection, *in camera*, at all times.

IV. CONCLUSION

Because of the relatively few cases submitted to the pilot program and small number of responses to the Survey, SICA did not renew or extend the pilot program beyond its expiration date.

copies → C. McBrine
H. McBrine, P. Jensen, et al.
→ R. Love

SECURITIES AND EXCHANGE COMMISSION
Public Investors Arbitration Bar Association

OCT 28 2002

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October 21, 2002

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Professor Thomas Stipanowich
President and CEO
CPR Institute for Dispute Resolution
366 Madison Avenue
New York, NY 10017

Dear Tom:

On behalf of the PIABA board, we express our thanks for the opportunity to attend a portion of the SICA meeting and to share PIABA's views on various issues.

You informed us at the meeting that Professor Gus Katsoris had been appointed to fill the public seat on SICA which is being vacated by Tom Grady. While PIABA applauds Professor Katsoris' long time efforts to champion fairness in the SRO arbitration process, we view his re-appointment with mixed emotions. The replacement of an investor advocate with an academic/neutral weakens SICA in our view. Unlike academics, attorneys who represent investors work with the code of arbitration procedure daily. Their unique perspective is vital to SICA.

Professor Katsoris himself has written extensively about the importance of public input into SICA and the relationship between the shrinking of that influence and diminishing public confidence in the SRO dispute resolution process. Certainly recent events in the marketplace and within the brokerage industry illustrate the need for the inclusion of investor advocates in the dispute resolution process.

PIABA calls upon SICA to expand its membership to increase public representation by one, and to appoint an investor advocate to that seat. It is our understanding that when Professor Katsoris first retired from SICA in 1996, his position was eliminated. Perhaps that position could be reinstated and both Professor Katsoris and an additional investor advocate could be added.

The Public Investors Arbitration Bar Association
2241 West Lindsey St., Suite 500 Norman, OK 73069 Phone: (405) 360-8776 Fax: (405) 360-2063
Toll Free: (888) 621-7484 Website: www.PIABA.org Email: piaba@piaba.org

Professor Thomas Stipanowich
October 21, 2002
Page Two

We thank you for your hospitality at the meeting, and we look forward to working with you in the future.

Sincerely,



J. Pat Sadler
President, Public Investors
Arbitration Bar Association

JPS/j

cc: Robert Love, Esq.

From: Tom Stipanowich [TSTIPANOWICH@cpradr.org]
Sent: Wednesday, December 18, 2002 3:39 PM
To: johnsonl@adr.org; lover@sec.gov; mcguirec@sec.gov; sneerisg@agedwards.com;
bwiener@jamsadr.com
Subject: SICA - Final Report
Attachments: SICA Pilot Report (FINAL 6-7-2002).doc



SICA Pilot Report
(FINAL 6-7-2...

Dear All,

I attach the Final Report of the Securities Industry Conference on Arbitration regarding the Pilot Program for Non-SRO-Sponsored Arbitration.

I ask Mr. Sneeringer please forward the report to the representatives of all of the brokerage firms that participated in the Pilot Program.

Thank you,

Thomas J. Stipanowich
Secretary
Securities Industry Conference on Arbitration

FINAL REPORT
SECURITIES INDUSTRY CONFERENCE ON ARBITRATION
Pilot Program for
Non-SRO-Sponsored Arbitration Alternatives

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