FORDHAM

New York City's Jesuit University

School of Law

Lincoln Center, 140 West 62nd Street, New York, NY 10023-7485

Constantine N. Katsoris
Wilkinson Professor of Law

Phone: 212-636-6830
Fax: 212-636-6899

November 22, 2010

Re: File No. SR-FINRA-2010-053 (Proposed Rule Change Relating to Amendments to the Panel Composition Rule)

Dear Ms. Murphy:

I submit this Comment Letter in my capacity as Chairman of the Securities Industry Conference on Arbitration ("SICA"), which has authorized me to write this letter in support of FINRA's recent Rule Filing referenced above, seeking an all-public panel option in FINRA arbitrations, and SEC Release No. 34-63250 seeking comments thereon.

Founded in 1977, SICA is a broad-based, open forum for interested constituents to discuss current issues in securities arbitration and mediation, to monitor SRO securities arbitration and mediation programs, and to provide independent feedback and to make recommendations for change to SROs on the rules, regulations, policy, procedures and operation of their dispute resolution forums. The Conference is composed of representatives of FINRA and the other SROs with arbitration programs,[1] the Securities Industry and Financial Markets Association ("SIFMA"), three members of the public ("Public Members"), and a representative from the North American Securities Administrators Association ("NASAA"). In addition, members of the staff of the Securities and Exchange Commission ("SEC" or "Commission"), the Commodity Futures Trading Commission ("CFTC"), the American Arbitration Association ("AAA"), a representative of the law schools with securities arbitration clinics, and the former Public Members ("Emeritus Members") are invited to attend the meetings of the Conferences.

Since its creation, SICA has documented its activities in fourteen widely circulated reports, the last of which (the Fourteenth Report in 2009) is enclosed with this letter and made a part thereof. This report is also available at:

http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@neutrl/documents/arbmed/p120019.pdf.

[1] The five SROs that are currently members of SICA are the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, FINRA (formerly known as NASD) and the National Stock Exchange.

At its latest meeting on November 12, 2010, SICA discussed the aforementioned FINRA Rule Filing and passed a resolution[2] supporting the rule filing and urging that it be approved.

I remain,

Very truly yours,

Constantine N. Katsoris, Chairman
Securities Industry Conference on
Arbitration

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609
(Enclosures)
Submitted in Triplicate

[2] Individual SICA members may be filing their own Comment Letters. FINRA abstained from voting on the Resolution authorizing this Comment Letter. SIFMA opposed the Resolution authorizing this Comment Letter and its issuance, and intends to file a separate comment letter that reflects the views and recommendations of its members; and, CBOE does not join in this Comment Letter.

Fourteenth Report
of the Securities Industry Conference
on Arbitration September 2009

Table of Contents Page

Fourteenth Report of the Securities Industry Conference on Arbitration September 2009

INTRODUCTION

The Securities Industry Conference on Arbitration ("SICA" or the "Conference") was formed in 1977 to develop nationwide uniform rules governing the arbitration of disputes between broker/dealers and customers at securities industry self-regulatory organizations ("SROs"). The Conference initially prepared and adopted a uniform code for investors' small claims,[1] providing for the resolution of disputes based on the submission by the parties of pleadings alone.

Subsequently a Uniform Code of Arbitration ("Uniform Code" or "Code") covering all disputes, including small claims, between customers and broker/dealers regardless of amount, was drafted and adopted. These rules were subsequently adopted by the SROs in accordance with the procedures set forth in Section 19 of the Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder. In addition, the Conference prepared and published several written materials explaining the arbitration procedures for investors and a training manual for arbitrators to assist them in carrying out their responsibilities. These written materials were distributed by the SROs and posted on their web sites, and have been freely reproduced and were periodically updated by SICA.

The Conference is presently composed of representatives of SROs with arbitration programs,[2] the Securities Industry and Financial Markets Association ("SIFMA"), three members of the public ("Public Members"), and a representative from the North American Securities Administrators Association ("NASAA"). In addition, staff of the Securities and Exchange Commission ("SEC" or "Commission"), the Commodity Futures Trading Commission ("CFTC"), the American Arbitration Association ("AAA"), and a representative of the law schools with securities arbitration clinics, and the former Public Members ("Emeritus Members") are invited to attend the meetings of the Conference.

In 1980, SICA issued its First Report outlining its activities. Since then, it has issued twelve additional Reports, with the last one, the Thirteenth Report, being issued in October 2005. Since the Thirteenth Report of SICA in 2005, SICA has worked on numerous issues ranging from: conducting an independent survey regarding the perception of SRO arbitration by the users of the process; to redefining itself in light of the merger of the NASD and NYSE Regulation arbitration and mediation programs in 2007; to changes in its governance and membership by elevating

[1] Originally $2,500, now $25,000.

[2] The five SRO's that are currently members of SICA are the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, FINRA, formerly known as NASD and the National Stock Exchange (referred to collectively as "SROs" or the "SRO").

NASAA to full voting membership and adding as an "invitee" a representative of the law schools with securities arbitration clinics; to conforming the SICA Uniform Code of Arbitration to NASD/FINRA rules on eligibility and digital recording of hearings.

In addition, SICA continues to work toward improving the dispute resolution process through cooperative efforts among the users of the system, as is reflected later in this Report under the heading of Rule Changes.

HISTORY OF SICA

In June 1976, the Commission solicited comments from interested persons on the feasibility of developing a uniform procedure for resolving disputes over small claims.[3] On July 15, 1976, the Commission held a public forum to receive oral presentations. Following the public forum, the Office of Consumer Affairs of the Commission issued a report recommending the adoption of specific procedures for handling investor disputes and the creation of a new entity to administer the system. However, before taking action on this proposal, the Commission invited further public comment.[4]

Several SROs and other interested persons proposed to the SEC that a task force consisting of the various interested parties be established to consider developing a uniform, efficient, economical, and appropriate mechanism for resolving investor disputes involving small amounts of money. In accordance with this proposal, and at the initiative of the SROs, SICA was established in early April 1977. Subsequently, the Commission invited proposals from SICA for improved methods for resolving investors' small claims.[5] The proposal for a small claims procedure put forth by SICA was subsequently adopted by the SROs and approved by the SEC.

The Conference first met on April 5, 1977. It was composed of representatives of the American, Boston, Cincinnati, Midwest (now Chicago), New York, Pacific and Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the Securities Industry Association (now SIFMA), and three representatives from the public. The public representatives were selected on the basis of their extensive experience and demonstrated interest in securities arbitration.

---

[3]Securities Exchange Act Release No. 12528 (June 9, 1976).

[4]Securities Exchange Act Release No. 12974 (November 15, 1976).

[5]Securities Exchange Act Release No. 13470 (April 26, 1977).

The original three Public Members were Peter R. Cella, Mortimer Goodman, and Professor Constantine N. Katsoris. A fourth public member, Justin P. Klein, was added to the Conference in 1983. Mr. Klein was the Director of Consumer Affairs at the Commission when SICA was created. In 1988, SICA adopted guidelines for the rotation of its Public Members, providing thereafter for a maximum of two consecutive four-year terms. Thereafter, candidates with extensive experience in alternative dispute resolution have been selected to serve as Public Members following interviews by the current and former Public Members, subject to the concurrence of the SRO participants of SICA.

Mortimer Goodman concluded his term in 1990 and was replaced by James E. Beckley, a sole practitioner from Wheaton, Illinois, who had extensive securities litigation experience representing both customers and brokers. In 1995, Justin P. Klein concluded his term and was replaced by Thomas R. Grady of Grady & Associates, Naples, Florida, who had many years of experience in representing claimants in arbitration. After nineteen years of service, Peter R. Cella concluded his term in 1996 and was replaced by Professor Thomas J. Stipanowich, a noted author who had a thorough knowledge of arbitration and other forms of alternative dispute resolution. In 2001 Professor Stipanowich was reappointed to serve a second term.

In 1997, after twenty years of service, Professor Constantine N. Katsoris concluded his term as a Public Member.[6] In 1998, James E. Beckley concluded his term and was replaced by Theodore G. Eppenstein of New York City, who had extensive securities and commodities arbitration experience primarily representing customers. Mr. Eppenstein was reappointed in 2002. Mr. Grady was reappointed to a second term and concluded his term on the Conference in 2003. Mr. Grady was replaced by Professor Katsoris who returned to active status and Chair of SICA meetings after actively participating for six years as an Emeritus Public Member.

In 2004, Professor Stipanowich concluded his second term as a Public Member and was replaced by J. Pat Sadler of Atlanta, Georgia, who was formerly the President of the Public Investors Arbitration Bar Association ("PIABA"). Mr. Sadler brought to bear considerable experience in the area of alternative dispute resolution. Mr. Sadler served out his term ending December 2008 and, upon choosing not to serve a second term, was replaced by Philip M. Aidikoff of Los Angeles, who also has extensive experience representing customers and likewise was a past President of PIABA.

SICA would like to express its gratitude to all the Public Members for their years of dedicated

[6] In July 1995, SICA voted to return the Public Membership to three persons upon the conclusion of Professor Katsoris' term in 1997.

service in the resolution of security disputes. Moreover, so as to not lose the benefit of their experience, they remain Emeritus Public Members and are invited to attend all meetings. SICA would also like to express its gratitude to Robert Love, Robert Clemente, and Karen Kupersmith, who participated in its operations in a most meaningful way. As an SEC invitee, Robert Love offered invaluable counsel and wisdom regarding the numerous proposals considered by SICA for over 20 years. Before leaving the New York Stock Exchange for private practice, Mr. Clemente was its Director of Arbitration and, as its representative, rendered extraordinary service to SICA for over 15 years. Ms. Kupersmith succeeded Mr. Clemente as Director of Arbitration at NYSE, and retired from FINRA shortly after the consolidation. She, too, rendered important service to SICA for which the Conference is grateful.

SICA'S CHANGING MISSION

In the Fall of 2006, NASD and NYSE Regulation announced their intention to merge their member regulation, enforcement, and dispute resolution programs, forming a new SRO that ultimately was named the Financial Industry Regulatory Authority ("FINRA"). The two organizations obtained the necessary governance and regulatory approvals and in the summer of 2007 completed the consolidation. With the merger of the arbitration and mediation programs, FINRA was expected to handle the large majority of all SRO securities disputes.[7]

Shortly after the intended merger was announced, SICA began to evaluate its post-merger role. When SICA was formed in 1977, there were ten SROs with arbitration programs. Its pre-consolidation mission was to serve as a cooperative effort of the securities industry, the SROs, the public and the SEC, to develop and maintain a Uniform Code of Arbitration, to implement a uniform system of arbitration, to monitor that system, to change it as appropriate or required, and to serve as a think tank to explore new ideas.

With FINRA's emergence as the predominant forum for resolving securities disputes, SICA's mission changed primarily to serving as a broad-based, open forum for interested constituents to discuss current issues in securities arbitration and mediation, to monitor SRO securities arbitration and mediation programs, and to provide independent feedback and to make recommendations for change to SROs on the rules, regulations, policy, procedures and operation of their dispute resolution forums.

SICA continues to meet at least three times a year to fulfill its mission. These meetings afford

[7]This has turned out to be the case. Case filing statistics for 2008 show that 99.9% of SRO arbitrations were filed with FINRA.

the Conference the opportunity to understand the current issues facing SRO arbitration and consider improvements to SRO arbitration programs in light of experiences of the users of these systems, to evaluate and respond to case law and other developments in arbitration, and to consider suggestions of the public, the industry and the SEC.

In furtherance of this changed role, SICA in 2007 elevated NASAA from a non-voting "invitee" to a full voting member of SICA. SICA also added a non-voting "invitee" seat for the law schools operating securities arbitration clinics. The Conference also revised its governance model and mission statement in light of its new mission. Finally, with its changing role and with FINRA administering almost all SRO arbitrations, SICA decided to cease further amendments to the SICA Uniform Code of Arbitration, The Arbitrator's Manual and The Arbitration Procedures Guide.

INDEPENDENT SURVEY OF USER PERCEPTIONS OF SRO ARBITRATION

In 2002, the Securities and Exchange Commission sponsored a study by Professor Michael Perino regarding the operation of arbitrator disclosure requirements in securities arbitration.[8] Among other things, Professor Perino sought empirical data on the experience of investors in securities arbitration, and determined that the most comprehensive study of investor outcomes was the Government Accounting Office's (GAO) 1992 report, "Securities Arbitration: How Investors Fare."[9] The GAO report examined results in arbitration over an eighteen-month period between 1989 and 1990. It found "no evidence of a systematic pro-industry bias" in arbitrations sponsored by the NASD, NYSE, and other SROs when compared to arbitrations conducted by the AAA.[10] Among other things, the GAO noted that in SRO arbitrations, panels found for investors in about 59% of arbitrations versus 60% of AAA-sponsored arbitrations, and prevailing investors received average awards of about 61% of the damages claimed, as opposed to awards averaging 57% of amounts claimed in AAA proceedings.[11]

Professor Perino's Report concluded "that there is little if any indication that undisclosed

---

[8] *See* Michael Perino, Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitration (Nov. 4, 2002), http://www.sec.gov/pdf/arbconflict.pdf [hereinafter PERINO REPORT].

[9] *Id* at 31.

[10] *Id.*

[11] *Id.*

conflicts represent a significant problem in SRO-sponsored arbitrations.[12] Nevertheless, the Perino Report "recommended minor enhancements to disclosure and other related rules to provide additional assurances to investors that arbitrators are in fact neutral and impartial.[13] Specifically, Professor Perino's Report made four recommendations:

> (1) Amend arbitration rules to emphasize that all arbitrator conflict disclosures are mandatory;
>
> (2) Re-examine the definitions of public and non-public arbitrator;
>
> (3) Provide greater transparency with respect to challenges for cause by including the cause standard in the rules;
>
> (4) Sponsor independent research to evaluate the fairness of SRO arbitrations.[14]

In 2003, SICA discussed Professor Perino's recommendations and decided to sponsor independent research to evaluate the fairness of SRO arbitrations.[15] Great care was taken to ensure the integrity and independence of the study both as to content and reporting; and, after examining proposals from various vendors, SICA entered into an agreement with Pace University in 2005 to conduct the recommended study.

An eight-page survey was prepared under SICA's direction (the "Survey"), which reflected the input of numerous constituencies. The Survey was distributed by SICA to nearly thirty thousand participants in customer-initiated arbitrations at NASD Dispute Resolutions and the New York Stock Exchange filed between January 1, 2002 through December 31, 2006 and closed during

---

[12] *Id* at 48.

[13] SEC. INDUS. CONFERENCE ON ARBITRATION, TWELFTH REPORT OF THE SECURITIES INDUSTRY CONFERENCE ON ARBITRATION, at 4-5 (2003) [hereinafter TWELFTH REPORT].

[14] *Id.*

[15] *See* SEC. INDUS. CONFERENCE ON ARBITRATION, THIRTEENTH REPORT OF THE SECURITIES INDUSTRY CONFERENCE ON ARBITRATION, at 6 (Oct. 2005) [hereinafter THIRTEENTH REPORT].

2005 and 2006. Over three thousand responses were received and processed.[16]
The survey was designed to assess participants' perceptions of: (1) the fairness of the SRO arbitration process; (2) the competence of the arbitrators to resolve investors' disputes with their broker-dealers; (3) the fairness of SRO arbitration as compared to their perceptions of fairness in securities litigation in similar disputes; and (4) the fairness of the outcome of arbitrations.[17]

In response, 3,087[18] surveys were returned to and processed by Cornell University's Survey Research Initiative, which provides survey research, data collection, and analysis services to a wide range of academic, non-profit, governmental and corporate clientele. Thereafter, a report ("the Perceptions Study"[19]) was prepared by Professors Jill I. Gross[20] and Barbara Black,[21] and was presented to SICA on February 6, 2008 and publicly released by SICA that same day.[22]

The Study on participant perceptions documents the results of an empirical study (through a one-time mailed survey) of survey participants' perceptions of fairness of securities SRO arbitrations involving customers.[23] The Survey and Perceptions Study were perceived

---

[16] *See* Jill I. Gross & Barbara Black, Perception of Fairness of Securities Arbitration: An Empirical Study, Report To The Securities Industry Conference on Arbitration (Feb. 6, 2008), **http://www.law.pace.edu/files/finalreporttoasica.pdf** [hereinafter Perceptions Study]; *see also* SICA Report on Arbitration's Fairness, SEC. ARB. COMMENTATOR, Apr. 2007, at 10-11 [hereinafter SICA Report].

[17] Perceptions Study, *supra* note 16, at 1, 48.

[18] *Id* at 12.

[19] *Id.*

[20] Jill I. Gross, Associate Professor of Law and Director, Investor Rights Clinics (a/k/a Securities Arbitration Clinic), Pace University School of Law. A.B. Cornell Univ.; J.D. Harvard Law Sch. Professor Gross has served as an NASD/FINRA arbitrator, represented both customers and brokers in NASD/FINRA and NYSE arbitrations, and has written and lectured extensively on securities arbitration. *See* Jill I. Gross, Curriculum Vitae, **http://www.law.pace.edu/files/facultyCVs/jilgrosscv2007.pdf.**

[21] Barbara Black, Charles Hartstock Professor of Law, B.A. Barnard Coll.; J.D. Columbia Univ. Law Sch. Professor Black was the founder and previously the Co-Director of the Securities Arbitration Clinic at Pace University School of Law. She writes and lectures extensively on securities regulation, securities arbitration, and investors' rights. *See* Barbara Black, Curriculum Vitae, **http://www.law.uc.edu/faculty/docs/black.pdf.**

[22] *See* Perceptions Study, *supra* note 16.

[23] *Id.* at 1.

differently, depending on one's perspective. A copy of the Survey and Perceptions Study, consisting of seventy-one pages, can be viewed on the Pace University website,[24] enabling each individual to assess and interpret the contents, results, and interpretation thereof.

UNIFORM CODE OF ARBITRATION

The Uniform Code of Arbitration, developed by SICA, established for the first time a nationwide uniform system of arbitration throughout the securities industry. The Code expanded existing rules of the various SROs and now consists of a uniform and comprehensive set of procedural rules for the administration of securities arbitration. It provides for the arbitration of disputes between customers and securities industry members under the auspices of a participating SRO selected by the investor. The Code, originally adopted by the SROs in 1979 and 1980, has been amended by SICA from time to time. Many of these amendments have also been adopted by the SROs.[25] In 2001 SICA re-wrote and adopted a plain English version Code of Arbitration in place of the then existing Code. The Code, as currently constituted, appears at page 15.

SICA SRO STATISTICS

The SICA 13th Report contains SRO statistics for 1980 through 2004. The definition of "Public Customer Cases" has changed as has the method of determining which awards were in favor of the public. Specifically, we have determined that cases involving customers **as claimants** are most relevant when measuring the outcomes of arbitrator decisions. In addition, an award is now considered "favorable" when arbitrators award some monetary or non-monetary damages but not when the award only returns filing fees or forum fees.

Because of these changes, it is no longer accurate to compare results from earlier years to the current statistics. Accordingly, we have not produced statistics for the previous years of 1980 through 2004 and are producing at page 16 of the 14th Report, only those statistics from 2005 through 2008 that SROs have reported under the new definitions.

---

[24] *See* Perceptions Study, *supra* note 16. See also Jill Gross and Barbara Black, When Perception Changes Reality: An Empirical Study of Investors' Views of the Fairness of Securities Arbitration, vol. 2008 Journal of Dispute Resolution (Univ. Mo. School of Law) No. 2 p. 349.

[25] A fuller description of the work of SICA and the provisions of the Code can be found in thirteen previous SICA Reports dated November 1977, December 1978, January 1980, November 1984, April 1986, August 1989, July 1991, June 1994, June 1996, July 1998, July 2001, October 2003, and October 2005. *See also* Constantine N. Katsoris, "SICA: The First Twenty Years," 23 Fordham Urban Law Journal 483 (1996).

RULE CHANGES

As stated above, in 2007 SICA's role changed from focusing primarily on maintaining and amending the Uniform Code of Arbitration and related publications, to serving as a broad-based, open forum for interested constituents to discuss current issues in securities arbitration and mediation, to monitor SRO securities arbitration and mediation programs, and to provide independent feedback and to make recommendations for change to SROs on the rules, regulations, policy, procedures and operation of their dispute resolution forums.

In light of its new mission, SICA in mid-2007 decided that it would no longer consider amendments to the Uniform Code. However, since the Thirteenth Report in 2005 and prior to the change in SICA's mission in 2007, the Conference adopted the following amendments to the Uniform Code of Arbitration.

- Amended Section 12 to conform to the then NASD Code of Arbitration Procedure and the U.S. Supreme Court's decision in *Howsam v. Dean Witter Reynolds, Inc.*[26] Specifically, this section was amended to: 1) vest in the arbitrators, rather than the Director of Arbitration, authority to decide issues of eligibility under the Code; 2) provide that, by requesting a dismissal under this section, the requesting party agrees that if the panel dismisses the claim, the filing party may withdraw any remaining claims without prejudice and pursue all of the claims in court; and 3) delete the former section 12(b) on fraudulent concealment. The latter change dropped language providing that "an allegation of fraudulent concealment does not make an otherwise ineligible claim eligible. However, arbitrators may consider fraudulent concealment in connection with any other defense to the claim based on lapse of time (e.g., statute of limitations)."

- Amended Section 16 to increase the three-arbitrator threshold from $100,000 to $200,000, with any party having a right to demand and thus require three arbitrators. As amended, the Uniform Code provides:

  - Claims of up to $100,000: single public arbitrator, with no party option to require three arbitrators.

  - Claims of between $100,000 and $200,000: presumption of a single public arbitrator, with any party having the right to demand/require three arbitrators.

[26] 537 U.S. 79 (2001).

- Claims of over $200,000: three arbitrators (two public; one non-public).

■ Amended Section 25 to permit hearings to be recorded via "digital or other means." This change mirrored a like amendment to the then NASD Code of Arbitration Procedure.

CHANGES TO SICA PUBLICATIONS

In the past, SICA published and maintained two publications: The Arbitration Procedures Guide ("Guide") and The Arbitrator's Manual ("Manual"). The former provided a plain English explanation of the Uniform Code and the arbitration process at the SROs. The latter was a uniform manual used by all arbitrators serving in SRO arbitration programs. In light of its new mission, and because FINRA administers virtually all SRO arbitrations, SICA in mid-2007 decided that it would no longer consider amendments to these publications. FINRA agreed to assume responsibility for maintaining an arbitrator's manual and adequate guidance on the process for parties. However, since the Thirteenth Report in 2005 and prior to the change in SICA's mission in 2007, the Conference adopted the following amendments to the Guide and Manual:

• The Manual was updated to include in the appendix the revised 2004 AAA/ABA Code of Ethics for Commercial Arbitrators ("Code of Ethics"), thereby replacing the older version that was in the Manual.

• The Manual and the Guide were changed to clarify when research would be permitted (for example, looking up cases cited in briefs) and to refer to Canon VI (B) of the revised Code of Ethics which provides that some limited research may be appropriate.[27] Because there was no analogous section in the Guide, SICA amended it to place the same language in the Guide's "What if I Don't Get Paid?" section (where the arbitrators' decision-making authority is discussed).

• The Manual and the Guide were amended to add that, although most arbitrator challenges are resolved after the Director of Arbitration has reviewed the parties'

[27] This provision of the *Code of Ethics* provides: "The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon."

relevant written submissions, a party can request that a conference call be convened with all counsel and the Director of Arbitration.

• The Manual and the Guide were amended to recognize that some SRO programs such as FINRA's now permit direct communication between the parties and arbitrators on non-substantive issues.

SICA INITIATIVES

Joint Meetings with PIABA, SIFMA, and the FINRA National Arbitration and Mediation Committee

To foster a greater appreciation of current issues and encourage a wider participation in SICA's deliberative process, the Conference continues to hold separate joint annual meetings with representatives of the Public Investors Arbitration Bar Association and also the Securities Industry and Financial Markets Association.

Following the NASD-NYSE Regulation merger, SICA also decided to meet annually with the leadership of FINRA's National Arbitration and Mediation Committee ("NAMC"), and to confer by conference call as needed. FINRA receives policy and rulemaking guidance from the NAMC, which is comprised of investor and industry representatives and arbitrators and mediators. SICA's newest Public Member, Philip M. Aidikoff, is the immediate past chair of the NAMC.

From these joint meetings a greater understanding of each group's perspective is obtained. In addition, SICA continues to invite various interested persons involved in alternative dispute resolution to share their insights and experiences.

Law School Securities Arbitration and Mediation Clinics

Arising out of initiatives of former Chairman of the Securities and Exchange Commission Arthur Levitt, SICA participated in the development of law school ADR clinics.[28] As a result of complaints from investors about their difficulty or inability in obtaining adequate and affordable legal representation in securities disputes, SEC Chairman Levitt suggested this difficulty could

[28] *See* Fordham Law Students Win Punitives for Investor, SEC. ARB. COMMENTATOR, June 2003, at 12. "[O]nce a case is accepted, the full panoply of ADR procedures should be available, as with private representation. . .[I]f mediation is practical, it should also be available to the clinic. Similarly, if an award has to be confirmed or vacated, the clinic should be able to do so." *Id.*

be addressed in part by clinical programs at various law schools. Since many SRO arbitrations are held in New York, this initiative was launched with law schools in New York. With participation by SICA, several meetings were held with representatives of several New York law schools and SEC staff. In addition, the Association of the Bar of the City of New York agreed to participate and serve as a screener and referral service for customers seeking representation in securities disputes.[29]

Although thirteen such clinics have been established, most are still concentrated in the northeast.[30] SICA continues to encourage the establishment of additional clinics to achieve broader geographical coverage throughout the United States.

In May 2009, the FINRA Investor Education Foundation announced an Investor Advocacy Clinic Grant Program to provide start-up funding for investor advocacy clinics at law schools in the United States. The Foundation will in December 2009 award up to three grants of $250,000 each to law schools committed to launching and supporting a new clinical education program that will provide legal advice and other help to investors in underserved communities. Proposals are being solicited from law schools in five geographic regions identified as "high need" by the Foundation, including Boston, Greater Los Angeles, Miami/South, Florida, Greater Philadelphia, and Greater Washington, DC.

In 2006, SICA extended "invitee" status to a representative of the law schools that operate securities arbitration clinics. Romaine Gardner of the Fordham Law School securities arbitration clinic now regularly attends SICA meetings.

Consideration of a Petition for SEC Rulemaking

In 2005, the SEC asked SICA to consider the proposals contained in a Petition for SEC Rulemaking it had received. Chairman Katsoris appointed a subcommittee to review the Petition

---

[29] *See* Constantine N. Katsoris, *Securities Arbitration: A Clinical Experiment*, 25 Fordham Urban LJ. 193 (1998); L. Post, Help for Churned and Burned, The National Law J., February 10, 2003 at A6. The SEC, FINRA, the New York Stock Exchange (NYSE), and local bar associations refer prospective clients to the clinics, which review their cases based on merit and other relevant criteria. *Id.*

[30] *See* "Law School Clinics Meet at Fordham," SEC. ARB. COMMENTATOR, Apr. 2005 at 14. Indeed, at a day-long Roundtable attended by directors of clinics at ten law schools, attendees voted to form an informal association, tentatively called National Association of Securities Mediation and Arbitration Clinics (NASMAC). *Id* at 15.

and to recommend a response. The subcommittee met several times during 2005 and 2006, periodically reporting to SICA on its progress. It presented its recommendations to SICA in the Fall 2006. SICA ultimately endorsed some of the Petition's proposals but rejected others. In some instances, SICA recommended to the SROs that they make certain changes in their arbitration programs. SICA implemented each of the recommendations it committed to do, such as the above-described changes to the Manual and Guide, as did the SROs.

CONCLUSION

At its inception, SICA consisted of ten SROs, three Public Members, and a representative of the SIA (now SIFMA). Presently only five SROs have active arbitration programs. As a result of the NASD – NYSE Regulation merger, FINRA administers almost all – 99.9% in 2008 – of arbitrations filed with SROs. Despite its shrinking SRO membership, and FINRA's preeminent position in the SRO dispute resolution area, the independent work of SICA is as important as ever, as indicated by the significant increase in claim filings in 2008, significant market declines, and the emergence of new sources of disputes, such as auction rate securities and collateralized debt/mortgage obligations.

As we look ahead, SICA will undoubtedly play an important role in adding to the debate of key issues of the day, such as the use of mandatory arbitration in consumer and investor contracts[31] and the continued presence of a non-public ("industry") arbitrator. SICA remains committed to maintaining the public's trust and confidence by helping to ensure that disputes between securities firms, their customers, and employees are resolved simply, fairly and economically.

[31] Indeed, the Obama Administration's June 15, 2009 whitepaper on financial regulatory reform among other things urges the SEC to seek legislation permitting it to ban mandatory pre-dispute arbitration agreements after first studying whether arbitration actually harms investors. The newly filed Investor Protection Act of 2009 would amend the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to authorize the SEC to prohibit pre-dispute arbitration agreements "if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors."

LIST OF SICA MEMBERS

To obtain further information, please contact the Director of Arbitration at one of the self-regulatory organizations or one of the members listed below:

Philip M. Aidikoff, Esq.* Aidkoff, Uhl & Bakhtiari 9454 Wilshire Boulevard, Ste., 303 Beverly Hills, CA 90212 (310) 274-0666 email: paidi@aol.com	Chicago Stock Exchange, Inc. 440 South LaSalle Street Chicago, IL 60605 (312) 663 2152 Website: www.chx.com
Theodore G. Eppenstein, Esq.* Eppenstein & Eppenstein 48 Wall Street – ste. 1100 New York, NY 10005 (212) 679 6000 email: teppenstein@eppenstein.com	National Stock Exchange, Inc. 440 South LaSalle Street, ste. 2600 Chicago, IL 60605 Website: www.nsx.com
Prof. Constantine N. Katsoris* Wilkinson Professor of Law Fordham Law School 140 West 62nd Street New York, NY 10023 (212) 636 6830 email: ckatsoris@law.fordham.edu	North American Securities Administrators Association 750 First Street, N.E.- Ste. 1140 Washington, D.C. 20002 (202) 737-0900 Website: www.nasaa.org
Securities Industry and Financial Markets Ass'n 1101 New York Avenue, N.W. Washington, DC 20005 (202) 962-7382 Website: www.sifma.org	FINRA Dispute Resolution 1 Liberty Plaza 165 Broadway, 27th Floor New York, NY 10006 (212) 858-4000 Website: www.finra.org
Boston Stock Exchange 100 Franklin Street Boston, MA 02110 (617) 235-2023 Website: www.bostonstock.com	Chicago Board Options Exchange, Inc. 400 South La Salle Street Chicago, IL 60605 (312) 786-8093 Website: www.cboe.com

* Public Member

UNIFORM CODE OF ARBITRATION

Approved 1/19/01, as amended 06/23/2005
Section 16 as amended 03/21/06 (1/9/07)
Section 25 as amended 10/25/06 (1/9/07)
Section 12 as amended 1/16/07 (1/31/07)
Section 12 as amended 3/27/07 (4/4/07)

TABLE OF CONTENTS

Section 1: Arbitration
This section covers who may file an arbitration claim and which parties are required to submit to arbitration. It also covers those types of claims that may not be appropriate for arbitration.

(a) **Who must submit to arbitration.**
(1) Members and associated persons must arbitrate a claim under the Constitution and Rules of an SRO if:

- the claim concerns the business activities of the member; and
- arbitration is requested by a customer or non-member.

Allied members, member organizations and associated persons are also required to submit to arbitration.
(2) Customers or non-members may be required to arbitrate a claim under the Constitution and Rules of an SRO if:

- the claim concerns the business activities of the member; and
- arbitration is required by a written agreement.

(b) **When arbitration is not appropriate.** The [SRO] may choose not to accept a claim for arbitration if the subject matter of the claim is not proper for arbitration, given the purposes of the [SRO] and the arbitration rules.

(c) **Claims from a specific market.** Several SROs offer arbitration programs. A SRO may refer a claim to the arbitration forum for a specific market if:

- that market where the transactions took place is identifiable; and
- the Claimant agrees to the referral.

(d) **Class Action Claims**
(1) Class action claims will not be arbitrated under this Code.

(2) Any claim that is included in a court-certified class action or a putative class action or is ordered by a court for arbitration at a non-SRO for class-wide arbitration will not be arbitrated under this code.

If a party can show that it is not participating in the class action, or has withdrawn from the class according to any conditions set by the court, the claim is eligible for arbitration under this Code.

The Director of Arbitration ("Director") will refer to a panel of arbitrators any dispute as to whether a claim is part of a class action unless either party petitions the court hearing the class action to resolve the dispute. The petition must be filed with the court within 10 business days of receipt of notice that the dispute is being referred to a panel of arbitrators.

(3) A member or associated person may not try to enforce any arbitration agreement against a member of a putative or certified class action until:

- the class certification is denied;
- the class is decertified;

- that person is excluded from the class by the court; or
- that person decides not to participate in the class or withdraws from the class.

(4) No person waives any rights under this Code or under any agreement except as stated in this paragraph.

Section 2. Agreement to Arbitrate
This Code is part of every agreement to arbitrate under the Constitution and Rules of the [SRO] and is incorporated by reference into all arbitration agreements.

Section 3. Requirements When Using Pre-Dispute Arbitration Agreements With Customers

(a) Member organizations must highlight any pre-dispute arbitration clause and immediately precede it by the following disclosure language, in outline form as shown here, that must also be highlighted:

(1) Arbitration is final and binding on the parties.
(2) The parties are waiving their right to seek remedies in court, including the right to jury trial.
(3) Pre-arbitration discovery is generally more limited than and different from court proceedings.
(4) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
(5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(b) Member organizations must include a highlighted statement, immediately before the signature line, that the agreement contains a pre-dispute arbitration clause, and state where the clause is located. The customer must separately initial the statement.

(c) The member organization must give a copy of the agreement with the arbitration clause to the customer, who must acknowledge its receipt on the agreement or on a separate document.

(d) The agreement may not include any condition that limits or contradicts:
(1) the rules of any SRO;
(2) the ability of a party to file a claim in arbitration; or
(3) the ability of the arbitrators to make an award.

(e) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

Section 6. Filing and Service Requirements

The parties may file documents with the Director and serve the other parties by first-class mail, overnight mail, or other means. Filing and Service are accomplished on the date of mailing either by first class or overnight mail or, in the case of other means of service, on the date of delivery. The parties must file documents with the Director on the same day as service on the parties.

Section 7. Starting an Arbitration

This section covers how to start an arbitration, how to answer a claim, and the time periods for filing and service of documents. It also covers when a party will not be allowed to defend against a claim, and the procedure to add third parties. If the claim for damages is $25,000 or less, see *Section 9 – Simplified Arbitration.*

(a) **Initial Filing Requirements.** Claimant must submit to the Director, with copies for each party and each arbitrator:

- a Submission Agreement, signed by Claimant;
- a Statement of Claim; specifying relevant facts and remedies requested;
- the non-refundable filing fee and deposit specified in Section 11; and
- documents supporting the claim.

The Director will send the Respondent the Submission Agreement and the Statement of Claim.

(b) Answer and Counterclaim Requirements.

(1) **Requirements Generally.** Within 20 business days of receipt of the Statement of Claim, the Respondent must serve each party with a signed Submission Agreement; and an Answer to the claim. At the same time, Respondent must file the signed Submission Agreement and Answer with the Director, with additional copies for the arbitrators.

(2) **Content of the Answer.** The Answer must include all available defenses and facts to be relied upon at the hearing. The Answer may also include:

- any related counterclaims;
- any cross-claims against another Respondent; and
- any third-party claims.

If an answer contains a counterclaim, cross-claim or third-party claim, the Respondent must submit the non-refundable filing fee and deposit as specified in Section 11 with the answer.

(3) **Answering Counterclaims**. Claimant must answer any counterclaim within 10 business days of receipt. The answer must comply with paragraph (2) above. Claimant must serve the answer on each party and file a copy with the Director, with copies for each Arbitrator.

(4) **Third-Party Claims**. To initiate a Third-Party Claim, a party must:

- serve each party with a copy of the Third-Party Claim;
- file a copy with the Director, with copies for each Arbitrator; and
- pay the non-refundable filing fee and hearing deposit as specified in Section 11.

(f) The requirements of subsection (e) will apply only to new agreements signed by an existing or new customer of a member or member organization after one year has elapsed from the date of Commission approval.

Section 4. Representation in Arbitration

(a) Representation by a Party

Parties may represent themselves in an arbitration held in a United States hearing location.

(b) Representation by an Attorney

At any stage of the arbitration proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney admitted to practice law in any state of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States, or foreign country. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(c) Qualifications of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law or bar regulations and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

(d) Assistance by a Non-Attorney

Parties may be assisted by a person who is not an attorney (such as a business associate, friend, or relative), if that person is not receiving compensation for services rendered in representing the party, and the representation does not violate the laws of the state in which the arbitration is scheduled to be held.

Sections 4(a) and (b) amended, and sections 4(c) and (d) added June 23, 2005.

Section 5. Tolling time limitations for filing a claim in court or arbitration

(a) If the law permits, when a claimant files a signed submission agreement, the time limits that would ordinarily run for filing a claim in court will be tolled. Tolling will continue while the SRO retains jurisdiction.

(b) When the parties have submitted the claim to a court, the 6-year time limit to submit a claim to arbitration will not run, while the court retains jurisdiction.

(5) **Answering Third Party Claims.** Third-Party Respondents must answer the claim as specified in (1) and (2) above.

(6) **Loss of the Right to Defend.**

(a) Upon objection of a party, the Arbitrator(s) may bar a party from presenting defenses or other facts at the hearing if:

- the answer to any claim contains only a general denial, without reference to the facts; or
- available defenses or relevant facts are not specified in the answer;

(b) Upon objection of a party or at its discretion, the panel may bar a party from presenting defenses or other facts at the hearing if the party does not file a timely answer.

(7) **Extending Time Periods.** The Director may extend any of the above time periods.

Section 8. Joining and Consolidating Claims for Multiple Parties

This section covers when multiple parties may start an arbitration or be named as respondents in an arbitration.

(a) **Multiple Claimants.** Several claimants may join together in one arbitration if their claims:

- contain common questions of law or fact, common to all the parties; and
- arise out of the same event, transaction, or series of events or transactions.

Each Claimant is not required to seek the same relief demanded by the other Claimants. Each Claimant may receive an award based on that Claimant's individual right to relief.

(b) **Multiple Respondents.** A Claimant may join separate Respondents into one arbitration if the claims against the Respondents:

- contain common questions of law or fact common to all the parties; and
- assert any right to relief arising out of the same event, transaction, or series of events or transactions.

Each Respondent is required to defend against only those claims for relief that are directed at that Respondent. Each Respondent may have an award issued against them based on their individual liability.

(c) Upon request of a party, the Director may make an initial determination to consolidate separate but related claims into one arbitration. After all pleadings are filed, if any party objects to the consolidation of the claims, the Director will make an initial determination whether the parties should proceed in the same or separate arbitration.

(d) Upon the request of a party, the Director's decision with respect to consolidating claims is subject to review by the arbitrators. The arbitrator(s) makes all final decisions regarding joining and consolidating multiple parties and claims.

Section 9. Simplified Arbitration
This section applies only to claims involving customers where damages of $25,000 or less are claimed.

(a) **Qualifying Claims.** Simplified arbitration only applies to claims involving customers where the dollar amount of the claim is $25,000 or less, not including costs and interest.

(b) **How to Start a Claim.** A Claimant must submit the following documents to the Director, with copies for each party and arbitrator:

- a signed and notarized Submission Agreement;
- a Statement of Claim, specifying relevant facts, remedies requested and whether a hearing is requested;
- additional documents supporting the claim; and
- the non-refundable filing fee and required deposit, specified in Section 11.

Upon receipt, the Director will promptly send each Respondent a copy of the Submission Agreement and Statement of Claim.

(c) **Answer and Counterclaim Requirements.**

(1) Within 20 days of receipt of the Statement of Claim, the Respondent(s) must send each party a signed and notarized Submission Agreement and an Answer. At the same time, the Respondent must file additional copies of the signed Submission Agreement and Answer with the Director with additional copies for the arbitrator.

(2) A Respondent's Answer must include all available defenses. The Answer may also include any related counterclaims and/or third-party claims. If a counterclaim or third-party claim is asserted, the Respondent must submit to the Director the non-refundable filing fee and required deposit specified in Section 11.

(3) The Claimant must send a reply to any counterclaim to each party within 10 days of receipt of the counterclaim. However, if the amount of the counterclaim exceeds the original claim, the Claimant may withdraw the original claim and discontinue the proceeding. After withdrawal, either party may refile their claim to initiate a new proceeding.

(4) If the Respondent asserts a third-party claim, the Respondent must serve on the Third-Party Respondent:

- a signed and notarized Submission Agreement,
- the Third Party Claim, and
- the original Statement of Claim and Answer.

A Third-Party Respondent must respond as if answering an original Statement of Claim.

(5) If a counterclaim exceeds $25,000, not including costs and interest, the arbitrator may:

- refer the entire case to a panel of 3 arbitrators for resolution pursuant to the procedures in general arbitration; or
- dismiss the counterclaim or the third-party claim, and allow it to be re-filed in a separate arbitration.

Costs to a customer may not exceed the amount specified in Section 11.

(b) **Documents to be Served on All Parties and Filed with the Director of Arbitration.** Where applicable, all parties must send a copy of the following documents to all other parties and to the Director, with copies for the arbitrator:

- the Answer;
- any Counterclaim;
- any Third-Party Claim;
- any Amended Claim; and
- any other pleading.

(e) **Time Extensions.**
The Director may grant extensions of time to file any pleading for good cause.

(f) **The Arbitrator Deciding the Claim.**

(1) The claim will be submitted to a single arbitrator knowledgeable in the securities industry, selected as described in Section 17. The arbitrator will decide the claim on the evidence and pleadings filed by the parties unless the customer requests or consents to a hearing, or the arbitrator calls a hearing. If a hearing will be held, the Director will select the hearing location and schedule the hearing date as soon as possible.

(2) The arbitrator deciding the claim may request the appointment of two additional arbitrators. Where there is more than one arbitrator, the majority of the arbitrators will be public arbitrators as defined in Section 16.

(g) **Document Production.**

(1) If there is a hearing, Sections 15 and 23 will govern information exchange and pre-hearing activity.

(2) If a hearing will not be held, the parties must make all requests for documents in writing within 10 business days of notice of the arbitrator's appointment. A request must be sent at the same time to all parties and filed with the Director.

(3) Parties must respond or object to the requests in writing, with copies to all parties, within 5 business days, and file a copy with the Director. The arbitrator will resolve objections on the papers submitted without a hearing.

(h) **Additional Documents.**

(1) With the permission of the arbitrator the parties may submit additional documents relating to the pleadings.

(2) Upon the request of a party or at the discretion of the arbitrator(s), the arbitrator(s) may order the submission of additional documentation relating to the pleadings.

(i) **General Arbitration Rules.** The general arbitration rules of the [SRO] apply to Simplified Arbitration, unless otherwise specified.

Section 10. The Arbitration Hearing
This section deals with the scheduling of the Arbitration Hearing, how parties may waive a hearing, and postponement of a scheduled hearing date.

(a) **Time and Place of Hearings**

(1) The Director decides when and where to hold the initial hearing. The Director must give notice of the time and place of the initial hearing to each party at least 15 business days before the hearing. Notice will be sent by personal service, or registered or certified mail, unless the parties waive notice.

(2) The arbitrator(s) decide when and where to hold subsequent hearings, and how to notify the parties of those hearings.

(3) A party attending a hearing waives the right to object to lack of notice of that hearing.

(b) **Waiver of the Hearing Requirement**

(1) A hearing will be held in every claim unless:

- The SRO is processing the case as a Simplified Arbitration; or
- All parties waive a hearing, in writing, and request a decision by the arbitrators based upon the pleadings and documentary evidence alone.

(2) Even if the parties waive the hearing, a majority of the arbitrators may call for a hearing. Also, any arbitrator may request that further evidence be provided.

(c) **Postponements**

A postponement is any delay or cancellation of a hearing date. This section covers how to request a postponement of the hearing date and describes the costs and possible consequences of such postponements.

(1) Arbitrators may postpone hearings on their own, or at the request of any party.

(2) Unless waived by the Director, a party that requests a postponement after arbitrators have been appointed must:

- for the first request, deposit a fee equal to the initial hearing session deposit.
- for the second and any subsequent requests, deposit an amount equal to twice the initial hearing session deposit, but not over $1,000. If the arbitrators do not grant a postponement, any postponement fees paid will be refunded. The arbitrators may also direct the refund of a postponement fee if a postponement is granted.

(3) If the arbitrators receive a third request for postponement that is consented to by all parties, the arbitrators may dismiss the arbitration. A claimant, however, may later file a new arbitration on the same claim.

Section 11. Schedule of Fees
All claims require that the filing party must pay a filing fee and hearing session deposit. This section also covers the amount of fees required and describes how the arbitrators may assess fees.

(a) **Filing Fees and Hearing Session Deposits.**
(1) When filing a Claim, Counterclaim, Third-Party Claim, or Cross-Claim, that party must pay a non-refundable filing fee and a hearing session deposit to the SRO, as indicated in the fee schedules below, unless waived by the Director.

(2) When multiple hearing sessions are scheduled, the arbitrators may require any party to make additional hearing session deposits. The sum of the hearing session deposits shall not exceed the amount of the largest initial hearing session deposit times the number of scheduled hearing sessions.

(b) **Hearing Session Defined.** A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference, which lasts 4 hours or less. The fee for a pre-hearing conference with one arbitrator is the same as the hearing session deposit for one arbitrator.

(c) **Forum Fees.**
(1) **General assessment of forum fees.** Forum fees are charges assessed against one or more of the parties for the hearing. The arbitrators, in their award, will decide the forum fee amount chargeable to the parties, and determine who must pay such fees. Forum fees will be assessed based upon the number of hearing sessions. The total forum fees for each hearing session may not exceed the amount of the largest initial hearing deposit of any party, except when claims are joined after filing. Forum fees for claims joined after filing are provided in paragraph (d). The arbitrators may decide that a party will reimburse another party for non-refundable filing fees.

(2) **Customer fees for an industry claim.** In an industry claim, the arbitrators may assess forum fees against the customer. In such case, the arbitrators will base their assessment on the hearing deposit for the amount actually awarded to the industry party, rather than the amount of the industry claim.

If an industry claim against a customer is dismissed, the arbitrators may not assess fees against a customer. However, if the case also involves a customer claim, the arbitrators may assess fees against the customer based upon the schedule of fees for customer claims.

(3) **Application of Deposits.** A party's deposits will be applied against forum fees assessed against that party, if any. The Director will refund a party's hearing deposit if forum fees are not assessed against that party, unless the arbitrators direct otherwise.

(4) **Other costs.** The arbitrators may also determine, and state in the award, the amount of costs incurred, including costs incurred under Sections 10(c) (Postponements), 15 (Information Exchange and Pre-Hearing Proceeding), and 25(d) (Record of Proceedings). The arbitrators will determine other costs and expenses of the parties and arbitrators that are within the scope of the agreement of the parties unless applicable law directs otherwise. The arbitrators will decide who will pay those costs.

(d) **Joined or Consolidated Claims.** For claims filed separately and subsequently joined or consolidated, the arbitrators will base the hearing deposits and forum fees on the total amount in dispute. The arbitrators will decide who will pay those fees.

(e) **Non-monetary Claims.** If the claim does not involve or specify a money claim, the non-refundable filing fee for a customer or non-member is $250 and the non-refundable filing fee for an industry party is $500. The hearing session deposit is $600 or an amount determined by the Director or the panel of arbitrators which will not exceed $1,000.

(f) **Claims Settled or Withdrawn Prior to the Initial Hearing.** The SRO will retain all hearing session deposits submitted by the parties in any matter settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.

(g) **Claims Settled or Withdrawn After the Initial Hearing.** The arbitrators may assess forum fees and any costs incurred for any matter settled or withdrawn after the beginning of the first hearing session, including a pre-hearing conference with an arbitrator. The arbitrators will base the fees on hearing sessions held or scheduled within eight business days after the SRO received notice that the matter is settled or withdrawn. The arbitrators must decide who will pay the forum fees and costs.

Schedule of Fees

For the purposes of the schedule of fees the term "claim" includes claims, counterclaims, cross claims, and third party claims. Any such "claim" made by a customer is a customer claim. Any such "claim" made by a member or associated person of a member is an industry claim.

SCHEDULE OF FEES

CUSTOMER CLAIMANT

	Filing Fee	Hearing Session Deposit		
Amount in Dispute		**Paper**	**1 Arbitrator**	**3 Arbitrators**
$.01-$1,000	$ 15	$15	$ 15	N/A
$1,000.01-$2,500	$ 25	$25	$ 25	N/A
$2,500.01-$5,000	$ 50	$75	$100	N/A
$5,000.01-$10,000	$ 75	$75	$200	N/A
$10,000.01-$25,000	$100	$100	$300	$ 400
$25,000.01-$50,000	$120	N/A	$300	$ 400
$50,000.01-$100,00	$150	N/A	$300	$ 500
$100,000.01-$500,000	$200	N/A	$300	$ 750
$500,000.01-$5,000,000	$250	N/A	$300	$1,000
Over $5,000,000	$300	N/A	$300	$1,500

(Editor's note: Section 8 refers to claims of $25,001 to $50,000 consider change here)

INDUSTRY CLAIMANT

Amount in Dispute	Filing Fee	Hearing Session Deposit		
		Paper	1 Arbitrator	3 Arbitrators
$.01-$1,000	$500	$75	$300	N/A
$1,000.01-$2,500	$500	$75	$300	N/A
$2,500.01-$5,000	$500	$75	$300	N/A
$5,000.01-$10,000	$500	$75	$300	N/A
$10,000.01-$25,000	$500	$100	$300	$600
$25,000.01-$50,000	$500	N/A	$300	$600
$50,000.01-$100,000	$500	N/A	$300	$600
$100,000.01-$500,000	$500	N/A	$300	$750
$500,000.01-$5,000,000	$500	N/A	$300	$1,000
Over $5,000,000	$500	N/A	$300	$1,500

Section 12. Determining time limits on eligibility of a claim
This section describes which claims may not be eligible for arbitration because of the passage of time. It also describes how the claim's eligibility will be decided.

(a) **Time Limits on Eligibility**
(1) At any party's request, the panel shall find a claim not eligible for arbitration if six years have passed between the time of filing and the event giving rise to the dispute, claim or controversy.
(2) If more than six years have passed since the event that is the subject of the claim, damages are not recoverable in arbitration. However, the Claimant may proceed in court with such claim.

(b) **Defining the Event Causing the Controversy.** "Event" means the trade date for the security on which the claim is based. If the claim is not based on a trade, event means the date that the responding party acted (or failed to act), creating the controversy that is the subject of the claim.

(c) **Claims Not Eligible for Arbitration.**
(1) If the panel decides that a claim is not eligible, any party may file the claim in court as if no arbitration agreement existed between the parties, even though a submission agreement has been filed.

(2) If permitted under applicable law and/or Section 5, when eligibility is contested, the time limits that would ordinarily run for filing a claim in court will be tolled (e.g., statute of limitations and repose). This tolling will continue from the filing of an arbitration claim until 20 business days after service of the panel's decision on eligibility.

(3) By requesting dismissal of a claim under this Section, the requesting party agrees that if the panel dismisses a claim under the Section, the party that filed the dismissed claim may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(d) **Statute of Limitations (Time Limits).**

(1) This section does not extend or limit any statutes of limitations.

(2) If a party files a claim in court and the party against whom the claim is brought requests the court to order arbitration, that party may not later challenge the eligibility of the claim to be arbitrated.

Section 12(a) amended, (c) deleted, (d) amended and (e) re-lettered January 16, 2007.
Section 12(a)(2) deleted, (a)(3) re-numbered March 27, 2007

Section 13. Amendments

(a) If a party wants to file a new or different pleading that party must:

- file the new or different pleading in writing with the Director, with copies for each arbitrator; and
- serve all other parties with a copy.

Other parties may file a response within 10 business days of receipt of the new or different pleading. Parties must send their response to all other parties and the Director, with copies for each arbitrator.

(b) Parties serving new or different pleadings or responses under this section must follow Section 6 (Service and Filing Requirements).

(c) Parties may not file new or different pleadings after the panel of arbitrators is appointed without the panel's consent. Parties may, however, respond to a pleading that was filed before the panel's appointment.

Section 14. Settlements

Parties to an arbitration may agree to settle their dispute at any time.

Section 15. Exchange of Documents and Information

This section covers the documents and information that the parties must provide to each other before the hearing.

(a) **General Rules**

(1) Parties must cooperate by voluntarily exchanging documents and information to expedite the arbitration.

(2) Requests for documents and information must be specific, relate to the controversy, and allow the responding party a reasonable time to respond without interfering with the hearing date.

(b) **Requests for Documents and Information**

(1) A party may request in writing documents and information from another party the earlier of:

- 20 business days after service of the Statement of Claim by the Director; or
- upon filing of the Answer.

(2) The party requesting information must serve copies of the request upon all parties.

(b) **Complying or Objecting**

(1) A party who receives a document and information request must satisfy or object to the request within 30 days from service of the request. The requesting party may allow a greater time to respond to the request.

(2) Before formally objecting to a document and information request, parties must try to resolve disputes among themselves. The objecting party must describe those efforts in the written objection.

(3) Any party who objects to a document and information request must serve the objection on all parties.

(4) Within 10 days of receipt of the objection, a party may serve a response to the objection on all parties.

(5) If a party does not receive the requested documents and information, upon written request, the Director will refer the matter to either a pre-hearing conference or to a selected arbitrator (See Section 23). Copies of the request, objections to the request and response to the objection, if any, must accompany the request to the Director of Arbitration.

Sections 15(b) (3)&(4) amended October 2, 2003

Section 16. Determining the Number and Type of Arbitrators

This section covers the number and type of arbitrators who will decide a claim with a customer or a non-member as a party, when the amount in dispute exceeds $25,000.. For claims of $25,000 or less involving customers or non-members, see Section 9 (Simplified Arbitration).

(a) **For claims of $25,001 to $100,000**

If any party is a customer or a non-member and the total amount claimed in the case is from $25,001 to $100,000 (excluding costs and interest), one arbitrator, classified as public and knowledgeable in the securities industry, will hear the case.

(b) **For claims of $100,001 to $200,000**

If any party is a customer or a non-member and the total amount claimed in the case is from $100,001 to $200,000 (excluding costs and interest):

(1) One arbitrator, classified as public and knowledgeable in the securities industry, will hear the case unless any party or the arbitrator asks for three arbitrators.

(2) If a party requests three arbitrators, the request must be made when that party files its *first* documents (Statement of Claim or Answer) with the SRO. The requesting party must pay an additional hearing session deposit for three arbitrators when it makes its request.

(3) If three arbitrators are requested, two will be classified as public arbitrators, unless the customer or non-member requests that the panel includes two or three arbitrators classified as being from the securities industry.

(4) The customer or non-member must ask for two or three arbitrators classified as being from the securities industry within ten days after the answer is due. This deadline is not extended even if an extension is granted for an answer.

(c) **Claims above $200,000 or where no dollar amount is claimed or disclosed**

Three arbitrators will hear and decide claims above $200,000 (not including costs and interest) or where no dollar amount is claimed or disclosed.

(1) Two of the three arbitrators will be classified as public arbitrators, unless the customer or non-member requests that the panel includes two or three arbitrators classified as being from the securities industry.

(2) A request for two or three arbitrators classified as being from the securities industry must be made within 10 days after the answer is due. This deadline is not extended even if an extension is granted for an answer.

(d) **How Securities Industry Arbitrators Are Classified**

If the parties select arbitrators from the SRO's pool, there are two types of arbitrators who may hear the case. Arbitrators are classified as either securities industry or public arbitrators.

An arbitrator is classified as being from the securities industry if that arbitrator:

(1) is or is associated with either:

- a member of an SRO
- a securities broker/dealer,
- a government securities broker
- a government securities dealer
- a municipal securities dealer
- a member of a registered futures association or any commodity exchange,
- a person registered under the Commodity Exchange Act; or

(2) has been associated with any of the above within the last five years; or

(3) has retired from or spent a substantial part of a career with any of the above; or

(4) is an attorney, accountant, or other professional who within the last two years devoted 20 percent or more of his or her time to any person or entities enumerated in (c)(1).

(e) How Public Arbitrators are Classified

(1) A public arbitrator is anyone in the SRO's pool of arbitrators who is not classified as a securities industry arbitrator.

(2) A person will not be classified as a public arbitrator if:

- a spouse or member of the household could be classified as a securities industry arbitrator under paragraph (c)(1) of this section.
- The person has been associated with the industry as defined in paragraph (c)(1) of this section
- The person is an investment advisor
- The person is an attorney, accountant or other professional whose firm derives 20 percent or more of its annual income from securities industry representation.

In addition, a person will not be classified as a public arbitrator if a spouse or member of the household is employed by a bank or financial institution, and:

- effects transactions in securities, or
- supervises employees who effect transactions in securities, or
- monitors compliance with the securities laws of the employees who effect transactions in securities.

(f) Who will not be classified as a securities industry arbitrator or a public arbitrator

(1) A person will not be classified as a securities industry or a public arbitrator if the person is employed by a bank or financial institution and:

- effects transactions in securities, or
- supervises employees who effect transactions in securities, or
- monitors compliance with the securities laws of the employees who effect transactions in securities.

(2) A person will not be classified as a securities industry or a public arbitrator if the (SRO) believes the person may not qualify as an arbitrator.

Section 16(c)(1), (c)(2), (c)(3) & (d)(2) amended June 7, 2002

Sections 16(c)(4) & (d)(2) amended April 9, 2003

Sections 16(a) & (b) amended March 22, 2004

Sections 16(b) (new) is added; former section (b) is designated as (c) and amended; remaining subsections re-lettered March 21, 2006

Section 17. Selecting Arbitrators

(a) Sources of Arbitrators

(1) The (SRO) will provide lists of potential arbitrators to the parties. If every party, however, agrees, they may jointly select arbitrators whether or not on the SRO's list.

(2) The Director will designate the chair for each panel unless all the parties agree to a chair.

(b) **Lists of Potential Arbitrators and Background Information.**

(1) If one arbitrator hears a case, the Director will send each party a list of public arbitrators.

(2) If three arbitrators hear a case, the Director will send each party two lists, one of public arbitrators and one of securities industry arbitrators.

(3) The Director will send the list(s) to the parties within 30 days after the answer to the initial claim is due. If however, the answer is filed on time and contains a third party claim, the list(s) will be sent within 30 days from the time the answer to the third party claim is due.

(4) Along with the list(s), the parties will also receive the employment histories of the listed arbitrators for the past 10 years and any information disclosed under Section 19 (Arbitrator's Required Disclosure).

(5) Any party may ask the Director for additional information about the background of a potential arbitrator.

The request for additional information must be made within the twenty days the party has to return the list(s) as provided in Section 17(c). The [SRO] shall obtain the information from the arbitrator without advising the arbitrator which party requested the information and shall send the arbitrator's response to all parties at the same time. The Director in his/her discretion may limit the additional information requested from the arbitrator.

The request for more information will toll the time for returning the list(s) to the Director. The tolling period shall commence from the date the request for additional information is received by the [SRO] to the date a response to the additional information requested is received. The Director may extend the deadline for requesting additional information and returning the list(s) if the Director finds a reasonable basis for this extension.

(c) **Return of lists.**

(1) The parties must return their list(s) to the Director within 20 days of the date they receive it, or as extended by the parties' use of the tolling period. A party must:

- Strike through the names of any unacceptable arbitrators on each list. A party's strikes are limited as explained in Section 18 (Objecting to Potential Arbitrators); and
- Rank the remaining names on each list in order of preference, with "1" being the arbitrator you most strongly prefer.

(2) A party accepts all arbitrators on the lists(s) when they do not return the lists on time.

(3) The SRO will ask arbitrators to serve in the order of the parties' mutual preferences. Mutual preferences are determined for each classification of arbitrator by adding together the numbers assigned to each arbitrator and selecting arbitrators with the lowest numbers first.

(d) Appointment of Arbitrators.

The Director will appoint one or more arbitrators for the panel from the SRO's pool of arbitrators if:

- the parties do not agree on a complete panel;
- acceptable arbitrators are unable to serve; or
- arbitrators cannot be found from the lists for any other reason.

In the event the Director's appointment becomes necessary, then each side will be given one peremptory strike per case.

Section 17 amended March 15, 2005 (added last paragraph)

Section 18. Challenging Potential Arbitrators

This section deals with striking unacceptable arbitrators and ranking those that are acceptable. Arbitrators may also be challenged for cause.

(a) Peremptory strikes

(1) If one arbitrator hears a case, a party may strike any or all of the names from the list without providing an explanation. This is called a peremptory strike. In the event the forum cannot select the arbitrator from the names not stricken, then a second list will be submitted to the parties. The second list will contain three names. Each side shall be given one peremptory strike from that list.

(2) If three arbitrators hear a case, a party may strike any or all of the names from the lists. In the event the forum cannot select the arbitrators from the names not stricken, then a second list will be submitted to the parties. The second list will contain three names for each vacancy to fill out the panel. Each side shall be given one strike per vacancy from the list without providing an explanation.

(3) In cases where there are two or more people making a claim or responding to a claim, all the people making the claim will share one set of peremptory strikes and all the people responding to the claim will share one set of peremptory strikes. If a claim is made against two or more third parties, the third parties will share one set of peremptory strikes.

(4) Section 17 (Selecting Arbitrators) provides the deadlines for exercising peremptory strikes.

(5) The Director may allow additional peremptory strikes if the Director determines that justice would be served by doing so.

(b) Challenges for Cause.

The parties have an unlimited number of challenges for cause. The Director will determine whether to remove an arbitrator because of a challenge for cause.

A challenge for cause to a particular arbitrator will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

Section 18(b) amended January 13, 2003

Section 19. Arbitrator's Required Disclosures

(a) **Disclosures Generally.** Before accepting appointment, each arbitrator must disclose to the Director any circumstances that might preclude the arbitrator from rendering an objective and impartial decision, including:

(1) any direct or indirect financial or personal interest in the result of the arbitration;

(2) any past or present financial, business, professional, family, social or other relationships between:

- themselves, their immediate families or household members, their employers and their professional or business associates, and
- the parties, their attorneys, and witnesses;

(3) any relationship that might reasonably create the appearance of partiality or bias; and

(4) the nature and extent of any prior knowledge the arbitrator may have of the dispute.

(b) **Duty to Investigate.** Arbitrators must make a reasonable effort to investigate all relationships described in paragraph (a) above.

(c) **Continuing Duty to Disclose.** An arbitrator must disclose any circumstances described in paragraph (a) above as they arise, are discovered, or recalled, throughout the arbitration.

(d) **Arbitrator Removal and Disclosure.**

(1) The Director may remove an arbitrator, before the first pre-hearing or hearing session, based on the disclosure of information described above. The Director will remove or will disqualify from appointment any arbitrator who the director concludes intentionally has failed to disclose material information as to his or her background, experience or potential or existing conflicts of interest or bias.

(2) The Director will inform the parties of any information disclosed under this section if the arbitrator is not removed.

(3) Once the hearings have commenced, the Director may remove an arbitrator based only on information required to be disclosed under subsection (a), not known to the parties when the arbitrator was selected. The Director's authority under this subsection may not be delegated.

Sections 19(a)(2) and 19(c) amended: March 14, 2000. Section 19(d)(3) added March 14, 2000. Section 19(d)((1) amended June 23, 2005.

Section 20. Filling Vacancies of Arbitrators

(a) Filling vacancies before the first hearing

(1) If an arbitrator must withdraw before the first hearing, the Director will invite the next acceptable arbitrator on the parties' list(s) of arbitrators to fill the vacancy. If there are no remaining names, or if the vacancy cannot be filled from the names on the lists, the Director will appoint an arbitrator.

The parties will receive:

- The arbitrator's name and employment history for the last 10 years, and
- Any information disclosed under Section 19 (Arbitrator's Required Disclosure).

(2) Any party may ask the Director for additional information on the proposed arbitrator's background. Any party may challenge the arbitrator as provided in Section 18 (Objecting to Potential Arbitrators).

(b) Filling Vacancies After The First Hearing Starts

(1) If an arbitrator cannot serve after the start of the first hearing, the case may continue with the remaining arbitrators unless any party objects. If any party objects, that party must advise the Director on whichever occurs earlier:

- Within 5 days of receiving notice of the vacancy, or
- Before the next scheduled hearing session.

(2) If any party objects to continuing without a full panel, the Director will fill the vacancy from the remaining names on the parties' lists of acceptable arbitrators. If there are no remaining names, or if the vacancy cannot be filled from the names on the lists, the Director will appoint an arbitrator.

(3) When the Director appoints a replacement arbitrator, the parties will receive the following as soon as possible:

- The arbitrator's name and employment history for the last 10 years, and
- Any information disclosed under Section 19 (Arbitrator's Required Disclosure).

(4) Any party may ask the Director for additional information on the appointed arbitrator's background. Any party may challenge the arbitrator as provided in Section 18 (Objecting to Potential Arbitrators).

Section 21. Arbitrator Rulings

(a) Oaths of the Arbitrators

Arbitrators will take an oath or affirmation before the first pre-hearing or hearing session begins or before issuing any ruling.

(b) Majority Agreement Requirement
The arbitrators will make any ruling or determination by a majority vote, except as provided under Section 23 (Pre-Hearing Procedures).

(c) Interpretation and Enforcement of Arbitrator Rulings
The arbitrators may interpret and enforce all provisions of this Code, except for the provision regarding the eligibility of claims for arbitration (see Section 12). Arbitrators also may take appropriate action to obtain compliance with their rulings, including imposing penalties (see Section 22). Arbitrators' interpretations and actions to obtain compliance are final and binding upon the parties.

Section 22. When Proceedings May be Dismissed

(a) Any time during an arbitration, the arbitrators may, either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties' to their judicial remedies or any other dispute resolution forum agreed to by the parties. Any such referral shall be without prejudice to any claims or defense.

(b) Arbitrators may dismiss a claim or a defense with prejudice when:
- a party intentionally fails to comply with an arbitrator's order; and
- lesser penalties have not produced compliance.

(c) The arbitrators will dismiss the proceedings when requested to do so by all parties.

Section 23. Pre-Hearing Proceedings
This section covers the procedures to be followed to resolve disputes over the exchange of documents and information before the hearing.

(a) Pre-Hearing Conference
(1) The Director will schedule a pre-hearing conference at the written request of a party, or an arbitrator. The Director may also schedule a pre-hearing conference at his or her own discretion.

2) The Director will decide where and when to hold a pre-hearing conference, and appoint a person to preside over it. The conference may be held by telephone.

(3) The presiding person will seek to achieve agreement among the parties on:
- pre-hearing information and document exchange;
- witness lists;
- stipulations of facts;
- identification and briefing of contested issues; and
- any other matter that will expedite the arbitration.

(4) The Director may refer any unresolved issues from the pre-hearing conference to a member of the Arbitration Panel for decision.

Decisions by a Single Arbitrator on Pre-hearing Issues. The Director may appoint a member of the Arbitration Panel to decide all unresolved pre-hearing issues on behalf of the panel. The arbitrator may:

- issue subpoenas for witnesses or documents;
- direct appearances of witnesses;
- direct production of documents; and
- set deadlines for document or witnesses production.

The arbitrator will decide issues under this section based on the papers submitted by the parties, or may call for a hearing. The arbitrator may refer any issues to the full panel for decision.

(c) Subpoenas.

(1) Arbitrators and any counsel of record may issue subpoenas as provided by law. The party who requests or issues a subpoena must send a copy of the request or subpoena to all parties and the entity receiving the subpoena in a manner that is reasonably expected to cause the request or subpoena to be delivered to all parties and the entity receiving the subpoena on the same day. The parties will produce witnesses and present proof at the hearing whenever possible without using subpoenas.

(2) No subpoenas seeking discovery shall be issued to or served upon non-parties to an arbitration unless, at least 10 days prior to the issuance or service of the subpoena, the party seeking to issue or serve the subpoena sends notice of intention to serve the subpoena, together with a copy of the subpoena, to all parties to the arbitration.

(3) In the event a party receiving such a notice objects to the scope or propriety of the subpoena, that party shall, within the 10 days prior to the issuance or service of the subpoena, file with the Director, with copies to all other parties, written objections. The party seeking to issue or serve the subpoena may respond thereto. The arbitrator appointed pursuant to this Code shall rule promptly on the issuance and scope of the subpoena.

(4) In the event an objection to a subpoena is filed under paragraph (c)(3), the subpoena may only be issued or served prior to the arbitrator's ruling if the party seeking to issue or serve the subpoena advises the subpoenaed party of the existence of the objection at the time the subpoena is served, and instructs the subpoenaed party that it should preserve the subpoenaed documents, but not deliver them until a ruling is made by the arbitrator.

(5) Rule 23(c)(2) and (3) do not apply to subpoenas addressed to parties or non-parties to appear at a hearing before the arbitrators.

(6) The arbitrator(s) shall have the power to quash or limit the scope of any subpoena.

(d) **Power to Direct Appearance and Production of Documents.** Arbitrators may, without using subpoenas, direct:

- the appearance of any employee or associated person of a member or member organization of the SRO; and
- the production of any records in the possession or control of persons or members.

The party requesting the appearance or document production will pay reasonable costs related to the request unless the arbitrator directs otherwise.

(e) Joint Administration

(1) At the request of any of the parties to an arbitration or of any member of the panel, the arbitrators may consider whether they should jointly administer all subsequent proceedings in the arbitration.

(2) If the arbitrators and all parties agree, then the arbitrators may, without the assistance of the SRO, schedule all pre-hearing and hearing dates, the timing of the service and filing of appropriate papers, all discovery matters and all other matters relevant to the expeditious handling of the case.

(3) This Rule shall only apply to those matters where all parties are represented by counsel. If, during the proceeding a party chooses to appear pro se, this Rule shall no longer apply.

(4) Transmittal of Documents and Procedure for Oral Communications

(a) Parties may send written materials directly to the arbitrators, provided that copies of all such materials are sent simultaneously and in the same manner to all parties and the Director. The parties shall send the Director, arbitrators, and all parties proof of service of such written materials, indicating the time, date, and manner of service upon the arbitrators and all parties. Service by mail is completed upon mailing. If the arbitrators and all parties agree, written materials may be served electronically.

(b) If the arbitrators agree, the parties may initiate conference calls with the arbitrators, provided that all parties are on the line before the arbitrators join the call. Such conference calls may be tape-recorded or stenographically recorded.

(c) The arbitrators may initiate conference calls with the parties, provided all parties are on the line before the conference begins. Such conference calls may be tape recorded or stenographically recorded.

(d) Parties may not communicate orally with the arbitrators unless all parties are present.

The arbitrators are empowered to terminate or modify any order they issue regarding the joint administration of the arbitration.

Section 23(e) added October 2, 2002

Section 23(c) amended June 12, 2003

Section 23(c) amended April 29, 2004
Section 23(c) amended October 20, 2004

Section 24. Pre-Hearing Exchange of Documents and Witness Lists
This section deals with the requirement of the parties to exchange documents and names of witnesses with each other before the hearing.

(a) All parties must serve on each other, no later than 20 days before the first scheduled hearing, copies of documents in their possession and the names of witnesses they intend to present at the hearing. Witnesses are to be identified by name, address, and business affiliation.

(b) Parties may provide a list of documents, rather than copies of the documents, if they have previously produced the documents to the other parties.

(c) All parties must serve on the Director, at the same time and in the same manner as service on other parties:

- a list of documents they have produced to other parties; and
- their witness lists.

(d) The arbitrators may exclude from consideration documents not exchanged and witnesses not identified as required under this section.

(e) Parties are not required to serve copies of documents or names of witnesses that they may use for cross examination or rebuttal.

Section 25. Hearing Procedures
This section covers the procedures that will be followed at a hearing.

(a) **Who May Attend Hearings**
The arbitrators will decide who may be present at the hearings. The parties and their attorneys are always entitled to attend hearings.

(b) **Oaths of Witnesses**
All witnesses will testify under oath or affirmation.

(c) **Acknowledgment of Pleadings**
Arbitrators will acknowledge at the hearing that they have read the pleadings.

(d) **Recording the Proceedings**
All arbitration hearings will be recorded verbatim by stenographic reporter or tape, digital, or other recording. Any party may request that the record be transcribed. A party requesting a transcript will bear the cost, unless the arbitrators direct otherwise. If the record is transcribed, the parties will provide the arbitrators with a copy of the transcript. The arbitrators may also direct that the record be transcribed.

(e) **Evidence**
The arbitrators decide if evidence is material or relevant, and are not required to follow the rules governing whether evidence is admissible.

(f) **Failure to Appear at a Hearing**
If a party, after receiving notice of a hearing, does not attend the hearing or its continuation, the arbitrators may proceed in their discretion; and make an award as if each party had entered an appearance in the arbitration.

Section 25(d) amended October 25, 2006

Section 26. Reopening of Hearings Before a Decision is Rendered
Unless prohibited by law, the arbitrators may reopen the hearing before an award is rendered by application of a party, or on their own initiative.

Section 27. Awards
This section covers the contents of the arbitrators' award, and what happens after the award is rendered.

(a) The arbitrators may grant any remedy or relief that they deem just and equitable and that would have been available in any court with jurisdiction over the matter.

(b) The arbitrators must make all awards in writing, and a majority of the arbitrators must sign the award. The arbitrators may also make awards in any other manner required by law. A court may enter a judgment on any award.

(c) Unless the law directs otherwise, awards made in accordance with this Code are final and not subject to review or appeal.

(d) The Director will send the parties or their counsel a copy of the award by one of the following methods:

- facsimile transmission or other electronic means;
- registered or certified mail to the address of record;
- personal service; or
- any other method of filing or delivery authorized by law.

(e) The arbitrators will attempt to render their award within 30 business days after the record is closed.

(f) The award will contain the following:

- names of the parties;
- names of counsel, if any;
- summary of the issues in controversy;
- type of security or product in controversy;
- damages and/or other relief requested;
- damages and/or other relief awarded;
- statement of any other issues resolved;
- names of the arbitrators; and
- signatures of the arbitrators concurring in the award.

(g) The SRO will make the awards publicly available, in accordance with its policies.

(h)(1) A party must pay any monetary relief awarded within 30 days of receipt of the award unless any party has filed a motion to vacate the award in a court.

(2) Monetary relief awarded will bear interest from the date it is issued if:

- the award is not paid within 30 days of receipt, or;
- a motion to vacate the award was denied, or;
- specified by the arbitrators in the award.

Interest shall be assessed at the legal rate then prevailing in the state where the award was rendered, or at a rate set by the arbitrators.

SICA SRO STATISTICS

COMPOSITE ARBITRATION FIGURES					
Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	6,560	10,206	7,793	1,917	947
2006	4,905	8,040	5,844	1,171	543
2007	3,370	5,668	3,956	717	258
2008	4,987	3,955	2,500	502	209

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.

BOSTON STOCK EXCHANGE, INC.

Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	0	0	0	0	0
2006	0	0	0	0	0
2007	0	0	0	0	0
2008	0	0	0	0	0

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	5	7	2	0	0
2006	7	3	1	0	0
2007	4	5	0	0	0
2008	3	5	2	2	0

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.

CHICAGO STOCK EXCHANGE, INC.

Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	5	4		1	0
**2006	6				
2007	2	2		0	0
2008	1	1		0	0

**Partial Data Received

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.

FINRA DISPUTE RESOLUTION (FORMERLY NASD DISPUTE RESOLUTION)

Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	6,074	9,043	7,033	1,671	851
2006	4,614	7,212	5,286	1,056	501
2007	3,238	5,345	3,759	671	245
2008	4,983	3,757	2,381	474	199

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.

NEW YORK STOCK EXCHANGE, INC.

Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	463	1,111	758	228	89
2006	278	825	557	115	42
2007	126	316	197	46	13
2008	0	192	117	26	10

Consolidated with NASD on 8/6/07

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.

PACIFIC EXCHANGE, INC.

Year	Total Cases Filed	Total Cases Closed	Total Public Customer Claimant Cases Closed	Total Public Customer Claimant Cases Decided	Total Public Customer Claimant Cases Where Customer Awarded Damages*
2005	13	41		17	7
**2006					
***2007					
2008					

**No Data Received

***NYSE administered Pacific Exchange cases as of 10/5/06; NYSE consolidated with NASD 8/6/07

*Reflects only instances in which investors as claimants recovered monetary damages or non-monetary relief.